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GABLE & GOTWALS 100 WEST FIFTH STREET, 10TH FLOOR TULSA, OK 74103			SNYDER, ALAN W	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMES R. PERRAULT, SETH P. AHRENS,
ABRAHAM B. CONTRERAS, WILLIAM BARTON DRAEGER,
and FABIANO TAVARES DE SOUZA

Appeal 2019-002909
Application 15/470,250
Technology Center 3700

Before JOHN C. KERINS, EDWARD A. BROWN, and
LISA M. GUIJT, *Administrative Patent Judges*.

BROWN, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1 and 2. 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 McElroy Manufacturing, Inc. Appeal Br. 3 (filed June 26, 2018).

CLAIMED SUBJECT MATTER

Claims 1 and 2 are independent. Claim 1 illustrates the claimed subject matter.

1. For preparing opposed ends of polyolefin pipes for fusion into a pipeline, a facer comprising a pair of spaced-apart parallel vertically oriented cutting wheels on opposite sides of a boom and rotatable in unison about a common axis extending through a free end of said boom and a motor driving said pair of cutting wheels about said common axis, said boom being configured to enable said common axis to trace a thickness of the opposed ends of the polyolefin pipes in a closed-loop path whereby said pair of parallel cutting wheels will simultaneously face the opposed ends of the polyolefin pipes.

Appeal Br. 10 (Claims App.).

REJECTIONS

Claims 1 and 2 are rejected on the ground of non-statutory double patenting as unpatentable over claim 1 of Perrault (US 9,604,288 B2, issued Mar. 28, 2017).

Claims 1 and 2 are rejected under 35 U.S.C. § 102(a)(1) as anticipated by Johnson (US 1,878,707, issued Sept. 20, 1932).

ANALYSIS

Non-Statutory Double Patenting

Appellant does not contest the non-statutory double patenting rejection of claims 1 and 2. Appeal Br. 6. Instead, Appellant states that a

terminal disclaimer will be submitted to address the rejection should either of claims 1 and 2 be allowed. *Id.* Accordingly, we sustain the rejection.

Anticipation

The Examiner finds that Johnson discloses all limitations of claims 1 and 2. Final Act. 4–5 (citing Johnson, col. 3, ll. 11–21, Fig. 2). Particularly, the Examiner finds that Johnson discloses a tool capable of functioning as a facer for opposed ends of polyethylene pipes for fusion into a pipeline, the tool comprising a pair of spaced-apart, parallel, vertically oriented cutting wheels (cutter heads 16, 17) on opposite sides of a boom (attachment 15). *Id.* at 4. The Examiner also finds that Johnson discloses an embodiment in which cutter head 16 is removed and substituted with another head like milling head 17 to permit face milling from either side of attachment 15. Ans. 8–9 (citing Johnson 3:11–21). The Examiner explains that this embodiment would include two “cutting wheels” 17 having cutting elements 20 that extend outwardly away from one another. *Id.* at 8. The Examiner relies on this embodiment “with two cutting heads in the form of milling head 17” in the rejection. *Id.* at 9. The Examiner further explains that, if the workpiece were two pipes, fed into the head from the left and the right as seen in Figure 2, the embodiment would be capable of face milling/facing the opposed ends of the pipes. *Id.*

Appellant disagrees that Johnson’s head 17 is a “cutting head,” as claimed. Reply Br. 2. Appellant contends that face milling tools have teeth on their face, and, in the embodiment of Johnson relied on by the Examiner, “the teeth of two teeth-on-face milling tools are faced in opposite directions.” *Id.* Appellant also contends that the Examiner admits that

Johnson's element 17 is a milling head with cutting elements 20 used for face milling, and asserts that the Examiner's annotated drawing (Ans. 9) showing the embodiment of Johnson relied on has two milling wheels, not cutting wheels. *Id.*

Appellant explains that the claimed cutting wheels have teeth on their edges. Reply Br. 3 (citing Figs. 4, 5, 9 and 13). Appellant explains that the cutting wheels *cut the walls*, not the faces, of the pipes as the rotational axis of the wheels traces the pipe thicknesses. *Id.* (citing Spec. 9, l. 18–10, l. 11, Figs. 15A–15E). Appellant contends that, in contrast, Johnson's milling wheels 17 do not have the same structure as cutting wheels 77. *Id.*

Particularly, “Johnson faces with milling wheels and milling wheels require teeth on the face. Appellant faces with cutting wheels and cutting wheels require teeth on the edges.” *Id.* at 4.

Appellant's contentions are persuasive. Appellant's Figures 4, 5, 9, and 13 each depict a pair of cutting wheels 77 extending parallel to each other on opposite sides of a boom 40. As shown, the edges extend parallel to each other and perpendicular to a common axis 79 about which cutting wheels 77 rotate in unison. *See* Fig. 1. The location of the teeth on the edges of cutting wheels 77 is shown clearly in Figure 13. As also shown in Figures 4, 5, 9, and 13, there are no teeth on the outer faces of respective cutting wheels 77. Appellant explains that in contrast to using a milling head to shave pipe, the claimed invention “uses a cutting wheel to cut off the end of the pipe in a single closed-loop path.” Reply Br. 8. Figures 15A–15E depict the closed-loop cutting operation. *See* Spec. 9, l. 18–10, l. 11.

The Examiner has not established by a preponderance of the evidence that Johnson discloses a facer comprising “a pair of spaced-apart parallel

vertically oriented *cutting wheels* on opposite sides of a boom.” Johnson describes that cutter head 17 “has bits or teeth 20 inserted therein projecting from the front face thereof to be used in face milling operations.” Johnson 2, ll. 2–5, Fig. 2 (showing teeth 20). Johnson describes that when boring head 16 is substituted with “another milling head like the head” a face milling operation can be performed on both ends of a workpiece. *Id.* at 2, ll. 92–105. We disagree with the Examiner’s finding that Johnson’s cutter heads 17, which both have teeth arranged and configured to perform a milling operation, correspond to the claimed cutting wheels. The broadest reasonable interpretation of a claim term “is an interpretation that corresponds with what and how the inventor describes his invention in the specification.” *In re Smith Int’l, Inc.*, 871 F.3d 1375, 1382–83 (Fed. Cir. 2017). Here, even if Johnson’s cutter heads 17 cut material during a milling operation, the Examiner’s finding that Johnson discloses the claimed cutting wheels is not based on an interpretation of this term that corresponds with what and how the present inventors describe their invention in the Specification.

For these reasons, we do not sustain the rejection of claim 1 as anticipated by Johnson. We also do not sustain the anticipation rejection of claim 2 for similar reasons.

CONCLUSION

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1, 2	Non-statutory Double Patenting, Perrault	1, 2	
1, 2	§ 102(a)(1), Johnson		1, 2
Overall Outcome		1, 2	1, 2

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