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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHELE FREDHOLM, LAURENT JOUBAUD, and
STEPHANE POISSY¹

Appeal 2019-002299
Application 14/621,608
Technology Center 1700

Before KAREN M. HASTINGS, CHRISTOPHER C. KENNEDY, and
JULIA HEANEY, *Administrative Patent Judges*.

KENNEDY, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 13–22. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

BACKGROUND

The subject matter on appeal relates to mechanisms for bending glass. *E.g.*, Spec. ¶4; Claim 13. Claim 13 is reproduced below from page 19 (Claims Appendix) of the Appeal Brief:

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. The Appellant identifies the real party in interest as Corning Incorporated. Appeal Br. 1.

13. A mechanism for bending thin glass comprising:
- a seating device;
 - a mold configured to bend a substrate to a desired shape when the substrate is on the seating device; and
 - a programmable counterweight system configured to control a force of the mold on the seating device based upon at least one of a pressure profile, a force profile, and a temperature profile, the programmable counterweight system comprising:
 - a first adjustable counterweight configured to apply a first counterweight force to a first portion of the mold; and
 - a second adjustable counterweight configured to apply a counterweight force to a second portion of the mold, wherein the first adjustable counterweight and second adjustable counterweight are independently controllable such that the first counterweight force is controlled independently of the second counterweight force.

ANALYSIS

Claims 13–22 stand rejected under 35 U.S.C. § 103 as unpatentable over Mumford (US 5,900,034, issued May 4, 1999), Frank (US 4,501,603, issued Feb. 26, 1985), and Blausey (US 4,071,344, issued Jan. 31, 1978).²

After review of the cited evidence in the appeal record and the opposing positions of the Appellant and the Examiner, we determine that the Appellant has not identified reversible error in the Examiner’s rejection. Accordingly, we affirm the rejection for reasons set forth below, in the Final Action dated May 15, 2018, and in the Examiner’s Answer.

In the Appeal Brief, the Appellant includes separate sections for independent claims 13 and 20. We address those claims below. The

² In the Examiner’s Answer, the Examiner withdraws rejections under 35 U.S.C. § 112(a) and (b). Ans. 4.

remaining claims on appeal are not separately argued and will stand or fall with the independent claim from which they depend. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Claim 13. The Examiner’s statement of the rejection appears at pages 4–10 of the Final Action. Of particular relevance to the issues raised by the Appellant in this appeal, and with reference to Figure 14 of Mumford, the Examiner finds that Mumford teaches a mechanism for bending glass comprising, *inter alia*, “counterweights 246” that “are adjustable by [adjusters] 316,” and that “[t]he counterweights can be adjusted independently of each other.” Final Act. 6. Thus, the Examiner finds that Mumford teaches first and second “adjustable counterweight[s]” that are “independently controllable,” as required by claim 13. *Id.*

As to the requirement of claim 13 that the counterweight system is “configured to control a force of the mold on the seating device *based upon at least one of a pressure profile, a force profile, and a temperature profile*,” the Examiner finds that the basis upon which the counterweight system is adjusted or configured is an “intended use” that concerns the manner of operating the apparatus and, therefore, cannot structurally distinguish the apparatus of claim 13 from the apparatus of the combined prior art. *Id.* at 8–9.

In view of those and other findings less relevant to the issues raised by the Appellant, the Examiner concludes that the subject matter of claim 13 would have been obvious to a person of ordinary skill in the art.

The Appellant argues that Mumford does not teach “independently controllable first and second counterweight forces” because Mumford discloses a single drive motor 288 and a single gas cylinder 274 “that

appear[] to provide counterbalancing to all of the four vertical connector rods 248 through [a] single component, which means that Mumford does not disclose independent control of two counterweight forces.” Appeal Br. 11–12. The Appellant argues that “Mumford does not disclose that the[] adjusters 316 are used for independent control of the counterweight forces, and indeed, even if the adjusters 316 allowed for different counterweight forces to be applied (which is also not disclosed in Mumford), all four counterweight forces are still applied with each other at the same time through a single actuating mechanism.” *Id.* at 13.

The Appellant’s argument is not persuasive of reversible error in the Examiner’s rejection. As an initial matter, we observe that the Appellant does not appear to dispute the Examiner’s finding that what Mumford describes as “connectors” 246, *see, e.g.*, Mumford Figs. 14 & 15, correspond to the claimed counterweights. *See generally* Appeal Br.; *see also* Ans. 9 (observing that the Appellant does not dispute the Examiner’s determination that connectors 246 constitute counterweights). Accordingly, we accept as uncontested the Examiner’s finding that Mumford’s connectors 246 constitute counterweights.

As the Examiner emphasizes in the Answer, the Examiner relies on adjusters 316 as providing independent control of those counterweights. Ans. 10. The Examiner finds that, by using the adjusters 316 to shorten or lengthen the counterweights, the force of the counterweight is altered. *Id.* (“A shortening of one adjuster 316 will cause the assembly 28 and mold 38 to rack and thus change the magnitude of the force acting on the mold.”). That finding is consistent with Mumford itself, which explains, “each connector 246 includes an adjuster 316 for adjusting its length.” Mumford

at 13:3–5; *see also* Fig. 15 (showing that each connector 246 has its own associated adjuster 316). Accordingly, we determine that a preponderance of the evidence supports the Examiner’s determination that Mumford discloses first and second adjustable counterweights that are independently controllable. That Mumford discloses only a single drive motor and gas cylinder that apparently would control all of the connectors 246 at the same time, *see* Appeal Br. 11–12, does not indicate error in the Examiner’s findings concerning the interaction between Mumford’s adjusters 316 and connectors 246. *See* Ans. 12–13 (“It may be that the Appellant is arguing that one could not adjust/control a single counterweight during the actuating of press cycle. The language of the claim is not limited to independent control during the press cycle.”).

In the Reply Brief, the Appellant does not persuasively contest the Examiner’s finding that adjusters 316 are structurally capable of independently controlling counterweights 246. Instead, the Appellant argues that “the Examiner has failed to provide any reason *why* a person of ordinary skill in the art would independently adjust the adjusters 316.” Reply Br. 6 (emphasis in original). That argument is not persuasive. Claim 13 is directed to an apparatus. For apparatus claims, what is relevant is whether the combined prior art teaches or suggests a structure that falls within the scope of the claim. *See Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469 (Fed. Cir. 1990) (“[A]pparatus claims cover what a device *is*, not what a device *does*.”). As set forth above, the Appellant has not identified error in the Examiner’s relevant findings about the structure of the combined prior art. Arguments about how a person of ordinary skill in the art may have chosen to use that structure, e.g., whether a person of ordinary

skill would have independently adjusted the adjusters 316, fail to show reversible error in the rejection.

In the Reply Brief, the Appellant also raises arguments about the Examiner's interpretation of the term "counterweight force." *See* Reply Br. 2–4. However, even assuming we were to agree with the Appellant that the term "counterweight force" does not require the counterweight system to "counterbalance[] the entire weight or force of the mold," *id.* at 3, we discern no reason to believe that the term "counterweight force" excludes that scenario. More importantly, however, we observe that the Appellant does not propose its own construction for the term "counterweight force," and, although the Appellant asserts that the alleged claim interpretation error "informs the entire § 103 analysis," the Appellant does not actually identify how the combined prior art falls beyond the scope of the correct interpretation of the term "counterweight force." On this record, the Appellant's arguments concerning claim interpretation fail to identify reversible error in the Examiner's rejection. *See In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) ("[I]t has long been the Board's practice to require an applicant to identify the alleged error in the examiner's rejections . . .").

In the Reply Brief, the Appellant also argues for the first time that, even if Mumford teaches independent control of counterweights, "the control would not be 'based upon at least one of a pressure profile, a force profile, and a temperature profile' as recited in claims 13 and 20." Reply Br. 7.

As noted above, the Examiner made specific findings concerning that claim recitation in the Final Action. *See* Final Act. 8–9. The Appellant did not raise arguments concerning that recitation in the Appeal Brief.

Accordingly, the argument is untimely. The Appellant has not attempted to show good cause for presenting it for the first time in the Reply Brief. We decline to consider it. *See* 37 C.F.R. § 41.41(b)(2).

We affirm the Examiner’s rejection of claim 13.

Claim 20. Claim 20 is similar to claim 13 and requires, *inter alia*, a plurality of “independently adjustable counterweight[s].” As above with respect to claim 13, the Appellant argues that Mumford does not teach counterweights that are “independently” adjustable. Appeal Br. 14–17. For reasons set forth above, we are not persuaded of reversible error in the Examiner’s rejection. *See Jung*, 637 F.3d at 1365.

CONCLUSION

In summary:

| Claims Rejected | 35 U.S.C. § | References | Affirmed | Reversed |
|------------------------|--------------------|----------------------------|-----------------|-----------------|
| 13–22 | 103 | Mumford, Frank, Blausey | 13–22 | |

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

AFFIRMED