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Hovey Williams LLP 10801 Mastin Blvd., Suite 1000 Overland Park, KS 66210			NGUYEN, PHONG H	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CLARK A. LEVSEN

Appeal 2019-001790¹
Application 14/693,697
Technology Center 3700

Before PHILLIP J. KAUFFMAN, JEREMY M. PLENZLER, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

FINAMORE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the Examiner’s decision to reject claims 1–3, 5, and 8–15. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We reference herein the Specification filed April 22, 2015 (“Spec.”), Non-Final Office Action mailed March 9, 2018 (“Non-Final Act.”), Appeal Brief filed June 21, 2018 (“Appeal Br.”), Examiner’s Answer mailed October 30, 2018 (“Ans.”), and Reply Brief filed December 26, 2018 (“Reply Br.”).

² “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Hantover, Inc. Appeal Br. 4.

SUBJECT MATTER ON APPEAL

The invention “relates generally to powered knives, such as those commonly used in meat processing plants,” and more specifically, to “a rotary knife having a rotating blade.” Spec. ¶ 3. Independent claim 1, reproduced below, is the sole independent claim and is representative of the subject matter on appeal.

1. A rotary knife comprising:
 - a frame;
 - a blade housing supported on the frame; and
 - an annular blade supported on the blade housing for rotational movement about an axis,
 - said blade presenting an annular inner blade surface that terminates at a cutting edge,
 - said inner blade surface including first and second sections, with the first section extending from the cutting edge and the second section being located further from the cutting edge than the first section,
 - said first and second sections of the inner blade surface being angled relative to one another,
 - said first and second sections of the inner blade surface being immediately adjacent one another and forming a transition area therebetween,
 - said transition area being a sharp apex,
 - said first section defining a first angle relative to an imaginary plane transverse to the axis,
 - said second section defining a second angle relative to the imaginary plane,
 - said second angle being at least about ten degrees greater than the first angle.

Appeal Br., Claims App.

REJECTION

The Examiner rejects claims 1–3, 5, and 8–15 under 35 U.S.C. § 103 as unpatentable over Esarey (US 2014/0074118 A1, published Mar. 13, 2014).³

ANALYSIS

Esarey describes a hand-held, power operated dermatome having an annular blade. Esarey ¶ 39, Fig. 4. Blade section 304 of annular blade 300 includes lower region 359 and upper region 358, separated by a discontinuity. *Id.* ¶ 69, Fig. 15. The inner, conical surface of lower region 359 defines cutting angle CA of approximately 30° with horizontal surface CP when cutting edge 360 rests on the surface. *Id.* ¶ 69, Fig. 16.

The Examiner finds Esarey discloses the limitations of independent claim 1, except for the “second angle being at least about ten degrees greater than the first angle.” Non-Final Act. 2–4. The Examiner further finds that one of ordinary skill in the art would have recognized Esarey’s first angle affects the cutting angle CA, which in turn affects the quality of tissue cut by the dermatome. Ans. 6–7. Based on this finding, the Examiner determines that “it would have been obvious to one skilled in the art to optimize the tissue removal by varying the angle of the blade.” *Id.* at 7. The Examiner also determines the recited second angle would have been obvious to try because (1) there had been a recognized problem in the art including pressure to solve the problem of the first angle, (2) there are a finite number of identified, predictable solutions to the recognized problem, namely 30 intervals of 1° to make the first section form a 180° angle with the second

³ The Examiner has withdrawn a rejection of claims 1–3, 5, and 8–15 under 35 U.S.C. § 102(a)(1) as anticipated by Esarey. Ans. 2.

section, (3) in view of the relationship between the first angle and the quality of cut and the only 30 potential solutions, one of ordinary skill in the art could have pursued the known potential solutions with a reasonable expectation of success, and (4) the *Graham* factual inquiries set forth in the rejection. *Id.* at 8–9.

Appellant argues the Examiner’s rationale based on optimization is deficient. Appeal Br. 10–11; Reply Br. 4–6. Appellant further argues the obvious-to-try reasoning is insufficient for the same reasons as the optimization rationale. Reply Br. 6–7. Appellant’s arguments are persuasive. Although Esarey discloses a relationship between the first angle and the quality of the cut, the Examiner does not correlate the second angle to the quality of the cut. More simply put, the Examiner has not demonstrated the quality of the cut would be effected by varying the difference between the first and second angles. Consequently, the Examiner has not shown persuasively that the subject matter of independent claim 1, including the “second angle being at least about ten degrees greater than the first angle,” would have been obvious from the teachings of Esarey. We, therefore, do not sustain the rejection of independent claim 1 and claims 2, 3, 5, and 8–15 depending therefrom.

CONCLUSION

Claims Rejected	Basis	Affirmed	Reversed
1–3, 5, and 8–15	35 U.S.C. § 103		1–3, 5, and 8–15
Overall Outcome			1–3, 5, and 8–15

REVERSED