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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL ZERBA and MICHAEL D. APPEL

Appeal 2019-001963
Application 14/996,908
Technology Center 3600

Before JENNIFER D. BAHR, JILL D. HILL, and LISA M. GUIJT,
Administrative Patent Judges.

GUIJT, *Administrative Patent Judge.*

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–3, 5, 6, 8–12, and 15. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Applicant SAF-HOLLAND, INC. Appeal Br. 1.

CLAIMED SUBJECT MATTER

Claims 1 and 11 are the independent claims on appeal. Claim 1, reproduced below with disputed limitations italicized for emphasis, is exemplary of the subject matter on appeal.

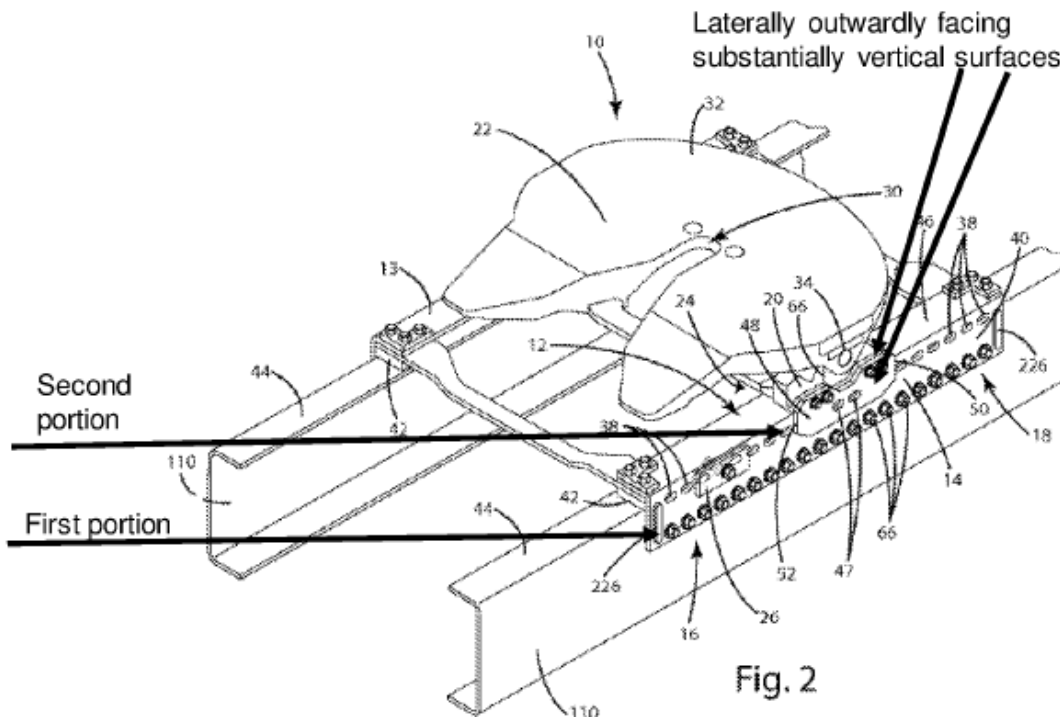
1. A fifth wheel hitch assembly, comprising:
 - a mounting bracket adapted to support a fifth wheel hitch plate and having a laterally outwardly facing substantially vertical surface;
 - a vehicle frame rail having a substantially horizontal portion and a substantially vertical portion; and
 - a support bracket having a first portion secured to the substantially vertical portion of the vehicle frame rail and *a second portion secured to the laterally outwardly facing substantially vertical surface of the mounting bracket*, and having a plurality of mounting positions spaced longitudinally along the support bracket from one another, wherein the mounting bracket is releasably secured to less than a total number of the mounting positions, and wherein the first portion and the second portion of the support bracket are permanently fixed to one another.

THE REJECTIONS²

I. Claims 1, 5, 6, and 8–12 stand rejected under 35 U.S.C. § 102(a)(2) as anticipated by Keatley '347 (US 2013/0285347 A1; published Oct. 31, 2013).

² The Examiner's objections to claims 4, 10, and 13 due to informalities are petitionable, not appealable, matters. *See* MPEP § 706.01; Final Act. 2. The Examiner also determines that independent claims 4 and 13, and claim 14 depending from claim 13, contain allowable subject matter. *See* Final Act. 9.

The Examiner identifies *two alternative* laterally outwardly facing substantially vertical surfaces of Keatley '347's carriage bracket 20 (or claimed mounting bracket): (i) the laterally outwardly facing substantially vertical surface of lower portion 48 (also identified as the bumper plate); and (ii) the laterally outwardly facing substantially vertical surface of the base portion of the carriage bracket 20 (not identified with a reference number or exposed for view in Figure 2) to which lower portion 48 (or the bumper plate) is coupled via fasteners. See Keatley '347 ¶ 29 (describing lower portion 48 as “extend[ing] down from the base portion [of carriage bracket 20] laterally adjacent to an exterior surface 40 of the side member 14 of the longitudinal rail 12” and “includ[ing] a bumper plate coupled with the base portion of the carriage bracket 20 using fasteners”). Ans. 3–5. The Examiner's annotated Figure 2 of Keatley '347 is reproduced below. *Id.* at 4.



The Examiner's annotated Figure 2 of Keatley '347, which depicts Keatley '347's sliding fifth wheel assembly reproduced *supra*, specifically identifies the Examiner's two laterally outwardly facing substantially vertical surfaces of carriage assembly 20, and also first and second portions of rail 12, according to the Examiner's findings.

The Examiner further finds that Keatley '347's rail 12 (i.e., the support bracket, as claimed) has a portion at its upper edge (at apertures 38) wherein lower portion 48 of carriage bracket 20 (i.e. the mounting bracket, as claimed) is attached to rail 12 via apertures 38. Ans. 5. See Keatley ¶ 28 (disclosing that “[an] engagement pin . . . may further extend through a select one of the . . . engagement apertures 38 to also engage holes 47 formed in the carriage bracket 20”), Fig. 2.

Thus, the Examiner finds that the portion of rail 12 having apertures 38 is *secured to* (as required by claim 1), *at least indirectly*: (i) the laterally outwardly facing substantially vertical surface of the bumper plate via an engagement pin; and (ii) the laterally outwardly facing substantially vertical surface of the base portion of carriage bracket 20 (without the bumper plate) via an engagement pin *and* via the bumper plate. Ans. 5 (“[s]ince lower portion (48 [of the bumper plate]) is part of the mounting bracket including carriage bracket (20), then support bracket ([rail] 12) . . . [is] secured to the laterally outwardly facing substantially vertical surfaces of *both* lower portion (48 [of the bumper plate]) and carriage bracket (20)” (emphasis added)).

Appellant argues that the Examiner's findings render the limitation of claim 1, which requires a second portion of a support bracket to be secured to a laterally outwardly facing substantially vertical surface of the mounting

bracket, “superfluous.”³ Reply Br. 2. Appellant also argues that the Examiner’s interpretation of this claim limitation is “unreasonable.” *Id.* at 3–5.

We are not persuaded by Appellant’s arguments. As an initial matter, Appellant has not disputed any of the Examiner’s factual findings relative to Keatley ’347, as set forth *supra*. Further, Appellant has not directed us to any special definitions for the claim term “secured to,” which are required by the Specification. We agree with the Examiner that the claim term “secured to” has a broad meaning. During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). An ordinary definition of the claim term “secure,” consistent with the Specification, is “to make fast.” WEBSTER’S THIRD NEW INT’L DICTIONARY 2053 (1993). Thus, in accordance with the Examiner’s claim construction, Keatley ’347’s engagement pin secures (or makes fast), at least indirectly, the (second) portion of rail 12 (at apertures 38) to either of the laterally outwardly facing substantially vertical surfaces of carriage bracket 20 identified by the Examiner *supra*, wherein such structures, when secured together, cannot move independently, but rather, are held fast relative to one another. The Examiner’s claim construction is neither unreasonable, nor renders the disputed claim limitation superfluous.

³ Although Appellant argues that the disputed claim limitation “has been included within the independent claims as submitted with the original application on January 15, 2016,” we note that references to a *laterally outwardly facing* surface were added to the claims for the first time by the Amendment dated January 4, 2018.

Accordingly, we sustain the Examiner's rejection of claim 1. Appellant chose not to present arguments for the patentability of claims 5, 6, and 8–12 apart from the arguments presented for claim 1 *supra*. Accordingly, for essentially the same reasons, we also sustain the Examiner's rejections of claims 5, 6, and 8–12. *See* Appeal Br. 7–8.

Rejection II

Appellant chose not to present arguments for the patentability of claims 2, 3, and 15 apart from the arguments presented *supra*. *See* Appeal Br. 8. Accordingly, for essentially the same reasons stated *supra*, we sustain the Examiner's rejection of claims 2, 3, and 15.

DECISION

The Examiner's decisions rejecting claims 1–3, 5, 6, 8–12, and 15 are **AFFIRMED**.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

CONCLUSION

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1, 5, 6, and 8–12	§ 102(a)(2) Keatley '347	1, 5, 6, and 8–12	
2, 3, and 15	§ 103 Keatley '347 and Keatley '197	2, 3, and 15	
Overall Outcome		1–3, 5, 6, 8–12, and 15	

Appeal 2019-001963
Application 14/996,908

AFFIRMED