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LENOVO/PANGRLE Pangrle Patent, Brand & Design Law, P.C. 3500 W Olive Ave 3rd Floor Burbank, CA 91505			MILLISER, THERON S	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOSEPH ANTHONY HOLUNG, TIN-LUP WONG,
JOSEPH DAVID PLUNKETT, RITCHIE ALAN RUSS,
PHILIP JOHN JAKES, and BOUZIANE YEBKA

Appeal 2019-003624
Application 15/015,114
Technology Center 2800

Before KAREN M. HASTINGS, JEFFREY R. SNAY, and
MICHAEL G. McMANUS, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ requests our review under 35 U.S.C. § 134(a) of the
Examiner’s final decision rejecting claims 1–7, 10–19, 21, 22, 33, and 34.
We have jurisdiction over the appeal 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(a). Appellant identifies the real party in interest as Lenovo Singapore Pte. Ltd. (Appeal Br. 2).

REJECTIONS

Claims 1–6 and 10–19 are rejected under 35 U.S.C. § 102(a)(1) as being anticipated by Bathiche (US 2013/0242495 A1; published Sept. 19, 2003).

Claim 7 is rejected under 35 U.S.C. § 103 over Bathiche, further in view of “Polymagnet® Guide” (Mechanisms Market: “Polymagnet® Guide” (<http://www.mechanismmarket.com/polymagnet-guide>); version accessed (Jan. 17, 2016)).

Claims 21 and 22 are rejected under 35 U.S.C. § 103 as unpatentable over Bathiche.

Claims 33 and 34 are rejected under 35 U.S.C. § 103 as unpatentable over Bathiche and Longo (US 2015/0281413 A1; published Oct. 1, 2015).

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of the subject matter on appeal (emphasis added to highlight key limitation in dispute):

1. An apparatus comprising:
 - a processor;
 - memory accessible by the processor;
 - a display operatively coupled to the processor;
 - a hinge assembly that comprises an axle and leaves*wherein *at least one of the leaves comprises a leaf magnet* that comprises north poles and south poles; and
 - a first housing and a second housing that comprise leaf receptacles that, in a coupled state, receive the leaves of the hinge assembly to pivotably couple the first housing and the second housing.

Independent claim 33 is similar to claim 1 but further recites that the hinge assembly comprises a barrel, and that the “north poles and the south

poles of the leaf magnet attract and repel the leaf receptacle magnet to form an inter-magnet gap in the coupled state of the first housing and the second housing” (Claims App’x. Appeal Br. 39–43).

Appellant’s arguments focus on the limitations emphasized above.

ANALYSIS

We review the appealed rejections for error based upon the issues identified by Appellant and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential), cited with approval in *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (“[I]t has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections.”). After considering the evidence presented in this Appeal and each of Appellant’s arguments, we are not persuaded that Appellant identifies reversible error. Thus, we affirm the Examiner’s rejections for the reasons expressed in the Final Office Action and the Answer.

We add the following for emphasis.

First, the Examiner’s determination that Bathiche and Longo are both directed to devices to connect two components, including displays or keyboards, in a folding manner is not in dispute (*generally* Appeal Br.; Ans.).

Appellant mainly contends that 1) due to the election of Species A and D (Election, Oct. 18, 2017, 7–8, in response to the restriction requirement, July 18, 2017, 5–6), the interpretation of the claims, including generic claim 1, is restricted only to the elected species (Appeal Br. 5–18, 34), 2) that the anticipation rejection is improper because the Examiner relies upon multiple

embodiments of Bathiche in the anticipation rejection (Appeal Br. 19–22; Reply Br. 2–6), and 3) that Longo, relied upon in the rejection of claim 33, does not teach hinge barrels (Appeal Br. 36).

First, we disagree that 35 U.S.C. § 121 and the cited cases, in particular *Uship Intellectual Properties, LLC v. United States*, 714 F.3d 1311 (Fed. Cir. 2013), necessitates a different reading of the claims in the case of an election of species. The text of 35 U.S.C. § 121 enables an applicant to file a divisional application after a requirement for restriction, but it does not address the interpretation of the originally filed claims that were elected. Appellant correctly identifies the main purpose of 35 U.S.C. § 121 in the citation of *Applied Materials v. Advanced Semi. Materials*, that the “inventor shall not be prejudiced” when complying with a restriction requirement by having his own application used against him in a “charge of double patenting” (Appeal Br. 10–11, citing 98 F.3d 1563 (Fed. Cir. 1996)).

Further, the Examiner correctly points out that the restriction requirement identified claim 1 as generic to all the species, and that the restricted species claims would be rejoined once claim 1 was in condition for allowance (Ans. 5). The Examiner notes that “a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment” (Ans. 4, citing *SuperGuide Corp. v. DirectTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004)). Here, because claim 1 is generic, it is broader than the elected species. Because of this potential rejoinder, and because there is no clear danger of an erroneous charge of double patenting, we do not see how 35 U.S.C. § 121 limits the claims to the elected species.

Nor does the Appellant's reliance on *UShip* change this outcome (Appeal Br. 11). The court in *UShip* found that statements made by a patent owner in a response to a restriction requirements could be prosecution disclaimers, since these disclaimers are not limited to when the applicant is trying to overcome a claim rejection. (714 F.3d 1311, 1315). The court only states that the response to a restriction "may be used to interpret patent claim terms," not that it must. *Id.*

We are not persuaded therefore, that the Examiner erred by not reading the "leaf magnet" of claims 1 and 33 in a manner so as to become the "leaf end magnet" of the elected species.²

Second, Appellant's argument that the Examiner impermissibly relied upon multiple embodiments of Bathiche is not persuasive of reversible error (Appeal Br. 19–22; Reply Br. 2–6). Appellant relies on the description by Bathiche of Figure 4 which states that the flexible hinge has material that bends "as opposed to mechanical rotation" supported by a pin, "although that embodiment is also contemplated" (Bathiche at ¶ 41). Appellant contends that the Examiner is relying on that phrase for the rejection, and thus incorporates a second embodiment of Bathiche into the anticipation rejection (Appeal Br. 22). However, the Examiner aptly points out that claim 1 does not require a pin for mechanical rotation and that this sentence

² Because of our finding in this regard, we do not address the Appellant's contention that Bathiche does not teach the limitation of "leaf end magnet" that is not recited in the claim (Appeal Br. 24; Examiner's response at Ans. 15). We note that "limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993); *see also In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (limitations not appearing in the claim may not be relied upon for patentability).

was not relied upon for the rejection (Ans. 12–13). Indeed, the rejection of claim 1 cites Figures 1 and 2 as corresponding to the “pivotably couple” limitation, but does not cite Bathiche ¶ 41 or explicitly rely on the language Appellant cites (Final Act. 3). The Examiner states that the claims encompass Figures 1 and 2 of Bathiche since claim 1 only recites that the two housings are “pivotably coupled,” and does not require that the hinges have a mechanical rotation (Claims App’x. Appeal Br. 39–43; Ans. 13). Appellant does not provide persuasive reasoning or evidence why one of ordinary skill in the art would have interpreted the claim language to have required the mechanical rotation mentioned by Bathiche, or why the rejection erred when it contended that the limitation of “pivotably couple” encompasses the prior art of Bathiche.

Third, in regards to independent claim 33, Appellant argues that secondary reference Longo does not teach hinge barrels (Appeal Br. 34–37). They contend that the “barrel 908” of Longo, cited by the Examiner, cannot be encompassed by the recited “barrel” of claim 33 (Appeal Br. 36). However, “the PTO must give claims their broadest reasonable construction consistent with the specification. . . . Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation.” *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007). “[A]s applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee.” *Id.* See also, *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1370 (Fed. Cir. 2003) (A court must not read particular embodiments and examples appearing in the Specification into the claims unless the Specification requires it).

Appellant has not directed us to any special definition in the Specification to support their position that a “barrel” is limited to a specific type of barrel, different from the barrel of Longo. Appellant relies upon their Specification at ¶¶ 94–95 and extrinsic evidence to argue that a hinge barrel is a “portion of a hinge that is enlarged to receive the pin and act as the pivot point” and it “includes one or more knuckles from each individual leaf” (Appeal Br. 35, citing the “Door and Cabinet Hinge Glossary”). Notably, the Examiner points out that the Specification discloses more varieties of barrels than are referenced in the portion of the Specification cited in the Appeal Brief, including that of Figures 4, 10, and 13, which have portions of the leaf extending from a barrel “without any separate axel [sic],” or Figure 15, a slotted configuration (Ans. 20–21). Only the embodiment shown in Figure 16 has a hinge barrel that corresponds to the relied upon extrinsic evidence (Ans. 21). Because of that narrow correspondence between the extrinsic evidence and the Specification, the Examiner contends the extrinsic evidence cannot limit the interpretation of “barrel” to exclude the barrel of Longo (Ans. 21). We find such reasoning to be persuasive. Thus, Appellant has not shown error in the Examiner’s interpretation of barrel as encompassing the barrel of Longo.

Last, Appellant argues Bathiche doesn’t encompass the limitations of dependent claim 16, which further recites “wherein the north poles and the south poles of the leaf magnet attract and repel the leaf receptacle magnet to form an inter-magnet gap” (Claims App’x., Appeal Br. 41; Appeal Br. 28; Reply Br. 6–9). The Examiner points out that an inter-magnet gap can be reasonably interpreted as encompassing the magnet arrangement of Bathiche’s Figure 16 (Final Act. 14; Ans. 17–18) citing the Appellant’s

Specification recitation that an inter-magnet gap “may be, for example, an air gap where electromagnetic energy may be transferred between antennas” (Spec. ¶ 58), as opposed to Appellant’s arguments that the inter-magnet gap requires a position where “attraction force and repulsion force define a composite force where a balance can exist at, for example, a zero crossing” (Appeal Br. 28, citing the description of Figure 9) (emphasis omitted). The Examiner points out that Figure 9 of the Specification discloses “an example of behavior of a magnet spring,” the element recited in Claim 7, not the inter-magnet gap of Claim 16 (Ans. 17–18). Under the doctrine of claim differentiation, therefore, these two claims should be presumed to be different in scope, not synonymous. Appellant has not directed our attention to any special definition of the inter-magnet gap beyond what the Examiner cites in the Specification, nor do they provide any persuasive reasoning or credible evidence to establish that the Examiner’s interpretation of the inter-magnet gap is unreasonable. Thus, a preponderance of evidence supports the Examiner’s position (Ans. *generally*).

To the extent Appellant presents any substantive arguments for any of the remaining dependent claims, no reversible error has been identified (*see also*, Ans. 17–20). In particular, the Examiner persuasively addresses the arguments Appellant raises regarding dependent claim 7 both from the Examiner’s explanation of how “spring magnets” would be read (Final Act. 8) and the response that Bathiche’s use of magnets “does not remove the benefits one of ordinary skill in the art would find in utilization of ‘Polymagnets®’ in place of other magnetic attachment(s)” (Ans. 18–19). *See also, In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (“The test for obviousness is not whether the features of a secondary reference may be

bodily incorporated into the structure of the primary reference. . . . Rather, the test is what the combined teachings of [those] references would have suggested to those of ordinary skill in the art.”); *In re Nievelt*, 482 F.2d 965, 968 (CCPA 1973) (“Combining the teachings of references does not involve an ability to combine their specific structures.”).

Accordingly, we sustain the § 102 and § 103 rejections of all of the claims on appeal.

The decision of the Examiner is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–6, 10–19	102	Bathiche	1–6, 10–19	
7	103	Bathiche, Polymagnet Guide	7	
21, 22	103	Bathiche	21, 22	
33, 34	103	Bathiche, Longo	33, 34	
Overall Outcome			1–7, 10–19, 21, 22, 33, 34	

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