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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FRANCISCO GOMEZ

Appeal 2019-002919
Application 15/113,171
Technology Center 3600

Before JENNIFER D. BAHR, MICHAEL L. HOELTER, and
BRETT C. MARTIN, *Administrative Patent Judges*.

BAHR, *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 1–9, 11–13, and 15–22. 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 Hewlett-Packard Development Company, LP, which is a wholly owned affiliate of HP Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Appellant's invention is directed to a media processing device comprising a flexion component for use in creating a flexion in media so as to cause a trailing portion of the media, which has just emerged from the feed area, to move away from the feed area so that the media will not "be 'recaptured' by the feed area" and "fed back into the media feed path or another part of the media processing device." Spec. ¶¶ 18, 24. Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. Apparatus comprising:

a support portion configured to couple the apparatus to a media processing device, the media processing device having a media path along which media is transported, the media path having a feed area comprising a feeding mechanism for feeding media to an output area;

a flexion component configured to apply a force to a first portion of media that is beneath the flexion component and thereby cause a flexion in the media, the flexion moving a second and trailing portion of the media away from the feeding mechanism of the feed area of the media path to prevent unintended further contact of the media with the feeding mechanism of the feed area.

EVIDENCE

The prior art relied upon by the Examiner is:

Tahara	US 5,518,229	May 21, 1996
Sugimoto	US 6,648,328 B2	Nov. 18, 2003
Onishi	US 2012/0112402 A1	May 10, 2012

REJECTION

- I. Claims 1–5, 9, 11, 13, 15, 16, 18, 19, 21, and 22 stand rejected under 35 U.S.C. § 102(a)(1) as anticipated by Onishi.

- II. Claims 7, 8, 17, and 20 stand rejected under 35 U.S.C. § 103 as unpatentable over Onishi and Sugimoto.
- III. Claim 6 stands rejected under 35 U.S.C. § 103 as unpatentable over Onishi, Sugimoto, and Tahara.
- IV. Claim 12 stands rejected under 35 U.S.C. § 103 as unpatentable over Onishi.

OPINION

Rejection I—Anticipation Based on Onishi

Claims 1–5, 16, 18, 19, and 21

The Examiner finds that Onishi discloses an apparatus as recited in claim 1 including, in pertinent part, a support portion configured to couple the apparatus to a media processing device having a media path having a feed area comprising a feeding mechanism (sheet delivery roller pair 51) for feeding to an output area (delivery tray 60), and a flexion component (sheet presser member 61) configured to apply a force as called for in claim 1. *See* Final Act. 2–3 (citing Onishi, Fig. 12 for the support portion).

Appellant argues that Onishi’s sheet presser member 61 does not act on one portion of the sheet to move another portion away from a feeding mechanism. Appeal Br. 11. According to Appellant, sheet presser member 61 is pushed out of the way by sheet P exiting delivery port 53, such that sheet presser member 61 does not place any downward force on the exiting media, and applies a pressing force to the trailing end of the sheet only after it has been stacked and is no longer exiting the delivery port. *Id.* at 12.

The Examiner responds,

[I]t is clear from Onishi that the sheet presser member is pushed by a sheet of media being ejected. The presser member rests its

weight on the sheet as the sheet is discharged. It is therefore pushing the ejected media from above in a manner not only satisfying the claim language but in a manner that is analogous to the pressing member of the instant application.

Ans. 4.

Onishi discloses that, in a default state (i.e., with no external forces applied), “before delivering the sheet, . . . the sheet presser member 61 has its center of gravity decentered on the downstream side in the sheet delivery direction,” such that, in a state in which sheet presser member 61 remains still by its own weight, bottom surface portion 61*b* of presser member 61 “is inclined downwardly toward the downstream side in the sheet delivery direction.” Onishi ¶ 61. Onishi discloses that, as each sheet P is delivered from sheet delivery roller pair 51, the leading end of the sheet contacts side surface 61*a* of presser member 61, causing presser member 61 to swing toward the downstream side in the sheet delivery direction. *Id.* ¶ 62. Onishi also discloses that “sheets P are stacked under a state in which the trailing ends thereof are slid under the bottom surface portion 61*b* of the sheet presser member 61” and that “the trailing end of the sheet P delivered from the sheet delivery port 53 is pressed by the bottom surface portion 61*b* from above.” *Id.* ¶ 63.

The above disclosure of Onishi is sufficient to establish, by a preponderance of the evidence, that bottom surface portion 61*b* of presser member 61 applies a downward reactive force to successive portions of sheet P from the leading end portion to the middle portion, and eventually to the trailing end portion, as the sheet is delivered from sheet delivery port 53 to delivery tray 60, causing flexion of the sheet around roller 73 at the intersection of side surface portion 61*a* and bottom surface portion 61*b*. As

the trailing end of the sheet exits the nip between sheet delivery roller pair 51, the flexion causes the trailing end portion to move away from sheet delivery roller pair 51 (the feeding mechanism).

Onishi's disclosure that leading ends of sheets P contact presser member 61 causing presser member 61 to swing in the downstream direction does not undermine the Examiner's finding that presser member 61 applies a downward force to portions of sheet P as the sheet is in the process of being delivered from sheet delivery port 53 to delivery tray 60. As discussed above, the center of gravity of Onishi's presser member 61, like that of Appellant's flexion component 70, is decentered relative to its coupling axis. *See* Onishi ¶ 61; Spec. ¶ 32. Furthermore, sheets delivered from the feeding mechanism, under force imparted by delivery roller pair 51, cause Onishi's presser member 61 to swing toward the downstream side, much like forces applied by the rollers of Appellant's feed area 30 move the media and displace Appellant's flexion component 70, allowing it to rotate upwards (i.e., in the downstream direction). Onishi ¶ 62; Spec. ¶ 33. Thus, Onishi's presser member 61, like Appellant's flexion component 70, is biased to rotate under the force of gravity towards its equilibrium position, and it is this biasing/reaction force that applies a force to the sheets as they slide under bottom surface portion 61*b* of presser member 61. *See* Onishi ¶ 63 (disclosing the pressing force applied by bottom surface portion 61*b*); Spec. ¶ 33 (disclosing a force applied to media 40 by flexion component 70 due to gravity). Although Onishi only expressly discusses, and is primarily concerned with, the force applied by presser member 61 to the trailing ends of the sheets P after they are stacked in delivery tray 60 (*see* Onishi ¶¶ 63, 65), for the above reasons, presser member 61 also applies pressing force to

sheets P as they slide under bottom surface portion 61*b* of presser member 61 during delivery.

Appellant, therefore, fails to apprise us of error in the rejection of claim 1. Accordingly, we sustain the rejection of claim 1, as well as claims 2–5, 16, 18, 19, and 21, for which Appellant does not present any separate arguments and which, thus, fall with claim 1, as anticipated by Onishi.

Claims 9, 11, and 13

The Examiner finds that Onishi discloses the method recited in claim 9. Final Act. 3–4.

Relying on the aforementioned arguments asserted for claim 1, Appellant argues:

Onishi fails to teach or suggest, “wherein the force results in a flexion in the media which draws a second portion of the media not underneath the flexion component laterally away from a feed area of the media feed path along the media path to prevent further interaction between the media and a feeding mechanism.” (Claim 9).

Appeal Br. 13.

Aside from merely reciting elements of claim 9, Appellant’s statement does not add anything to the arguments presented for claim 1, which, for the reasons discussed above, fail to apprise us of error in the rejection of claim 1. Appellant’s statement, thus, does not constitute a separate argument for patentability of claim 9 pursuant to 37 C.F.R. § 41.37(c)(1)(iv). *See In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (holding that the Board had reasonably interpreted 37 C.F.R. § 41.37(c)(1)(vii) (the predecessor to § 41.37(c)(1)(iv)) as requiring “more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that

the corresponding elements were not found in the prior art”). For the reasons discussed above, Appellant’s arguments fail to apprise us of error in the rejection of claim 1 and, likewise, fail to apprise us of error in the rejection of claim 9, which falls with claim 1. Accordingly, we sustain the rejection of claim 9, as well as claims 11 and 13, for which Appellant does not present any separate arguments and which, thus, fall with claims 1 and 9, as anticipated by Onishi.

Claim 15

The Examiner finds that Onishi discloses a media processing apparatus as called for in claim 15. Final Act. 4–5. The Examiner reads the claimed flexion component on Onishi’s presser member 61, including roller 73. *Id.* at 4. With respect to the recitation in claim 15 that the flexion draws a trailing edge of the media laterally away and upwards from the feed area to prevent an unintended re-feeding of the sheet into the media processing apparatus, the Examiner finds:

[S]ince the member 61 pushes a discharged media sheet, such that it moves the trailing end of the sheet such that it prevents unintended further contact of the media with the feeding mechanism, the region within which the trailing edge is drawn is upwards from the feed area of the media path, seen in Figures 1 and 6.

Id. at 4–5.

Relying on the aforementioned arguments presented for claim 1, Appellant submits:

Onishi fails to teach or suggest: a flexion component configured to apply a force to a first portion of the sheet of media that is beneath the flexion component at the media output tray when a second portion of the sheet of media remains within the media

path and thereby cause a flexion in the media, the flexion drawing a trailing edge of the media laterally away and upwards from the feed area of the media path along the media path to prevent an unintended re-feeding of the sheet of media into the media processing apparatus.

Appeal Br. 14.

Aside from merely reciting elements of claim 15, Appellant's statement does not add anything to the arguments presented for claim 1, which, for the reasons discussed above, fail to apprise us of error in the rejection of claim 1. Appellant's statement, thus, does not constitute a separate argument for patentability of claim 15 pursuant to 37 C.F.R. § 41.37(c)(1)(iv). *See In re Lovin*, 652 F.3d at 1357.

Accordingly, we sustain the rejection of claim 15, which falls with claim 1.

Claim 22

Claim 22 depends from claim 1 and further recites, "wherein the flexion component is in a retracted position when a cover to the media processing device is opened." Appeal Br. 23 (Claims App.).

Citing Onishi, paragraph 65, the Examiner finds that presser member 61 may be in a retracted position, "*including* when a cover (30) to the media processing device is opened." Final Act. 5 (emphasis added). Onishi identifies item 30 as "a document cover." Onishi, para. 34; *see id.*, Fig. 1. Paragraph 65 of Onishi discloses that presser member 61 is pushed by the upper surface of sheet P so as to pivot toward the downstream side, but mentions nothing about a cover.

Appellant argues that "there is no link between a cover being open or closed and the relative position of the flexion component." Appeal Br. 15.

This argument is not commensurate in scope with claim 22, which does not recite a link between the cover being open or closed and the relative position of the flexion component. *See* Ans. 5 (stating, “[t]he claim fails to include any link between the cover and the position of the flexion – structural or otherwise. Instead, the claim simply requires the flexion to be retracted at a same time when a cover is in an open position.”). Thus, Appellant’s argument fails to apprise us of error in the rejection of claim 22. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (limitations not appearing in the claims cannot be relied upon for patentability). Accordingly, we sustain the rejection of claim 22 as anticipated by Onishi.

Rejection II—Obviousness Based on Onishi and Sugimoto

In contesting the rejection of claims 7, 8, 17, and 20, which depend from claim 1, Appellant relies solely on the arguments presented for claim 1. Appeal Br. 15. For the reasons discussed above, these arguments fail to apprise us of error in the rejection of claim 1 and, likewise, fail to apprise us of error in the rejection of claims 7, 8, 17, and 20 as unpatentable over Onishi and Sugimoto, which we, thus, sustain.

Rejection III—Obviousness Based on Onishi, Sugimoto, and Tahara

Claim 6 depends from claim 1 and recites:

the flexion component is coupled, via an axle, to an axle aperture of the support portion, and wherein the axle aperture is configured such that the flexion component can be retracted into a portion of the axle aperture, such that the flexion component is maintained in a position in which it no longer applies a force to the media.

Appeal Br. 20 (Claims App.).

The Examiner applies Sugimoto’s teaching of flexion component 30 coupled via an axle to axle aperture 26 (Fig. 1) and Tahara’s teaching to retract a flexion component (42) so it no longer applies force to the media. Final Act. 7–8; *see* Sugimoto, Fig. 1; *id.* 5:63–6:3; Tahara, Figs. 2, 3A, 3B. The Examiner determines it would have been obvious to modify Onishi “to combine the flexion components to provide the [axle] aperture detail while allowing the component to be retracted for easier removal of sheets.” *Id.* at 8.

Appellant does not identify any deficiency in either the Examiner’s findings regarding Sugimoto and Tahara or the Examiner’s reasoning in combining them with Onishi. *See* Appeal Br. 16. Instead, Appellant appears to attack Tahara individually and, thus, fails to apprise us of error in the rejection of claim 6. *See id.* (asserting that Tahara “does not make any mention at all of an axle aperture nor retraction into such an axle aperture”). “Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.” *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)).

Accordingly, we sustain the rejection of claim 6 as unpatentable over Onishi.

Rejection IV—Obviousness Based on Onishi

Claim 12, which depends from claim 9, recites “retracting the flexion component from the media path whereby to stop applying the force to the first portion of media.” Appeal Br. 21 (Claims App.).

The Examiner finds that Onishi’s flexion component (presser member 61) is resident within the media path and “is retractable from the media

path.” Final Act. 8 (citing Onishi ¶ 54). The Examiner finds that “[i]t is unclear whether Onishi can be considered as endorsing retracting the flexion component.” *Id.* However, the Examiner reasons that it would have been obvious “to use the teachings of Onishi and retract the flexion component by moving it along its pivoting path from the media path to stop applying the force to the first portion of media to reach in and remove a sheet that was stuck in that area.” *Id.*

Appellant submits that paragraph 54 of Onishi merely states that sheet presser member 61 “is supported so as to be swingable in the sheet delivery direction,” but “does not mention retraction of the sheet presser member.” Appeal Br. 17. Appellant argues that “being swingable merely indicates it can rotate, but does not teach or suggest an active retraction of the component so as to ‘stop applying the force to the first portion of media.’” *Id.*

Appellant’s argument is not responsive to the rejection articulated by the Examiner. The Examiner does not find that paragraph 54 of Onishi teaches or suggests an active retraction of sheet presser member 61. *See* Ans. 8 (agreeing with Appellant’s acknowledgement that “Onishi teaches the flexion component is swingable. That is, that it can rotate, but not actively rotating the flexion component to stop applying the force to the media.”). However, the Examiner determines that it would have been obvious to modify Onishi’s method by having a user actively “retract the flexion component [(i.e., sheet presser member 61)] from the media path to stop applying the force to the media in order to better access and free a jammed sheet” because “it is commonplace for the user/operator to remove the jammed sheet by opening the sheet path in whatever way enabled by the

manufacturer” and “Onishi provided a sheet presser member in the vicinity of the discharge port that is freely swingable.” *Id.*

Appellant responds by contending that an active retraction would not be obvious because Onishi describes passive action. Reply Br. 10. This response does not specifically address, much less refute, the Examiner’s articulated reason for modifying Onishi by actively retracting the sheet presser member—namely, to clear the media path to remove a jammed sheet, which is a commonplace practice. Thus, Appellant fails to apprise us of error in the Examiner’s rejection of claim 12. Accordingly, we sustain the rejection of claim 12 as unpatentable over Onishi.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–5, 9, 11, 13, 15, 16, 18, 19, 21, 22	102(a)(1)	Onishi	1–5, 9, 11, 13, 15, 16, 18, 19, 21, 22	
7, 8, 17, 20	103	Onishi, Sugimoto	7, 8, 17, 20	
6	103	Onishi, Sugimoto, Tahara	6	
12	103	Onishi	12	
Overall Outcome			1–9, 11–13, 15–22	

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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