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EXAMINER

MILLNER, MONICA E

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD D. WELCH

Appeal 2019-002821
Application 15/226,782
Technology Center 3600

Before CHARLES N. GREENHUT, WILLIAM A. CAPP, and
LISA M. GUIJT, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134(a) of the final rejection of claims 1–6 and 8–20.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ A rejection of claim 7 under 35 U.S.C. § 103 has been withdrawn by the Examiner. Ans. 3. Claims 10–12 are objected as being dependent upon a rejected base claim. Final Action 7. Claims 21–24 are allowed. *Id.*

THE INVENTION

Appellant's invention relates to tie down anchors for use in planked decks. Spec. ¶ 4. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A tie-down anchor for securing an object to a structure, the structure having adjacent first and second members of thickness T_1 and T_2 , respectively, the first and second members spaced apart by a gap of width W_1 , said tie-down anchor comprising:

a shaft assembly, the shaft assembly comprising (a) a longitudinally extending rod having a first end and a second end, (b) an anchor portion located at said first end, said anchor portion having a bar portion sized and shaped for engaging a lower side of at least the first member, and (c) an attachment portion located at said second end, said first end of said longitudinally extending rod and said anchor portion each having a maximum width less than or about equal to gap width W_1 ;

a spring assembly, said spring assembly comprising (a) a compression spring, (b) an upper spring retainer, and (c) a lower spring retainer, said upper spring retainer comprising a first inner edge defining a first shaft receiving aperture, and said lower spring retainer comprising a second inner edge defining a second shaft receiving aperture, said spring assembly longitudinally adjustable and located around said longitudinally extending rod and located between said anchor portion and said attachment portion, said lower spring retainer comprising a bottom surface for engaging an upper side of at least said first member;

wherein by engaging said lower spring retainer with the upper side of at least the first member and compressing said compression spring, the bar portion of the anchor portion may be pushed below the first member, and then the shaft assembly (a) rotated, and (b) released, so that said tie-down anchor is placed in an installed configuration where it securely engages at least the first member, by and between (1) the bar portion at the lower side, and (2) the lower spring retainer at the upper side.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

NAME	REFERENCE	DATE
Higuchi	US 3,381,925	May 7, 1968
Johansen	US 5,967,075	Oct. 19, 1999
Bishop	US 2005/0246997 A1	Nov. 10, 2005

The following rejections are before us for review:

1. Claims 1–6 and 15–20 are rejected under 35 U.S.C. § 102(a)(1) as anticipated by Johansen.
2. Claims 8 and 9 are rejected under 35 U.S.C. § 103 as being unpatentable over Johansen.
3. Claims 13 and 14 are rejected under 35 U.S.C. § 103 as being unpatentable over Johansen and Higuchi.

OPINION

Anticipation by Johansen

Claims 1–5

Appellant argues claim 1 and states that claims 2–5 stand or fall with claim 1. Appeal Br. 11–15. The Examiner finds that Johansen discloses each limitation of the invention. Final Action 2–3. In particular, the Examiner finds that Johansen exhibits an upper spring retainer as claimed. *Id.* at 3 (citing Johansen, Fig. 5). The Examiner also finds that Johansen’s spring assembly is longitudinally adjustable. *Id.*

Appellant argues that Johansen lacks an upper spring retainer as claimed. Appeal Br. 13. Appellant argues that the Figure 5 embodiment is affixed with screws to Lazy Susan 28 and, therefore, is inhibited from

longitudinal movement. *Id.* at 13–14. According to Appellant, all three components of the claimed spring assembly must move longitudinally to satisfy the claim. *Id.* at 14.

In response, the Examiner furnishes an annotated version of Johansen Figure 5, with annotations indicating where the upper spring retainer, the spring, and the lower spring retainer are to be found in such embodiment. Ans. 4. The Examiner elaborates on such drawing with the following explanation:

The examiner submits that the claim requires that the upper and lower spring retainers have shaft-receiving apertures. Clearly, the plates shown in the annotated figure have shaft-receiving apertures. In fact, the rod is shown extending through the bottom plate, while claim 7 teaches that the top of the rod is fixed to the lazy susan. Since the top of the rod is fixed to the lazy susan, the top of the rod must also extend through the plate that is attached to the lazy susan 28 via bolts. Fig. 6 shows the top attachment of the rod directly to the lazy susan presumably through the plate.

Id. The Examiner rebuts Appellant’s “longitudinally adjustable” argument by pointing out that the claim merely requires the spring assembly to be adjustable, not that each of the three components individually must be adjustable. Ans. 4–5.

Determining whether claims are anticipated involves a two-step analysis. *In re Montgomery*, 677 F.3d 1375, 1379 (Fed. Cir. 2012). The first step involves construction of the claims of the patent at issue. *Id.* “During examination, ‘claims ... are to be given their broadest reasonable interpretation consistent with the specification, and ... claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *Id.* (quoting *In re Am. Acad. of Sci. Tech. Ctr.*,

367 F.3d 1359, 1364 (Fed. Cir. 2004)). The second step of an anticipation analysis involves comparing the claims to prior art. *Id.* A prior art reference anticipates a patent claim under 35 U.S.C. § 102(b) if it discloses every claim limitation. *Id.*

Johansen is directed to a spring loaded mooring device. Johansen, Abstract. Johansen features linear cross bar 16 that may be inserted between decking planks in a manner similar to that of Appellant's invention. *Id.* col. 4, ll. 7–8, Figs. 5–7. A circular plate 18 is provided with a concentric aperture for being slidably received on rod 14. *Id.* col. 4, ll. 1–6. On the opposite end of rod 14 there is a supporting means that may take the form of an eyelet, a hook, an angled tube, or Lazy Susan 28. *Id.* col. 4, ll. 7–21. Figures 5 and 6 depict the Lazy Susan embodiment. *Id.* Figs. 5, 6. Figure 5 shows what appears to be a plate that is bolted or screwed into the bottom of Lazy Susan 28. The best interpretation of Figure 5 is that such plate contains an aperture for receiving rod 14 in a manner that allows Lazy Susan 28 to rotate as is commonly understood for Lazy Susan devices.² Interpreting the figure in such a reasonable manner leads to the conclusion that such plate satisfies the upper spring retainer limitation of claim 1.

Furthermore, we agree with the Examiner that the claim merely requires that spring assembly be longitudinally adjustable, not that each individual component of the assembly is adjustable. Figure 5 indicates that Johansen's spring assembly is readily capable of adjusting to be installed through deck planking of varying thickness via compression of coil

² A Lazy Susan is commonly understood to be a turntable or rotating tray that is placed on a table or countertop to aid in distributing food. *See e.g.*, https://en.wikipedia.org/wiki/Lazy_Susan (accessed November 19, 2019).

spring 20. *Id.* Fig. 5. Thus, the longitudinally adjustable limitation is satisfied by Johansen.

The Examiner's position is supported by a preponderance of the evidence. Accordingly, we sustain the Examiner's anticipation rejection of claims 1–5.

Claim 6

Claim 6 depends from claim 5 and adds the limitation: “wherein said anchor portion further comprises downwardly oriented first and second segments, at least one of which extends from said bar portion.” Claims App. The Examiner finds that Johansen's spurs 17 meet this limitation. Ans. 6–7.

Appellant attempts to distinguish between Appellant's “segments” and Johansen's “spurs” by relying on English language dictionary definitions of each term. Appeal Br. 15. This approach to claim construction is neither productive nor persuasive. There is no requirement in the law of anticipation that the prior art expressly use the term “segment.” *See In re Bode*, 550 F.2d 656, 660 (CCPA 1977) (explaining that while anticipation requires disclosure of each and every element of the claim at issue in a single prior art reference, the disclosure need not be in *haec verba*).

In the case of *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005), the Federal Circuit cautioned us away from over reliance on dictionary definitions in construing claim terms. *Phillips* explains that different dictionaries may contain different definitions for the same word, such that a claim should not rise or fall based upon the preferences of a particular dictionary editor. *Id.* at 1322.

Indiscriminate reliance on definitions found in dictionaries can often produce absurd results . . . One need not arbitrarily pick and choose from the various accepted definitions of a word to decide which meaning was intended as the word is used in a given claim. The subject matter, the context, etc., will more often than not lead to the correct conclusion.

Id. at 1322.

In the instant case, Appellant’s Specification teaches that anchor portion 40 may be comprised of “segments.” Spec. ¶ 37. Such segments may be formed “integrally” with bar portion 50. *Id.* Such segments may be joined at a vertex. *Id.* Broadly construed in light of the Specification, the term “segment” can be applied to any identifiable portion of anchor 40. Using a broad, but reasonable, construction of segment, Johansen’s element 17 satisfies the claim limitations of first and second downwardly oriented segments. *See* Johansen, Fig. 7.

We sustain the Examiner’s anticipation rejection of claim 6.

Claims 10–12, 15, 17, and 18

Appellant does not argue for the separate patentability of these claims. We summarily sustain the Examiner’s rejection of claims 10–12, 15, 17, and 18. *See* 37 C.F.R. § 41.37(c)(1)(iv) (failure to separately argue claims).

Claim 16

Claim 16 depends from claim 1 and adds the limitation: “wherein said bar portion comprises, at least in part, a cylindrically shaped outer surface.” Claims App. Appellant argues that such limitation is not met by Johansen. Appeal Br. 17. In response, the Examiner directs our attention to column 3, lines 65–67 of Johansen which states that: “the eyelet, rod, and cross bar are formed of a rigid metal with a constant circular cross-section,

as shown in Fig. 9.” *Id.* Figure 9 depicts a cross-section of eyelet 12 that is circular in shape. *Id.* at Fig. 9.

The Examiner’s position is supported by a preponderance of the evidence. We sustain the Examiner’s anticipation rejection of claim 16.

Claim 19

Claim 19 depends from claim 1 and adds the limitation” “said shaft assembly is rotatably adjustable with respect to said spring assembly.” Claims App. Appellant argues that Johansen fails to teach that plate 18 is rotatable with respect to its rod. Appeal Br. 18.

In response, the Examiner submits that, since plate 18 is slidably received on the rod, as is the spring, the plate is rotatable. Ans. 7. The Examiner further notes that the claim is not specific as to which parts of the shaft assembly and spring assembly are rotatable. *Id.*

A person of ordinary skill in the art, having reviewed the drawings and Specification of Johansen, would recognize that Johansen’s rod 14 rotates relative to coil spring 20. In like manner, the rod “assembly” rotates relative to the spring “assembly.” Appellant’s arguments to the contrary are not supported by the evidentiary record before us. We sustain the Examiner’s anticipation rejection of claim 19.

Claim 20

Claim 20 depends from claim 1 and adds the limitation” “wherein said shaft assembly is axially adjustable with respect to said spring assembly.” Claims App.

In traversing the rejection, Appellant relies on the same argument that we previously considered and found unpersuasive with respect to the “longitudinally adjustable” limitation of claim 1, which argument is equally

unpersuasive here. We sustain the Examiner's anticipation rejection of claim 20.

*Unpatentability of Claims 8 and 9
over Johansen*

Claims 8 and 9 depend, directly or indirectly, from claim 1. Claims App. Appellant does not argue for their separate patentability. Appeal Br. 22. We sustain the Examiner's rejection of claims 8 and 9. 37 C.F.R. § 41.37(c)(1)(iv).

*Unpatentability of Claims 13 and 14
over Johansen and Higuchi*

Claim 13

Claim 13 depends from claim 1 and adds the limitation: "wherein said lower spring retainer comprises an inwardly dished head." Claims App. Appellant argues that Higuchi fails to satisfy the foregoing limitation. Appeal Br. 23–24. Appellant contends that the floor of Higuchi's cup 16 is totally flat. *Id.* at 24.

In response, the Examiner directs our attention to cup 16 as satisfying the inwardly dished head limitation.

Higuchi is directed to anchoring fittings for attaching tiedown means to a floor or deck. Higuchi, col. 1, ll. 11–12. Higuchi's tiedown means features cup 16 with a tapered underside at 17. *Id.* col. 2, ll. 1–6. Cup 16 also features annular flange 18 and finger grips 20. *Id.* col. 2, ll. 6–33.

We have reviewed Figure 1 of Higuchi and agree that the structure of elements 16–20 satisfies Appellant's limitation directed to an inwardly dished head. *Id.* Fig. 1. After comparing Higuchi's Figure 1 to Appellant's

Figure 5, we are at loss to understand how Appellant’s “totally flat” argument distinguishes the claim language at issue from Higuchi.

We sustain the Examiner unpatentability rejection of claim 13 over Johansen and Higuchi.

Claim 14

Claim 14 depends from claim 1 and adds the limitation: “wherein said spring comprises a lower end, and wherein said lower spring retainer further comprises a spring capture side, and wherein said spring capture side further comprises an annular lip sized and shaped to capture said lower end of said spring.” Claims App. Appellant argues that Higuchi fails to satisfy the foregoing limitation. Appeal Br. 24–25. Appellant contends that the floor of Higuchi’s funnel shaped wall 17 is not an annular lip as depicted in Appellant’s Figure 5. *Id.* at 25.

Appellant’s argument is without merit. There is no reason to limit the scope of Appellant’s claims to the embodiment disclosed in Appellant’s drawings. It is settled law that a patent that discloses only one embodiment is not necessarily limited to that embodiment. *Saunders Grp., Inc. v. Comfortrac, Inc.*, 492 F.3d 1326, 1332 (Fed.Cir.2007). “[I]t is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited.” *Liebel–Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed.Cir.2004). Thus, in reviewing the Examiner’s rejection, we compare the prior art to Appellant’s claim language, not to Appellant’s Figures. We agree with the Examiner that element 17 of Higuchi satisfies Appellant’s

“lip” limitation. Accordingly, we sustain the Examiner unpatentability rejection of claim 14 over Johansen and Higuchi.

CONCLUSION

In summary:

Claims Rejected	§	Reference(s)	Aff'd	Rev'd
1-6, 15-20	102	Johansen	1-6,15-20	
8, 9	103	Johansen	8, 9	
13, 14	103	Higuchi	13, 14	
Outcome			1-6, 8-20 ³	

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

³ The Examiner indicates that dependent claims 10–12 would be allowable if rewritten so as not to depend from a rejected base claim. Final Action 7. Our ruling herein does not disturb this determination by the Examiner.