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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANTHONY OGG

Appeal 2019-002262
Application 14/523,980
Technology Center 3600

Before GEORGE R. HOSKINS, LEE L. STEPINA, and
FREDERICK C. LANEY, *Administrative Patent Judges*.

STEPINA, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 25–32 and 34–38. 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 LG Electronics Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed to a refrigerator that is capable of minimizing cool air losses and power consumption. Spec. ¶ 5.

Claim 25, reproduced below with emphasis added, is illustrative of the claimed subject matter.

25. A refrigerator, comprising:
- a cabinet having a first storage compartment and a second storage compartment;
 - a first door configured to open or close a front opening of the first storage compartment;
 - a second door configured to open or close a front opening of the second storage compartment, the second door configured to be positioned below the first door;
 - a mullion disposed inside the cabinet to partition the first storage compartment and the second storage compartment, such that the first storage compartment is disposed above the mullion and the second storage compartment is disposed below the mullion, the mullion having an access hole to connect the first storage compartment and the second compartment, the access hole being formed at a front portion of the mullion and being configured to provision access to one or more food items to a user; and
 - an access cover provided to selectively open or close the access hole, *wherein the access hole is configured to enable passing of at least a hand of the user or the one or more food items between the first storage compartment and the second storage compartment.*

Appeal Br. 11 (Claims App.).

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Lee	US 5,551,252	Sept. 3, 1996
Shin	US 2007/0163290 A1	July 19, 2007
Eveland	US 2009/0277210 A1	Nov. 12, 2009
Ootsuka	US 2013/0043780 A1	Feb. 21, 2013
Seo	US 2013/0127322 A1	May 23, 2013

REJECTIONS

I. Claims 25–32 and 34–38 are rejected under 35 U.S.C. § 112(a) as failing to comply with the written description requirement.

II. Claims 25, 28, and 38 are rejected under 35 U.S.C. § 103 as unpatentable over Lee and Shin.

III. Claims 26, 27, 29, 30, and 34–36 are rejected under 35 U.S.C. § 103 as unpatentable over Lee, Shin, and Seo.

IV. Claims 31 and 32 are rejected under 35 U.S.C. § 103 as unpatentable over Lee, Shin, and Eveland.

V. Claim 37 is rejected under 35 U.S.C. § 103 as unpatentable over Lee, Shin, and Ootsuka.

OPINION

Rejection I—Written Description

The Examiner finds that claims 25–32 and 34–38 contain subject matter that was not described in the Specification in such a way as to reasonably convey to a person of ordinary skill in the art that the inventor had possession of the claimed invention at the time the application was filed. Final Act. 2. Specifically, the Examiner finds that, in independent claim 25, the limitation “the access hole . . . being configured to provision access to

one or more food items to a user, . . . wherein the access hole is configured to enable passing of at least a hand of the user or the one or more food items between the first storage compartment and the second storage compartment” is not supported.² *Id.*

Appellant argues that paragraphs 18, 37–41, 44, and 69 of the Specification and Figures 6–9 support the limitation at issue in claim 25. Appeal Br. 4–5. In particular, Appellant quotes the following statements from the Specification: “the user may hold and lift the handle 163 of the access cover 16 to take foods in or out of the receiving box 155” (Spec. ¶ 44)³ and “since the access cover is opened without withdrawing the drawer provided in the utility compartment to withdraw foods accommodated in the refrigerating space of the utility compartment, the user’s convenience may be improved” (Spec. ¶ 69). Appeal Br. 5.

In response, the Examiner maintains the rejection, stating, “the original disclosure does not provide details to the limitation directed to a user hand passing between the first and second compartment.” Ans. 4.

In reply, Appellant argues that the Examiner failed to properly respond to the arguments set forth in the Appeal Brief, and, again referring

² Claim 25 is not an original claim, it was added in an amendment filed on August 1, 2016. In the last amendment filed before the present Appeal, filed on December 15, 2017, (hereinafter the “December 15, 2017, Amendment”) the language at issue in *Rejection I* was added. As a statement of where support for the amendment to claim 25 could be found, Appellant stated, “[s]upport for the amendments may be found at least in FIGS. 8 and 9, and ¶¶ [0041]-[0044] and [0069] of the specification.” December 15, 2017, Amendment 5.

³ After quoting this statement, Appellant cites paragraphs 37 and 44 of the Specification, but the quoted language is found only in paragraph 44. *See* Appeal Br. 5; Reply Br. 2.

to the language quoted above from paragraphs 44 and 69 of the Specification, states:

From this description, coupled with the visual depiction of the claimed refrigerator in at least FIG. 9, a POSITA would have concluded that the described and depicted access hole is configured to enable passing of at least a hand of the user or the one or more food items. *How else is a user that is holding and lifting the handle of an access cover supposed to take food items in or out of the receiving box with added convenience if the access hole were not configured to enable passing of at least the hand of the user and the one or more food items?* A POSITA would understand that users take food items in or out refrigerators using their hands and that the inventor possessed taking food items in or out of receiving box 155 through the claimed access hole.

Reply Br. 2–3 (emphasis added). Thus, Appellant contends that the disclosure of the ability of a user to place food items in (and remove items from) receiving box 155 when access cover 16 is lifted supports the claim limitation regarding passing a “hand” at issue in claim 25.

The Examiner has the better position. The disclosure in the Specification that a user may move food items into and out of receiving box 155 does not specify how this movement is accomplished, and, therefore, does not support the specific *size limitation* recited in claim 25 that “the access hole is configured to enable passing of at least a hand of the user.” In other words, Appellant elected to recite a size limitation in terms of the hand of a user, which is not discussed in the portions of the Specification cited by Appellant or anywhere else in the description of the access hole. Only one component disclosed in the Specification is described in terms of a user’s hand, namely, handle 151. *See Spec.* ¶ 35 (“Thus, when the user’s hand is inserted into the handle 151 of the utility compartment door 15, the user’s

hand may not interfere with the top surface of the freezing compartment door 14 to improve convenience of use.”). Handle 151 is not related to the size of the recited access hole. *See* Figs. 1, 9. Accordingly, when Appellant described the size of handle 151, Appellant chose to do so in terms of a user’s hand, but elected not to use this frame of reference when describing the size of the access hole.

Additionally, we note that claim 25 recites that the access hole has a configuration “to enable passing of at least a hand of the user or the one or more food items.” Appeal Br. 11 (Claims App.) (emphasis added). Thus, by reciting these actions in the alternative, the plain language of claim 25 distinguishes between being able to pass a user’s hand and being able to pass one or more food items, implying that these are different actions. Accordingly, description in the Specification regarding passing one or more food items would not appear to support a claim limitation regarding a hand of a user.

Finally, claim 25 recites “the mullion having an access hole to connect the first storage compartment and the second compartment, the access hole being formed at a front portion of the mullion and being configured to provision access to one or more food items to a user.” Appeal Br. 11 (Claims App.). This explicit recitation of access to food items mirrors the language in the Specification identified by Appellant as supporting the “hand of the user” limitation. Again, the fact that claim 25 separately recites limitations defining the access hole in terms of food items implies that the ability to pass food items through the access hole is not the same as passing the hand of a user through the access hole. Accordingly, we sustain the

Examiner's rejection of claim 25 and claims 26–32 and 34–38 depending therefrom as failing to comply with the written description requirement.

Rejection II—Lee and Shin

The Examiner finds that Lee discloses many of the elements recited in claim 25, including an access hole (14, 15) configured to enable passing of a hand of the user or one or more food items between a first storage compartment and a second storage compartment. Final Act. 3–4 (citing Lee, Fig. 6). The Examiner relies on Shin to teach an access cover that covers the access hole. *Id.* at 4–5.

Appellant argues that upper and lower openings 14 and 15 of Lee are for conducting air to evaporator 7, and “[n]othing in Lee suggests or teaches that openings 14, 15 are ‘configured to enable passing of at least a hand of the user or the one or more food items between the first storage compartment and the second storage compartment,’ as recited in claim 25.” Appeal Br. 8.

In response, the Examiner determines that the claim limitation at issue is the recitation of an intended use of the refrigerator of claim 25, and openings 14 and 15 of Lee are capable of performing as required by the claim. Ans. 4–5. Specifically, the Examiner states, “[a]lthough Lee teaches the access opening is for allowing air to pass, the opening is arranged so that one could pass a small food item and/or a hand through the access opening.” Reply Br. 5.

The Examiner's finding that the openings 14 and 15 of Lee are large enough to allow a hand to pass therethrough is not supported by a preponderance of the evidence. As Appellant correctly points out, and the Examiner admits, openings 14 and 15 are disclosed as being used for the passage of air. An opening capable of allowing the passage of air is not

necessarily capable of allowing the passage of one or more food items or hand. The Examiner does not direct our attention to any portion of Lee that would indicate that these openings are large enough to accommodate passage of a user's hand or a food item. Accordingly, we do not sustain the rejection of claim 25 and claims 28 and 38, depending therefrom, as unpatentable over Lee and Shin.

Rejections III–V—Lee, Shin, Eveland, Ootsuka, Seo

The Examiner relies on the same inadequately supported finding of fact regarding the capability of openings 14 and 15 of Lee in each of Rejections III–V. Accordingly, for reason discussed above regarding Rejection II, we do not sustain Rejections III–V.

CONCLUSION

- I. We affirm the Examiner's rejection of claims 25–32 and 34–38 as failing to comply with the written description requirement.
- II. We reverse the Examiner's rejection of claims 25, 28, and 38 as unpatentable over Lee and Shin.
- III. We reverse the Examiner's rejection of claims 26, 27, 29, 30, and 34–36 as unpatentable over Lee, Shin, and Seo.
- IV. We reverse the Examiner's rejection of claims 31 and 32 as unpatentable over Lee, Shin, and Eveland.
- V. We reverse the Examiner's rejection of claim 37 as unpatentable over Lee, Shin, and Ootsuka.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
25–32, 34–38	112(a)	Written Description	25–32, 34–38	
25, 28, 38	103	Lee, Shin		25, 28, 38
26, 27, 29, 30, 34–36	103	Lee, Shin, Seo		26, 27, 29, 30, 34–36
31, 32	103	Lee, Shin, Eveland		31, 32
37	103	Lee, Shin, Ootsuka		37
Overall Outcome			25–32, 34–38	

TIME PERIOD FOR 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