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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GALE L. AMACHER, JR.

Appeal 2019-002626
Application 15/418,957
Technology Center 3700

Before BRETT C. MARTIN, MICHAEL J. FITZPATRICK, and
LISA M. GUIJT, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant, Englefield, Inc.,¹ appeals under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We Affirm.

¹ Appellant is the “applicant” under 37 C.F.R. § 1.42(b) and identifies itself as the sole real party in interest. Appeal Br. 3.

STATEMENT OF THE CASE

The Specification

The Specification's disclosure "relate[s] generally to an apparatus and system for storing and dispensing liquids, such as oil." Spec. ¶2.

The Claims

Claims 1–20 are rejected. Final Act. 1. Claim 1 is illustrative and reproduced below.

1. A system for storing and dispensing oil comprising:

an upper shelf comprising a downward sloping surface configured to receive at least one oil bucket that has a dispensing mechanism positioned on an end thereof, said upper shelf configured to receive said at least one oil bucket in a lateral position such that a side surface of the oil bucket is configured to rest on the downward sloping surface; and

a lower shelf positioned below said upper shelf and configured to receive at least one dispensing container that has an aperture located thereon, said lower shelf configured to receive said at least one dispensing container in an upright position;

wherein a leading edge of said lower shelf protrudes beyond a leading edge of said upper shelf such that the aperture of a respective said dispensing container is adapted to be positioned below the dispensing mechanism of a respective said oil bucket to facilitate dispensing of a content of said respective oil bucket into said respective dispensing container.

Appeal Br. 16.

The Examiner's Rejections

The rejections before us, all of which are pursuant to 35 U.S.C. § 103, are:

1. claims 1–6 and 8 over Numberger² and Dominos³ (Final Act. 2);
2. claim 7 over Numberger, Dominos, and Arlt⁴ (*id.* at 6);
3. claim 9 over Numberger, Dominos, and Swanson⁵ (*id.*);
4. claims 10–13, 15, and 17–19 over Numberger, Dominos, and Selina⁶ (*id.* at 7);
5. claim 14 over Numberger, Dominos, Selina, and Arlt (*id.* at 11);
6. claim 16 over Numberger, Dominos, Selina, and Swanson (*id.*)⁷; and
7. claim 20 over Numberger, Dominos, Selina, Swanson, and Lester⁸ (*id.*).

² DE 3324977 A1, published Jan. 24, 1985 (“Numberger”). Numberger is a German language document. The record also includes an English translation of Numberger’s abstract (“Numberger Abstract”).

³ US 3,286,849, issued Nov. 22, 1966 (“Dominos”).

⁴ US 1,700,212, issued Jan. 29, 1929 (“Arlt”).

⁵ US 2006/0266726 A1, published Nov. 30, 2006 (“Swanson”).

⁶ US 2012/0085793 A1, published Apr. 12, 2012 (“Selina”).

⁷ The examiner also identifies Lester (*see infra* n.8) as a reference but does not apply it in this rejection.

⁸ US 7,997,461 B2, issued Aug. 16, 2011 (“Lester”).

DISCUSSION

Rejection 1

Appellant argues the patentability of the rejected claims, namely claims 1–6 and 8, together. Appeal Br. 11–15. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner found that Numberger discloses the subject matter of claim 1 except that “Numberger does not disclose that the upper shelf has a downward sloping surface configured such that a side surface of the bucket can rest on the downward sloping surface.” Final Act. 2–4 (citing Numberger Figs. 4–5). The Examiner found that “Dominos teaches that it is known to provide such a shelf with a downward sloping surface (16) that functions to contact and support a side of the container (17).” *Id.* at 4 (citing Dominos Fig. 1).” The Examiner concluded:

It would have been obvious to one skilled in the art to provide the device of Numberger with a downward sloping surface as a substitute for the back plate (14) as an equivalent structure for performing the same function of tilting the container. Additionally, doing so would merely amount to a simple substitution of one known element for another to obtain predictable results. *See e.g. MPEP 2143, citing KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007).

Id.

Appellant argues against the rejection first on the basis that “the proposed combination of Numberger with Dominos would impermissibly change Numberger’s principle of operation.” Appeal Br. 11. Appellant asserts that “an essential feature of [Numberger] is the ability to rapidly insert bottles into the device while also preventing lateral movement of the inserted bottles.” *Id.* at 12. Thus, according to Appellant, “Numberger’s principle of operation is the use of a rear and forward set of shelves having

semi-circular shaped recesses that suspend individual bottles in a declined position.” *Id.* (citing Numberger Figs. 4–5).

The Examiner responds that the Numberger’s principle of operation is not limited to the specific embodiment of Numberger’s Figure 4 (or Figure 5) but rather is more generally “to pour the contents of one container into another by supporting the dispensing container (30) in a downwardly [tilted] position with the receptacle container (20) beneath it.” Ans. 3.

We agree with the Examiner that the proposed modification would operate through the same principle, albeit with a somewhat modified structure holding the pouring container in downwardly sloping orientation. *Id.* at 4. Indeed, the proposed modification of Numberger would preserve, what Appellant has characterized as an “essential feature” of Numberger: “the ability to rapidly insert bottles into the device while also preventing lateral movement of the inserted bottles.” *See* Appeal Br. 12.

The Examiner proposed that a person of ordinary skill in the art would have substituted a downward sloping surface, as taught by Dominos, for Numberger’s *back plate only*. Final Act. 4. Thus, the proposed modification, would preserve the front plate of Numberger, which includes semi-circular recesses that would preclude some lateral movement. *Id.*

That the front plate alone would not preclude lateral movement as well as both plates in combination does not render the proposed modification non-obvious. As the Examiner points out, the law recognizes that “[a] given course of action often has simultaneous advantages and disadvantages, and this does not necessarily obviate motivation to combine.” *Allied Erecting v. Genesis Attachments*, 825 F.3d 1373, 1381 (Fed. Cir. 2016) (cited at Ans. 5.). “The fact that the motivating benefit comes at the expense of

another benefit, however, should not nullify its use as a basis to modify the disclosure of one reference with the teachings of another. Instead, the benefits, both lost and gained, should be weighed against one another.” *Winner Int’l Royalty Corp. v. Wang*, 202 F.3d 1340, 1349 (Fed. Cir. 2000). And, as the Examiner found, substituting the downward sloping surface of Dominos “has an advantage of being able to accommodate containers of different sizes because it is not limited by the size of the semicircular recesses in a back plate.” Ans. 5. This is a sufficient reason with rational underpinning to support the conclusion of obviousness.

Appellant also argues that “simple substitution” of Dominos’s downward sloping surface for Numberger’s back plate 14 would not work because the person of skill in the art would slope that surface downward from the bottom of Numberger’s back plate 14 and, thus, the substituted surface would “extend[] below or well short of the front plate 12.” Appeal Br. 13. This argument is not persuasive. As the Examiner points out, a person of ordinary skill in the art is a person of “ordinary creativity” and is not an “automaton.” Ans. 6 (quoting *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007)).

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

In re Keller, 642 F.2d 413, 425 (CCPA 1981).

The Examiner has identified teachings in the prior art and offered a reasoned analysis based on rational underpinning that a person of ordinary skill in the art would have combined those teachings in a manner encompassed by claim 1. Moreover, Appellant has not apprised us of

Appeal 2019-002626
Application 15/418,957

Examiner error in either regard. Thus, we affirm the rejection of claim 1, as well as that of claims 2–6 and 8, which fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejections 2–7

In these rejections, the Examiner rejected the remaining claims over Numberger, Dominos, and one or more additional prior art references. Final Act. 6–15. Appellant does not present arguments against these rejections beyond those already considered and found unavailing above. *See* Appeal Br. 11–15 (arguing all claims and all rejections together). Accordingly, for similar reasons, we affirm Rejections 2 through 7.

SUMMARY

Claims Rejected	35 U.S.C. §	References	Affirmed	Reversed
1–6, 8	103	Numberger, Dominos	1–6, 8	
7	103	Numberger, Dominos, Arlt	7	
9	103	Numberger, Dominos, Swanson	9	
10–13, 15, 17–19	103	Numberger, Dominos, Selina	10–13, 15, 17–19	
14	103	Numberger, Dominos, Selina, Arlt	14	
16	103	Numberger, Dominos, Selina, Swanson	16	
20	103	Numberger, Dominos, Selina, Swanson, Lester	20	
Overall Outcome			1–20	

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