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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT C. TOMLINSON

Appeal 2019-002089
Application 13/974,097
Technology Center 1700

Before LINDA M. GAUDETTE, CHRISTOPHER L. OGDEN, and
JANE E. INGLESE, *Administrative Patent Judges*.

INGLESE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ requests our review under 35 U.S.C. § 134(a) of the Examiner’s decision to finally reject claims 1 and 3–22.² We have jurisdiction over this appeal 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 Milliken & Company as the real party in interest. Appeal Brief filed August 7, 2018 (“Appeal Br.”) at 2.

² Claim 23 has been withdrawn from consideration. Final Office Action entered March 7, 2018 (“Final Act.”) at 1.

CLAIMED SUBJECT MATTER

Appellant claims a carpet or rug cleaning system. Appeal Br. 2. Claim 1, the sole pending independent claim, illustrates the subject matter on appeal, and is reproduced below with contested language italicized:

1. A carpet or rug cleaning system comprising:
 - (a) a self-propelled and guided robotic cleaner that includes:
 - (i) *a pretreatment dispensing chamber for dispensing an aqueous cleaning solution,*
 - (ii) *a powder dispensing chamber for dispensing a powder cleaning composition,*
 - (iii) a brushing mechanism,
 - (iv) optionally, a retrieval chamber, and
 - (v) a power source, and,
 - (b) a guidance system.

Appeal Br. 11 (Claims Appendix) (emphasis added).

REJECTIONS

The Examiner maintains the following rejections in the Examiner's Answer entered October 25, 2018 ("Ans.")³:

- I. Claim 1 under 35 U.S.C. § 102(b) as antitipated by Ziegler;⁴ and
- II. Claims 3–22 under 35 U.S.C. § 103(a) as unpatentable over Ziegler in view of Moore.

³ The Examiner withdrew the rejection of claim 1 under 35 U.S.C. § 103(a) as unpatentable over Schnittman et al. (US 2008/0047092 A1, published February 28, 2008), and rejection of claims 3–22 under 35 U.S.C. § 103(a) as unpatentable over Schnittman in view of Moore et al. (US 2010/0249011 A1, published September 30, 2010), in the Answer. Ans. 7–8.

⁴ Ziegler et al. (US 2007/0016328 A1, published January 18, 2007).

FACTUAL FINDINGS AND ANALYSIS

Upon consideration of the evidence relied upon in this appeal and each of Appellant's contentions, we affirm the Examiner's rejection of claim 1 under 35 U.S.C. § 102(b), and rejection of claims 3–22 under 35 U.S.C. § 103(a), for the reasons set forth in the Final Action, the Answer, and below.

We review appealed rejections for reversible error based on the arguments and evidence the appellant provides for each issue the appellant identifies. 37 C.F.R. § 41.37(c)(1)(iv); *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (cited with approval in *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (Explaining that even if the Examiner had failed to make a prima facie case, “it has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections.”)).

Rejection I: claim 1 under 35 U.S.C. § 102(b) as anticipated by Ziegler

Claim 1 recites that the claimed carpet or rug cleaning system comprises, in part, a pretreatment dispensing chamber for dispensing an aqueous cleaning solution, and a powder dispensing chamber for dispensing a powder cleaning composition.

Appellant argues that Ziegler does not disclose “two separate and distinct chambers—one that dispenses an aqueous material and one that dispenses a cleaning material in powder form as recited by the present claims.” Appeal Br. 8.

As the Examiner finds, however, Ziegler discloses an autonomous floor cleaning robot that includes a tank comprised of multiple separate compartments (chambers), and Ziegler discloses that cleaning solution can

be disposed in one compartment, and dry particulate (powder) can be disposed in another compartment. Final Act. 9; Ziegler ¶¶ 16, 294, 296. As the Examiner also finds, Ziegler discloses a cleaning operation in which the autonomous floor cleaning robot applies an abrasive powder, and then applies cleaning fluid, to a surface being cleaned. Final Act. 9; Ziegler ¶¶ 303, 304. Contrary to Appellant's arguments, Ziegler thus discloses an autonomous floor cleaning robot (a carpet or rug cleaning system) comprising a compartment from which a cleaning fluid is dispensed (a pretreatment dispensing chamber for dispensing an aqueous cleaning solution), and a separate compartment from which a powder cleaning material is dispensed (a powder dispensing chamber for dispensing a powder cleaning composition), as recited in claim 1.

Furthermore, as the Examiner points out (Ans. 9), the recitation in claim 1 of "for dispensing an aqueous cleaning solution," and recitation of "for dispensing a powder cleaning composition," describe intended uses of the recited pretreatment dispensing chamber and powder dispensing chamber, respectively. It is well-settled that "apparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1468 (Fed. Cir. 1990). An inventor of an apparatus is entitled to benefit from all of its uses, even those not described, *Roberts v. Ryer*, 91 U.S. 150, 157 (1875), and conversely, patentability of an apparatus does not turn on its use or function. *In re Michlin*, 256 F.2d 317, 320 (CCPA 1958) ("It is well settled that patentability of apparatus claims must depend upon structural limitations and not upon statements of function."). Consequently, apparatuses must be distinguished from the prior art on the basis of structure, and where there is reason to believe that a prior art

structure is inherently capable of performing a recited function, the burden shifts to the applicant to show that the recited function patentably distinguishes the claimed structure from the prior art structure. *See In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997); *In re Hallman*, 655 F.2d 212, 215 (CCPA 1981).

Appellant's arguments do not identify a structural difference between Ziegler's autonomous floor cleaning robot and the carpet or rug cleaning system of claim 1. Appeal Br. 7–8. Nor do Appellant's arguments show that Ziegler's autonomous floor cleaning robot is incapable of dispensing an aqueous cleaning solution from one compartment, and dispensing a powder cleaning composition from a separate compartment. *Id.*

Consequently, Appellant's arguments do not identify reversible error in the Examiner's rejection of claim 1 under 35 U.S.C. § 102(b) as anticipated by Ziegler, which we accordingly sustain.

Rejection II: claims 3–22 under 35 U.S.C. § 103(a) as unpatentable over Ziegler in view of Moore

To address this rejection, Appellant relies on the arguments discussed above that Appellant provides for claim 1, and contends that the additional reference applied in this rejection—Moore—fails to remedy the deficiencies of Ziegler. Appeal Br. 9. Because we are unpersuaded of reversible error in the Examiner's rejection of claim 1 for the reasons discussed above, Appellant's argument for this rejection is also unpersuasive of reversible error.

Appellant also makes conclusory assertions as to deficiencies in the Examiner's rejection, without identifying any specific error in the Examiner's factual findings or reasoning. Appeal Br. 9–10 (stating that to

establish prima facie obviousness there must be (a) a motivation or suggestion to combine or modify the references, (b) there must be a reasonable expectation of success if the combination or modification is made, and (c) all the claim limitations must be considered, which “have not been met; and therefore, the instant claims are not obvious in light of the prior art,” and stating that “[t]o support the conclusion that the claimed invention is directed to obvious subject matter . . . the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references . . . Appellant respectfully submits that the Examiner has thus far failed to provide a convincing line of reasoning.”).

Appellant’s conclusory assertions, however, do not warrant our separate consideration pursuant to 37 C.F.R. § 41.37(c)(1)(iv). We, accordingly, sustain the Examiner’s rejection of claims 3–22 under 35 U.S.C. § 103(a) as unpatentable over Ziegler in view of Moore.

CONCLUSION

Claims	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1	102(b)	Ziegler	1	
3–22	103(a)	Ziegler, Moore	3–22	
Overall Outcome			1, 3–22	

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

AFFIRMED