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23908	7590	03/04/2020	EXAMINER	
RENNER OTTO BOISSELLE & SKLAR, LLP 1621 EUCLID AVENUE NINETEENTH FLOOR CLEVELAND, OH 44115			YOON, SEAHEE	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GERHARD FINKBEINER

Appeal 2019-003048
Application 13/262,247
Technology Center 3700

BEFORE JILL D. HILL, JEREMY M. PLENZLER, and
PAUL J. KORNICZKY, *Administrative Patent Judges*.

PLENZLER, *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 1–5, 9, 13–19, 21, and 24–27.² We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM IN PART.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as the inventor, Gerhard Finkbeiner. Appeal Br. 2.

² Claims 22 and 23 are pending, but objected to as dependent from a rejected claim while including allowable subject matter. Final Act. 8.

CLAIMED SUBJECT MATTER

The claims are directed to a lifting device. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A lifting device for lifting loads or vehicles comprising:
 - a lifting column provided on a base device;
 - a carrier positioned to move up and down in relation to the lifting column, the carrier having a sleeve-shaped or cartridge-shaped design which at least partly surrounds the lifting column;
 - a load handling attachment arranged on the carrier;
 - a drive unit comprising a drive element and a hydraulic unit, the drive element is situated in the lifting column, the drive element being a lifting cylinder; and the hydraulic unit is provided on the carrier;
 - a control provided on the carrier for moving the carrier up and down in relation to the lifting column, wherein the control is an electronic unit that is configured for wireless communication and communicates with further controls wirelessly for a simultaneous lifting movement of the lifting device; and
 - at least one accumulator provided on the carrier.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Francis	US 5,484,134	Jan. 16, 1996
Baker	US 7,014,012 B2	Mar. 21, 2006

REJECTIONS

Claim 24 is rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

Claims 1–5, 9, 13, 16–19, 21, and 25–27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Francis and Baker.

OPINION

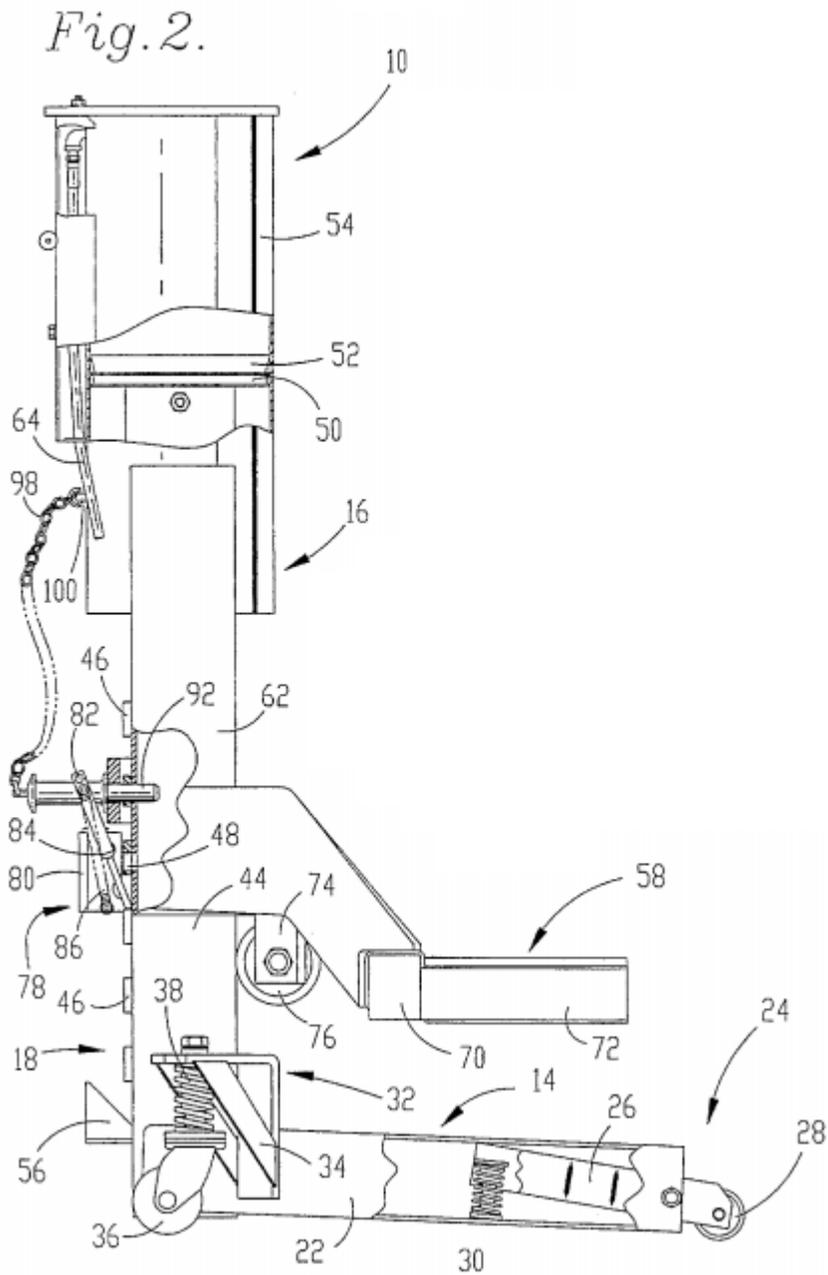
Indefiniteness

The Final Action rejects claim 24 as indefinite. Final Act. 2. Although the Examiner's Answer does not list the indefiniteness rejection, it states that "[e]very ground of rejection set forth in the Office action dated 3/7/2018 from which the appeal is taken is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading 'WITHDRAWN REJECTIONS.'" Ans. 3. There are no rejections listed as withdrawn in the Examiner's Answer. Further, our review of the record does not indicate that the indefiniteness rejection has been withdrawn. Accordingly, we understand this rejection is pending.

Our rules state that Appellant's "arguments shall explain why the examiner erred as to each ground of rejection contested by appellant." *See* 37 C.F.R. § 41.37(c)(1)(iv). "When the appellant fails to contest a ground of rejection to the Board . . . the PTO may affirm the rejection of the group of claims that the examiner rejected on that ground without considering the merits of those rejections." *Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008). Accordingly, because there is no assertion of error by Appellant, we summarily affirm the Examiner's indefiniteness rejection.

Obviousness

Each of the claims requires a "drive element being a lifting cylinder" that "is situated in the lifting column." The Examiner finds that Francis teaches "a lifting column 18" and a "drive element 50 . . . situated in the lifting column." Final Act. 3. Figure 2 of Francis is reproduced below.



“F[igure] 2 is a side elevational view, partially in section, of the vehicle wheel lift and stand apparatus, illustrating a cradle assembly of the apparatus in a raised position.” Francis 2:31–33. Francis explains that “the upper free end of the post 18 is provided with a piston 50.” *Id.* at 3:39–40.

Appellant contends, consistent with the description reproduced above, that “Francis does not disclose or even suggest a drive element that is *situated in the post 18*, since the piston 50 is located above the post 18.” Appeal Br. 10.

The Examiner responds that “[t]he phrase, ‘situated in’ does not require the drive element to be ‘inside’ of the lifting column.” Ans. 3. The Examiner bases this determination on an unsupported finding that “[i]t is known in the art that the terms, ‘in[’], ‘inside’, and ‘into’ all have similar meanings with subtle differences” and “[i]t is also commonly known that the term ‘situated in’ does not require something to be ‘positioned inside.’” *Id.* That is, the Examiner does not dispute that piston 50 is entirely outside of post 18 in Francis. Rather, the basis for the Examiner’s rejection is that piston 50 is “situated in” post 18 because it is near post 18. *See id.* (“with the broadest reasonable interpretation, the drive element 50 is situated in (in the place and in the area of) the lifting column 18”).

Based on the record before us, we see no support for the Examiner’s broad interpretation of the phrase “situated in.” As noted above, the Examiner fails to provide any evidence supporting this interpretation, and does not explain, or even assert, that such an understanding is consistent with the Specification. The Specification explains that the “lifting cylinder, for example as a drive unit 18, is arranged in the lifting column 14 and within the carrier 21” and “is therefore not accessible from the outside and is protected.” Spec. 18:17–19. The Specification further explains that “this configuration has the advantage that the upper guide element 41 and the lower guide element 43 are always inside and therefore protected.” *Id.* at 18:20–22.

Consistent with the plain meaning of the term “in,” as well as the Specification, the claim recitation that “the drive element is situated in the lifting column” requires at least some part of the drive element to be within the lifting column. Because the Examiner’s rejection lacks any finding regarding an element meeting that claim limitation, we do not sustain the Examiner’s decision to reject claims 1–5, 9, 13, 16–19, 21, and 25–27.

CONCLUSION

The Examiner’s indefiniteness rejection is affirmed and the obviousness rejection is reversed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
24	112 ¶ 2		24	
1–5, 9, 13, 16–19, 21, 25–27	103(a)	Francis, Baker		1–5, 9, 13, 16–19, 21, 25–27
Overall Outcome			24	1–5, 9, 13, 16–19, 21, 25–27

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 IN PART