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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PIOTR ORLEWSKI and FRANCESCO SPORTELLI

Appeal 2019-002172
Application 15/366,075
Technology Center 3600

Before EDWARD A. BROWN, CHARLES N. GREENHUT, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

GREENHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant,¹ The Goodyear Tire & Rubber Company, appeals from the Examiner's decision to reject claims 1–3. Non-Final Act. 1. 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 The Goodyear Tire & Rubber Company. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to a lightweight tire assembly. Claim 1, reproduced below, is the sole independent claim before us and the only claim separately argued:

1. A tire having an axis of rotation, the tire comprising:
 - a circular tread band;
 - a circular hub for attachment to an axle; and
 - a structure including a plurality of annular rings interconnecting the tread band and the hub and transferring a load from the tread band to the hub, a first group of the rings being disposed axially adjacent each other and a second group of the rings being concentric with the first group of the rings and disposed radially adjacent each other, the first group of the rings having a diameter less than a diameter of the second group of the rings, the first group of the rings being separately constructed from the second group of the rings.

REFERENCES

The prior art relied upon by the Examiner is:

Grove	US 2,882,950	Apr. 21, 1959
Asper	US 2015/0174954 A1	June 25, 2015
Kim	US 2018/0029419 A1	Feb. 1, 2018

REJECTIONS

Claims 1–3 are rejected under 35 U.S.C. § 112(a) as failing to comply with the written description requirement. Non-Final Act. 3.

Claim 1 is rejected under 35 U.S.C. § 102(a)(2) as being anticipated by Kim. Non-Final Act. 4.

Claim 2 is rejected under 35 U.S.C. § 103 as being unpatentable over Kim and Grove. Non-Final Act. 6.

Claim 3 is rejected under 35 U.S.C. § 103 as being unpatentable over Kim in view of Asper. Non-Final Act. 7.

OPINION

The written description requirement

New or amended claims which introduce elements or limitations that are not supported by the as-filed disclosure violate the written description requirement. *See, e.g., In re Lukach*, 442 F.2d 967 (CCPA 1971). The purpose of the written description requirement is to prevent an applicant from later asserting that he invented that which he did not; the applicant for a patent is therefore required to recount his invention in such detail that his future claims can be determined to be encompassed within his original creation. *Amgen Inc. v. Hoechst Marion Roussel Inc.*, 314 F.3d 1313, 1330 (Fed. Cir. 2003) (citing *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1561 (Fed. Cir. 1991)). Although there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure. The fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. *See, e.g., Vas-Cath, Inc.*, 935 F.2d at 1563–64. When an explicit limitation in a claim is not present in the written description it must be shown that a person of ordinary skill would have understood that the description requires that limitation. *Hyatt v. Boone*, 146 F.3d 1348, 1353, (Fed. Cir. 1998). If the originally filed disclosure does not

provide support for each claim limitation, a new or amended claim must be rejected under 35 U.S.C. § 112(a) as lacking adequate written description.

The Examiner reasonably questioned the presence of descriptive support in the original disclosure for the recitation added by amendment: “the first group of the rings being separately constructed from the second group of the rings.” Non-Final Act. 3. Appellant, in response, reproduces paragraph 56 and, without further explanation, asserts one skilled in the art would understand paragraph 56 in conjunction with Figures 1 and 2 disclose the relevant aspects of the subject matter now claimed. We agree with and adopt as our own² the Examiner’s analysis:

paragraph [0056] of Appellant’s [S]pecification **does not** describe how the annular rings **120** are formed. Instead, paragraph [0056] of Appellant’s [S]pecification merely states that “The annular rings 120 may include several rings disposed axially adjacent each other (three in Fig. 2) as well as several concentric rings disposed radially adjacent each other (three in Figs. 1-2)”. Further, the manner in which these rings **120** are formed cannot be ascertained from the schematic cross-sectional view shown in Fig. 1 and the schematic sectional view shown in Fig. 2. Appellant’s original disclosure, including the original claims, makes no mention of the first group of rings being separately constructed from the second group of rings. As such, the manner in which the first group of rings are formed with respect to the second group of rings would be pure conjecture based upon Appellant’s original disclosure.

Ans. 5–6. Accordingly, we sustain the written description rejection.

Anticipation and Obviousness

² See, e.g., *In re Paulsen*, 30 F. 3d 1475, 1478 n. 6 (Fed. Cir. 1994) accord *In re Cree*, 818 F.3d 694, 698 n. 2 (Fed. Cir. Mar. 21, 2016).

The entirety of Appellant's argument concerning the prior-art rejections is:

Paragraph 130 of Kim discloses inner and outer rings being separate, not axially adjacent rings being separate.

Appeal Br. 5.

Claim 1 requires that the rings of the first group be "axially adjacent *each other*." (Emphasis added.). The second group of rings must be radially adjacent each other and "*concentric with* the first group of the rings." (Emphasis added.). Thus the requirement for the first and second group of rings to be "separately constructed" relates only to rings that are *concentric* and not to any rings that must be "axially adjacent" such as those *within* the first group itself. Thus, although the Examiner explains, correctly we think, why paragraph 130 of Kim would be understood to disclose separate construction among the axially arranged spokes 110, 120, this is a moot point because claim 1 includes no such requirement for "axially adjacent rings being separate" as Appellant argues (Appeal Br. 5). Separation of the inner 110/120(20) and outer 12, 13 concentric rings, which Appellant acknowledges is disclosed in Kim (Appeal Br. 5), suffices to meet the claim language. Appellant's argument is not commensurate with the scope of claim 1, and for that reason, does not demonstrate error in the Examiner's rejection of claim 1. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (limitations not appearing in the claims cannot be relied upon for patentability). Accordingly, we sustain the prior-art rejections.

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DECISION

The Examiner's rejections are affirmed.

FINALITY AND RESPONSE

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).

AFFIRMED