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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GORDON F. JEWESS and ANTHONY C. JONES

Appeal 2019-003751
Application 14/769,316
Technology Center 3600

Before MICHAEL C. ASTORINO, CYNTHIA L. MURPHY, and
AMEE A. SHAH, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), the Appellant¹ appeals from the Examiner's decision to reject claims 9, 10, 12–16, 18, 20, and 21, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. The Appellant identifies the real party in interest as United Technologies Corporation. Appeal Br. 2.

STATEMENT OF THE CASE

Claimed Subject Matter

Claims 9 and 16 are the independent claims on appeal. Claim 9, reproduced below, is illustrative of the claimed subject matter.

9. An auxiliary power unit assembly comprising:
 - a gearbox, the gearbox including a sump level line, the gearbox including at least one mounting pad below the associated sump level line;
 - a bracket including at least one gearbox mounting face secured to a corresponding one of the at least one mounting pad; and
 - an arm of the bracket extending upwardly past the associated sump level line;wherein the bracket has a “U” shape and includes a support strap that extends along a downwardly facing surface of the gearbox.

Rejections

Claims 20 and 21 are rejected under 35 U.S.C. § 112(a) as failing to comply with the written description requirement.

Claim 21 is rejected under 35 U.S.C. § 112(b) as indefinite.

Claims 9, 10, 12–14, 16, 18, 20, and 21 are rejected under 35 U.S.C. § 103(a) as unpatentable over Suttie et al. (US 7,516,621 B2, iss. Apr. 14, 2009) (“Suttie”) and Bell et al. (US 2013/0320134 A1, pub. Dec. 5, 2013) (“Bell”).

Claim 15 is rejected under 35 U.S.C. § 103(a) as unpatentable over Suttie, Bell, and DeDe et al. (US 2013/0015291 A1, pub. Jan. 17, 2013) (“DeDe”).

Claims 9, 10, 12, and 13 are rejected under 35 U.S.C. § 103(a) as unpatentable over Suttie, Bell, and Williams (US 2006/0032974 A1, pub. Feb. 16, 2006).

ANALYSIS

Written Description

The Examiner rejects claim 20, which recites, “wherein every location at which the at least one gearbox mounting face is secured to the gearbox is below the associated sump level line,” and claim 21, which recites, “every location at which the bracket is secured to the gearbox is below the sump level line,” for failing to comply with the written description requirement. Final Act. 3–4. The Examiner’s rejection is premised upon Figure 3 showing that arm 54 of bracket 46 is secured to gearbox 34 above sump level line 74. *See id.* at 3. We agree with the Appellant that the Examiner has an “unreasonable interpretation” of what is shown in Figure 3. *See* Appeal Br. 6–7. One of ordinary skill in the art would understand Figure 3 as depicting that bracket 46 is only secured to gearbox 34 via fasteners 76, which are all located below sump level line 74. *See also* Spec. ¶¶ 20, 39–41. This adequately conveys to one of ordinary skill in the art that the Appellant had possession of the claimed subject matter at the time the application was filed.

Thus, we do not sustain the Examiner’s rejection of dependent claims 20 and 21 as failing to comply with the written description requirement.

Indefinite

The Examiner’s rejection of claim 21 as indefinite is based on reasoning similar to the reasoning provided for the failure of claim 21 to comply with the written description requirement. *See* Final Act. 3–5. For at least the reasons discussed above, we do not sustain the Examiner’s rejection of dependent claim 21 as indefinite.

Obviousness

Independent Claim 9 and Dependent Claims 10, 12–15, and 20

The Appellant argues that “Suttie does not describe a gearbox of the APU 8, and there is therefore no basis for alleging that Suttie’s bracket 2 is attached to a gearbox of the APU 8.” Appeal Br. 3 (emphasis omitted); *see* Reply Br. 3. The Appellant’s argument is persuasive.

At the outset, we note that the Appellant’s argument is based on the notion that claim 9 requires an understanding of the location of a gearbox of auxiliary power unit. *See* Reply Br. 3. We agree. Claim 9 recites “a bracket including at least one gearbox mounting face secured to a corresponding one of the at least one mounting pad [of the gearbox].” This limitation connotes that the gearbox is mounted to a particular surface of the bracket (i.e., gearbox mounting face). Without an explanation, on this record, of the location of a gearbox of Suttie’s auxiliary power unit, we cannot to evaluate whether a gearbox is mounted to a particular surface of Suttie’s bracket 2, which is necessary to support a rejection of claim 9.

The Examiner’s rejection of claim 9 relies on a finding that Suttie’s auxiliary power unit 8 includes a gearbox and that mounting surface 4 corresponds to the at least one gearbox mounting face. *See* Ans. 5; Final Act. 5–6, 7, Appendix 2. Alternatively, the Examiner’s rejection relies on a finding that an auxiliary power unit typically includes a gearbox. Ans. 10. However, the Examiner fails to explain, on this record, where the gearbox is located as a part of auxiliary power unit 8. Therefore, the finding that mounting surface 4 corresponds to the at least one gearbox mounting face is based on speculation.

The Examiner's rejection further relies on Bell's teachings to modify Suttie's assembly. Ans. 5–6. However, the modification does not appear to account for the lack of disclosure in Suttie concerning the location of a gearbox of auxiliary power unit 8. *See id.* Rather, the modification presupposes the validity of the finding that Suttie discloses the claimed at least one gearbox mounting face, which is not adequately established on this record.

In the alternative, the Examiner finds that Bell teaches an auxiliary power unit that includes a gearbox. *See id.* at 10. However, the Examiner fails to provide, on this record, a reason with rational underpinning to modify Suttie's assembly with Bell's teaching to either establish or change the location of a gearbox of auxiliary power unit 8 relative to mounting surface 4.

Thus, we do not sustain the Examiner's rejection of independent claim 9 and dependent claims 10, 12–14, and 20 as unpatentable over Suttie and Bell. The remaining rejections based on Suttie and Bell in combination with DeDe or Williams include the same deficiency as discussed above. The deficiency is not cured by the additional findings and reasoning of the remaining rejections. Thus, we do not sustain the rejections of: dependent claim 15 as unpatentable over Suttie, Bell, and DeDe; and independent claim 9 and dependent claims 10, 12, and 13 as unpatentable over Suttie, Bell, and Williams.

Independent Claim 16 and Dependent Claims 18 and 21

The Appellant argues that the Examiner's rejection fails to adequately support a finding that Suttie teaches, "supporting the auxiliary power unit gearbox utilizing a strap extending along a downwardly facing surface of the

auxiliary power unit gearbox,” as recited in claim 16. Appeal Br. 5 (emphasis omitted). The Appellant’s argument is persuasive. As discussed above, the Examiner fails to establish the location of a gearbox of auxiliary power unit 8 and does not remedy this deficiency. Therefore, the Examiner’s finding that Suttie utilizes a strap (e.g., attachment surface 5) that extends along a downwardly facing surface of a gearbox of auxiliary power unit 8 is, likewise, inadequately supported. *See* Ans. 5, 7. Thus, we do not sustain the Examiner’s rejection of independent claim 16 and dependent claims 18 and 21 as unpatentable over Suttie and Bell.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
20, 21	§ 112(a)	Written Description		20, 21
21	§ 112(b)	Indefinite		21
9, 10, 12–14, 16, 18, 20, 21	§ 103(a)	Suttie, Bell		9, 10, 12–14, 16, 18, 20, 21
15	§ 103(a)	Suttie, Bell, DeDe		15
9, 10, 12, 13	§ 103(a)	Suttie, Bell, Williams		9, 10, 12, 13
Overall Outcome				9, 10 12–16, 18, 20, 21

REVERSED