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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID E. MOORE

Appeal 2019-001668
Application 14/732,164
Technology Center 3600

Before MICHAEL J. FITZPATRICK, ANNETTE R. REIMERS, and
BRANDON J. WARNER, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant, Compumeric Engineering, Inc.,¹ appeals under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 1–8, 10, 12–20, 22, and 24. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

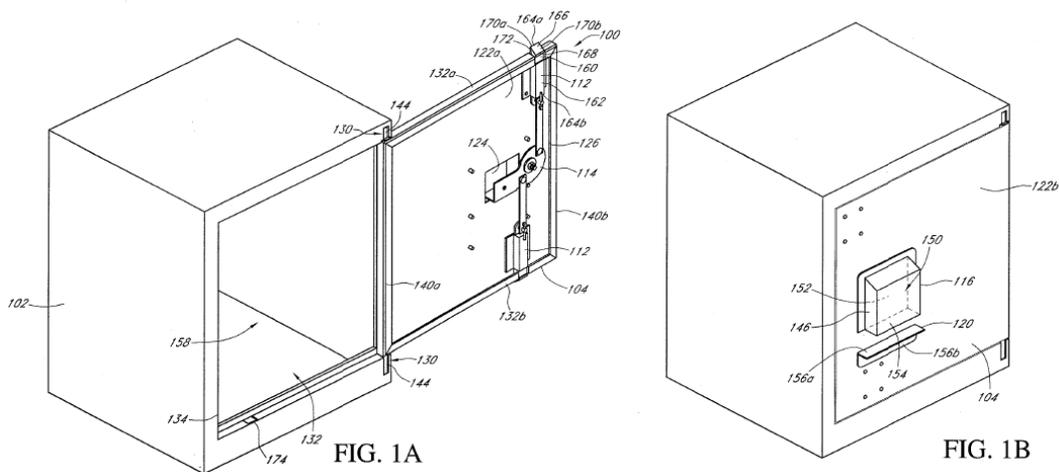
¹ Compumeric Engineering, Inc. is the applicant and sole real party in interest. *See* 37 C.F.R. § 1.42(b); Appeal Br. 3.

STATEMENT OF THE CASE

The Specification

The disclosure “relates to latching systems and, in particular, concerns a latching system for use with a container to inhibit access to the interior of the container by animals.” Spec. ¶2.

Figures 1A and 1B are reproduced below.



Figures 1A and 1B, reproduced above, “illustrate perspective views of a container equipped with one embodiment of an animal resistant latching system in the opened and closed position.” *Id.* ¶12. The container includes a door, i.e., access panel 104, having a rectangular-shaped opening 124. *Id.* ¶¶18, 20. On interior “first side” 122a of the access panel are latching members 112, cam assembly 114, and related components. *Id.* ¶25. On exterior “second side” 122b of the access panel are a cover 116, covering the opening in the access panel, and bracket 120. *Id.* ¶23.

Figure 4 is reproduced below with our annotation.

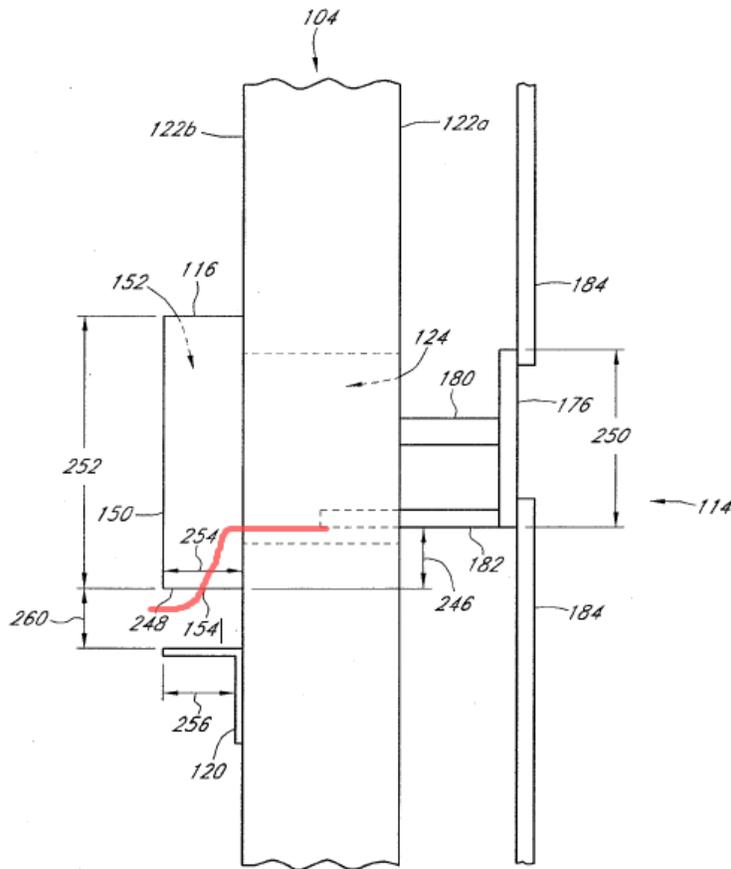


FIG. 4

Figure 4, reproduced above, shows “a side view of the animal resistant latching system of Figure 1, illustrating one embodiment of the predetermined dimensions of the latching system which inhibit access of the lever by bears.” *Id.* ¶15. The cover is open on its underside, providing cover opening 154 through which a hand may extend. *Id.* ¶23. Bracket 120 is positioned below the cover opening but spaced apart by bracket offset 260. *Id.* ¶42; *see also id.* ¶8 (“[T]he bracket is spaced from the cover opening a distance that is selected to permit human access to the cover opening but inhibit access by animals.”). Our annotation shows the path through which a hand traverses to access lever 182 of the cam assembly to

unlock the access panel. *Id.* ¶¶30, 35, 42. More specifically, the hand passes, left to right, between the cover and bracket, then upward through the cover opening, and finally rightward again through the opening in the access panel.

The Rejected Claims

Claims 1–8, 10, 12–20, 22, and 24 are rejected; no other claims are pending.² Claim 1 is illustrative and reproduced below.

1. An animal resistant latching system for use with a container to inhibit access to the interior of the container by animals, the latching system comprising:

an access panel having a first and a second side and an opening formed between the first and second sides wherein the access panel is adapted to be moved between an open and a closed position with respect to the container;

at least one latching member that is movable between a latched position and an unlatched position wherein the at least one latching member is coupled to the access panel at a location wherein the at least one latching member inhibits movement of the access panel to thereby inhibit access to the container in the latched position and wherein the at least one latching member permits movement of the access panel to thereby allow access to the container in the unlatched position;

a cam assembly having a lever wherein the cam assembly is mounted to a first side of the access panel and wherein the cam assembly is coupled to the at least one latching member such that movement of the cam assembly results in movement

² Both the Final Action and Appeal Brief include typographical errors regarding which claims are pending and rejected. The Final Action lists claims 11 and 23 as pending and rejected (Final Act. 1, 3), but those claims are cancelled. *See* Appeal Br. 10, 19, and 21. The Appeal Brief misstates that “appeal of Claims 1–10, 12–22 and 24 is now being sought” (Appeal Br. 10) but elsewhere correctly acknowledges that claims 9 and 21 are also cancelled. *Id.* at 19, 21.

of the at least one latching member between the latched and unlatched positions and wherein the lever is positioned adjacent the opening in the access panel and is accessible so as to allow a person to move the cam assembly so as to urge the at least one latching member from the latched position to an unlatched position;

a cover that is mounted on the second side of the access panel so as to cover the opening in the access panel wherein the cover has side walls that extends outward from the plane of the second side of the access panel and an outer surface that interconnects the side walls so as to define a space positioned above the opening in the access panel wherein the cover defines a cover opening that permits access into the space defined by the cover and also to the lever of the cam assembly wherein the cover opening is dimensioned to allow access to the lever via the opening in the access panel to manipulate the at least one latching member from the latched position to the unlatched position; and

a bracket positioned on the second side of the access panel adjacent the cover opening wherein the bracket extends outward from the second surface of the panel and wherein the bracket is spaced from the cover opening.

Appeal Br. 18–19.

The Examiner's Rejections

The following rejections, all under 35 U.S.C. § 103(a),³ are before us for review:

1. claims 1, 2, 10, 12–14, 22, and 24 as being unpatentable over Kennedy,⁴ Bishop,⁵ and Smith⁶ (Final Act. 3);
2. claims 3–6 and 15–18 as being unpatentable over Kennedy, Bishop, Smith, and Rand⁷ (*id.* at 6);
3. claims 7 and 19 as being unpatentable over Kennedy, Bishop, Smith, and Hess⁸ (*id.*); and
4. claims 8 and 20 as being unpatentable over Kennedy, Bishop, Smith, and Hambleton⁹ (*id.* at 7).

DISCUSSION

Rejection 1

The Examiner rejected claim 1, among others, upon determining that a person of ordinary skill in the art would have modified Kennedy's latch and lock for trailer doors by incorporating Bishop's "cover member (A)," which is actually a "metallic lift" for a window sash (*see* Bishop 1), and also incorporating Smith's laterally projecting portion 29 as a "bracket." Final Act. 3–6.

³ The Final Action includes a rejection of claims 11 and 23 under 35 U.S.C. § 112 ¶2 (*see* Final Act. 2) but, again, those claims are cancelled.

⁴ US 5,509,700, issued Apr. 23, 1996 ("Kennedy").

⁵ US 135,396, issued Feb. 4, 1873 ("Bishop").

⁶ US 3,999,792, issued Dec. 28, 1976 ("Smith").

⁷ US 140,307, issued June 24, 1873 ("Rand").

⁸ US 1,044,047, issued Nov. 12, 1912 ("Hess").

⁹ US 5,341,752, issued Aug. 30, 1994 ("Hambleton").

One of Appellant's arguments against this rejection is that "the cited art does not teach the combination of a cover and bracket that is spaced away from the opening." Appeal Br. 14 (all caps and bolding removed); *see also* Reply 4–5. The actual claim limitation being disputed states as follows: "a bracket positioned on the second side of the access panel adjacent the cover opening wherein the bracket extends outward from the second surface of the panel and *wherein the bracket is spaced from the cover opening.*" Appeal Br. 19 (emphasis added);

To meet this limitation, the Examiner relied exclusively on Smith. Final Act. 5. Figure 6 of Smith, as annotated by the Examiner, is reproduced below.

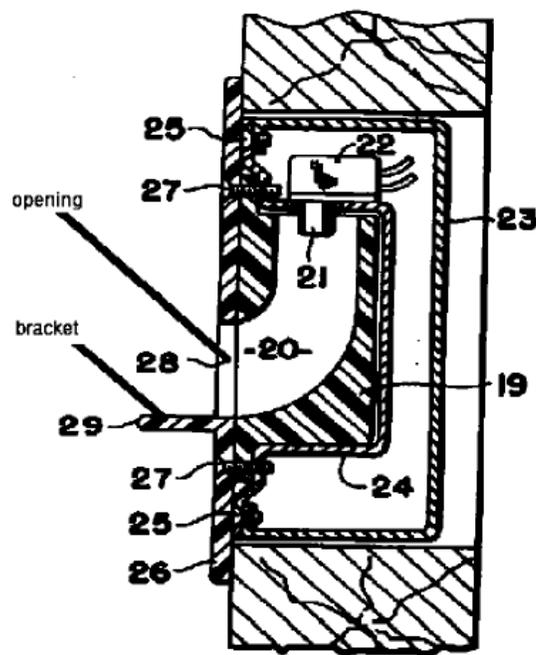


Figure 6 of Smith, reproduced above, shows what the Examiner asserts as a bracket and cover opening. Final Act. 5. The Examiner explained as follows:

Smith teaches that it is well known in the art to provide a system having an operator (21) positioned within a cover member (26)

having an opening (20) and a bracket member (29) located at a certain distance from the opening of the cover to inhibit undesirable access to the operator.

Id. The Examiner's findings regarding Smith are in error. Smith does not include a cover within the meaning of claim 1. Indeed, elsewhere in the Final Action, the Examiner relies on Bishop to teach the cover limitation. *See* Final Act. 4. Further, in Smith, the asserted bracket (i.e., "laterally projecting portion 29") is not located at any distance from the asserted cover opening (i.e., 20). Rather, as seen above, the bottom surface of the asserted cover opening and the upper surface of the asserted bracket are flush with one another.

For these reasons, we reverse the rejection of claim 1 and claim 13, which also recites that "the bracket is spaced from the cover opening." Appeal Br. 21. For similar reasons, we also reverse the rejection of claims 2, 10, 12, 14, 22, and 24, all of which ultimately depend from claim 1 or claim 13. *See In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) ("Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.").

Rejections 2–4

In Rejections 2–4, the Examiner relies on additional references to meet limitations recited by dependent claims 3–8 and 15–20. In doing so, the Examiner does not rely on the additional references in any way that would cure the deficiency of the underlying rejection of independent claims 1 and 13 identified above. Accordingly, we reverse the rejections claims 3–8 and 15–20, all of which ultimately depend from either claim 1 or claim 13.

SUMMARY

Claims Rejected	Basis	Affirmed	Reversed
1, 2, 10, 12–14, 22, and 24	§ 103(a); Kennedy, Bishop, and Smith		1, 2, 10, 12–14, 22, and 24
3–6 and 15–18	§ 103(a); Kennedy, Bishop, Smith, and Rand		3–6 and 15–18
7 and 19	§ 103(a); Kennedy, Bishop, Smith, and Hess		7 and 19
8 and 20	§ 103(a); Kennedy, Bishop, Smith, and Hambleton		8 and 20
Overall Outcome			1–8, 10, 12–20, 22, and 24

REVERSED