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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEFAN RITSCHKE

Appeal 2019-002343
Application 14/430,804
Technology Center 3700

Before MURRIEL E. CRAWFORD, PHILIP J. HOFFMANN, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

HOFFMANN, *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 1–7, 9–11, and 14–20. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

Appellant's invention "relates to a liquid dispenser for discharging pharmaceutical liquids, having a housing, an outlet opening and an outlet

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 Aptar Radolfzell GmbH. Appeal Br. 1.

valve assigned to the outlet opening.” Spec. ¶ 1. Independent claim 16, reproduced below, is illustrative of the claimed subject matter:

16. A liquid dispenser for discharging pharmaceutical liquids, comprising:

a housing;

an outlet opening; and

an outlet valve assigned to the outlet opening, the outlet valve having a closed position to prevent fluid flow therethrough and an open position to allow fluid flow therethrough;

wherein the outlet valve comprises:

a valve opening and a valve pin, the valve pin closing the valve opening in the closed position and releasing the valve opening in the open position;

a valve body, which has either the valve pin or the valve opening and which is displaceable at least partially with respect to the housing of the liquid dispenser to thereby allow for transfer of the outlet valve between the closed position and the open position; and

a pressure chamber arranged upstream of the valve opening and delimited to one side by a valve plate of the valve body, the valve body being displaceable at least in portions by application of pressure at the valve plate by liquid in the pressure chamber, such that the valve pin and the valve opening are thereby displaced relative to one another;

wherein at least one portion of the valve plate which is in contact with liquid in the pressure chamber comprises an elastic cycloolefin copolymer or a combination of an elastic cycloolefin copolymer and polypropylene; and

wherein the valve body includes a deformable portion and a fixing region which is fixed immovably in relation to the housing for allowing the valve opening or the valve pin to be displaced with respect to the housing.

REJECTIONS AND PRIOR ART

The Examiner rejects the claims as follows:

- I. Claims 16–20 under 35 U.S.C. § 103(a) as unpatentable over Wochele et al. (US 2009/0294347 A1, pub. Dec. 3, 2009) (hereinafter “Wochele”) and Harrington et al. (US 5,723,545, iss. Mar. 3, 1998) (hereinafter “Harrington”); and
- II. Claims 1–7, 9–11, 14, and 15 under 35 U.S.C. § 103(a) as unpatentable over Wochele, Harrington, and Painchaud et al. (US 8,616,418 B2, iss. Dec. 31, 2013) (hereinafter “Painchaud”).

ANALYSIS

Rejection I—Obviousness rejection of claims 16–20

Based on our review of the record, including the Examiner’s Final Office Action and Answer, and Appellant’s Appeal Brief and Reply Brief, for the reasons discussed below, we agree with Appellant that the Examiner’s rejection of claims 16–20 is in error. Thus, we do not sustain the obviousness rejection.

As set forth above, independent claim 16 recites, in relevant part, “wherein at least one portion of the valve plate which is in contact with liquid in the pressure chamber comprises an elastic cycloolefin copolymer or a combination of an elastic cycloolefin copolymer and polypropylene.” Appeal Br., Claims App. In the claim rejection, the Examiner finds that Wochele discloses substantially all of the claim’s recitation, but that Wochele “is silent on . . . the plastic is an elastic cycloolefin copolymer or a combination of an elastic cycloolefin copolymer and polypropylene.”

Answer 5. However, the Examiner finds that Harrington discloses the claimed plastic. *Id.*, citing Harrington col. 2, ll. 1–21, 50–67. According to the Examiner, “[i]t would have been obvious . . . to modify the device of Painchaud with [the above-discussed] polymer as taught by Harrington in order to provide a blend of a polymer with impact modifying rubbers that achieve a balance of useful mechanical properties and desirable surface properties.” Answer 5.

Appellant argues that the Examiner errs because “Harrington . . . does not disclose . . . [anything] that would entice or motivate one skilled in the art to combine . . . Harrington . . . with . . . Wochele.” Appeal Br. 6; *see also* Reply Br. 1–3. More specifically, according to Appellant:

In the combination of the references as set forth by the Examiner, a part of a nozzle that is completely hidden and covered, the valve plate, is [proposed by the Examiner to be] modified [based on Harrington] in order to provide a valve plate that does not have “reduced gloss, haze and poor tactile quality.” However, since the valve plate is completely hidden and covered and therefore can[not] be seen or felt, there clearly is no desire to address any “reduced gloss, haze and poor tactile quality” of such product.

Reply Br. 2 (underlining omitted) (citing Harrington col. 1, ll. 33–38).

Appellant’s arguments are persuasive. The Examiner does not support adequately that one of ordinary skill would have been concerned with “gloss,” “haze,” “brittleness,” “tactile quality,” “flexural modulus,” “surface tension,” or any other “useful mechanical properties and desirable surface properties” of the materials utilized for the valve in Wochele, such that it would have been desirable to use Harrington’s plastic. Harrington col. 1, l. 25–col. 2, l. 11. Thus, the Examiner does not support adequately

that one of ordinary skill would have been interested in utilizing Harrington's "blend of a polymer with impact modifying rubbers that achieve a balance of useful mechanical properties and desirable surface properties" to replace the material disclosed in Wochele. *See* Answer 5. Instead, the Examiner's stated reason for replacing Wochele's material with Harrington's—i.e., the reason being to "provide . . . a polymer" with the characteristics of Harrington's polymer (*id.*)—appears to have no adequate support, but instead appears to be based solely on impermissible hindsight.

Thus, based on the foregoing, we do not sustain the Examiner's obviousness rejection of independent claim 16. We also do not sustain the obviousness rejection of claims 17–20 that depend from claim 16, and which the Examiner rejects with the independent claim.

Rejection II—Obviousness rejection of claims 1–7, 9–11, 14, and 15

To support independent claim 1's rejection, the Examiner relies on Harrington to disclose the claim recitation that "the plastic is an elastic cycloolefin copolymer or a combination of an elastic cycloolefin copolymer and polypropylene." *See* Answer 7–8; *see* Appeal Br., Claims App. Thus, we do not sustain the Examiner's obviousness rejection of independent claim 1 for substantially the same reasons as independent claim 16, discussed *supra*. Further, we do not sustain the obviousness rejection of claims 2–7, 9–11, 14, and 15 that depend from, and which the Examiner rejects with, claim 1.

CONCLUSION

We REVERSE the Examiner's obviousness rejections of claims 1-7, 9-11, and 14-20.

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
16-20	103(a)	Wochele, Harrington		16-20
1-7, 9-11, 14, 15	103(a)	Wochele, Harrington, Painchaud		1-7, 9-11, 14, 15
Overall Outcome				1-7, 9-11, 14-20

REVERSED