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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL OSLIZLO and DENNIS E. COX

Appeal 2019-003288
Application 13/714,662
Technology Center 3700

Before LINDA E. HORNER, MICHAEL J. FITZPATRICK, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 1, 4, and 8. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ Appellant is the "applicant" under 37 C.F.R. § 1.42(a) and identifies Federal-Mogul Corporation as the sole real party in interest. Appeal Br. 3.

STATEMENT OF THE CASE

The Specification

The Specification's disclosure relates "to windscreen wiper devices for automobiles and more particularly to hybrid windscreen wiper devices." Spec. ¶2.

The Claims

Claims 1, 4, and 8 are rejected. Final Act. 1. The remaining pending claims, namely claims 9–12, have been withdrawn from consideration. Claim 1 is illustrative and reproduced below.

1. A windscreen wiper device for cleaning a windshield of a vehicle, comprising:
 - an elongated wiper strip of a flexible material for sealing against the windshield;
 - at least one deflectable carrier element in engagement with said elongated wiper strip for biasing said elongated wiper strip into a pre-curved configuration;
 - a frame structure coupled to said at least one carrier element;
 - said frame structure including a main bridge with a spoiler-shaped outer surface and a pair of end piece sub-assemblies that are coupled to opposite ends of said main bridge;
 - each of said end piece sub-assemblies including a linkage with two sets of claws that are spaced from one another and an end cap and a connecting piece which is pivotably connected with said linkage and with said end cap and which presents a resiliently deflectable tongue with a button that projects in a direction away from said wiper strip;
 - each of said opposite ends of said main bridge having an opening shaped to receive said connecting piece of one of said end piece sub-assemblies and a recess within said opening;

said connecting pieces of said end piece sub-assemblies being at least partially received within said openings of said main bridge with said buttons being disposed within said recesses such that said connecting pieces are restricted from rotation relative to said main bridge; and

said recesses being covered by said spoiler-shaped outer surface of said main bridge such that the connections between said end piece sub-assemblies and said main bridge are irreversible and permanent.

Appeal Br. 17 (emphasis added).

The Examiner's Rejection

The Examiner rejected claims 1, 4, and 8 pursuant to pre-AIA 35 U.S.C. § 103(a) as unpatentable over US 2011/0131750 A1, published June 9, 2011 (“Kwon”), US 3,041,654, issued July 3, 1962 (“Anderson”), and US 2007/0089257 A1, published April 26, 2007 (“Harita”). Final Act. 3.²

DISCUSSION

Claim 1 recites “said recesses being covered by said spoiler-shaped outer surface of said main bridge such that the connections between said end piece sub-assemblies and said main bridge are irreversible and permanent.” The issue before us is whether the asserted prior art meets the “irreversible and permanent” aspect of this limitation.

² The Examiner also rejected claims 1, 4, and 8 as failing to comply with the written description requirement of 35 U.S.C. § 112(a)/¶1, but ultimately withdrew that rejection. Final Act. 2; Ans. 3.

The Examiner relies on Anderson as teaching this limitation, finding and concluding as follows:

Anderson further teaches that the spring snaps into position in apertures (**16 and 17**) behind the claws 14 to prevent accidental displacement from their assembled position (**col. 2, lines 47-51**).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the frame structure of Kwon et al., based on the aforementioned teachings of Anderson, to releasably secure the components of the frame structure as desired thereby making connections irreversible and permanent until the necessary pressure is applied to intentionally release the components from assembly.

Final Act. 5–6.

On its face, the rejection would appear erroneous in that it identifies a “releasabl[e]” connection as one that is “irreversible and permanent.” *Id.* However, the Examiner construes “irreversible and permanent” *not* in accordance with its plain and ordinary meaning. *See* Ans. 3–4. In that regard, the Examiner construes “irreversible and permanent” according to its supposed definition set forth in paragraph 27 of the Specification. *Id.* That paragraph states, in part:

This connection between the resilient tab 58 and the recess 62 in the opening is shown in Figure 9 and is hereinafter referred to as a “bayonet connection”. Because the resilient tab 58 is not readily accessible from outside of the main bridge 28, the bayonet connection between the main bridge 28 and the end piece sub-assembly 30 is, for all practical purposes, irreversible and permanent.

Spec. ¶27. The Examiner takes the position that this paragraph defines an “irreversible and permanent” connection as one in which a resilient tab is not readily accessible from outside the main bridge, without regard to whether it

is “irreversible and permanent” in the plain and ordinary meaning of those terms. Ans. 4 (“[T]he plain and ordinary meaning of the term “irreversible and permanent” is not applied to the claims. . . . Based on appellant’s definition, ‘**irreversible and permanent**’ means **to not be readily accessible from outside.**”).

The Examiner then applies that construction to the connecting structure identified in Anderson. *Id.* (“Anderson also teaches that the spring (18) snaps into position in apertures 16 and 17 **behind the claws 14** (col. 2, lines 47-51), thereby making connections ‘not readily accessible from outside’.”). As Appellant points out, however, Anderson explicitly describes its connection between the asserted windshield end piece sub-assemblies (i.e., “secondary yokes”) and the main bridge (i.e., “primary bridge”) as being reversible. Appeal Br. 10.

When, however, it is necessary to replace the wiping element, the connecting process is reversed and, therefore, a suitable button 21 is operatively associated with the free end of spring 18 whereby the button may be depressed so that the laterally extending portions of the spring may be depressed so that claws 14 and 15 may be returned from slots 19 and 20 to apertures 16 and 17 to effect separation of the primary bridge and secondary yoke. Both ends of the primary bridge may be detachably connected to their respective secondary yokes in this manner.

Anderson 2:52–62.

The plain and ordinary meaning of an “irreversible and permanent” connection does not encompass Anderson’s connection, which includes structure specifically designed to “reverse[]” the connection and “detach” the main bridge from the yokes. The Examiner effectively concedes this on page 4 of the Answer, as quoted above. Thus, the issue before us is whether

Appellant has acted as his own lexicographer and defined “irreversible and permanent” in a manner that would encompass Anderson’s connection.

“Although words in a claim are generally given their ordinary and customary meaning, a patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, *as long as the special definition of the term is clearly stated in the patent specification or file history.*” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996) (emphasis added).

The Specification states that, in the embodiment illustrated in the Figures, “the bayonet connection between the main bridge 28 and the end piece sub-assembly 30 is, for all practical purposes, irreversible and permanent.” Spec. ¶27. Although the Specification explains why the exemplary connection illustrated in the Figures is “irreversible and permanent,” i.e., “[b]ecause the resilient tab 58 is not readily accessible from outside of the main bridge 28,” the Specification does not clearly set forth a definition for “irreversible and permanent,” let alone one that means a connection in which a tab is not readily accessible from the outside. *Id.*; *see Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012) (“To act as its own lexicographer, a patentee must ‘clearly set forth a definition of the disputed claim term’ other than its plain and ordinary meaning. It is not enough for a patentee to simply disclose a single embodiment or use a word in the same manner in all embodiments, the patentee must ‘clearly express an intent’ to redefine the term.”) (citations omitted); *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1364 (Fed. Cir. 1999) (“We decline, however, to adopt a proffered unaccustomed meaning [of ‘permanently affixed’] with so little support in the intrinsic record.”).

Because the Examiner misconstrued “irreversible and permanent” in reading claim 1 on the prior art, we reverse the obviousness rejection of claim 1. We likewise reverse the rejection of claims 4 and 8, which depend from claim 1. *See In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) (“Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.”).

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	References	Affirmed	Reversed
1, 4, 8	103	Kwon, Anderson, Harita		1, 4, 8

REVERSED