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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MATTHIAS WENDT, ADRIANUS JOHANNES STEPHANUS
MARIA DE VAAN, and HAIMIN TAO

Appeal 2019-003849
Application 14/429,904
Technology Center 2800

Before GEORGE C. BEST, LILAN REN, and JANE E. INGLESE,
Administrative Patent Judges.

REN, *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 and 9–15. *See* Final Act. 4–5, 7. 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 “Philips Lighting Holding B.V.” Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to a DC power distribution system. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A DC power distribution system comprising:

an electrical conductor for guiding DC power from several power supply units to an electrical consumer,

the several power supply units for providing DC power to the electrical consumer, wherein the power supply units are electrically connected to the electrical conductor,

the electrical consumer being electrically connected to the electrical conductor for receiving the DC power from the several power supply units,

a power consumption information providing system comprising a plurality of distributed power consumption information providing sub units, each of the plurality of distributed power consumption information providing sub units being assigned to a respective one of the several power supply units wherein each one of the plurality of distributed power consumption information providing sub units determines the output power of the respective one of the several power supply units, wherein the power consumption information providing system provides power consumption information indicative of the power consumed by the electrical consumer based on the determined output power of the respective one of the several power supply units, wherein each of the plurality of power consumption information providing sub units determines the power consumption information for the respective power supply unit to which it is assigned, and

a power supply control system for controlling the power supply units depending on the power consumption information provided by the power consumption information providing system, the power supply control system comprising a plurality of power supply control sub units assigned to each of the respective several power supply units, wherein a power supply control sub unit assigned to the respective power supply unit is configured to control the power supplied depending on the power

consumption information determined by the power consumption information providing system.

Claims Appendix (Appeal Br. 25).

REFERENCE

The prior art relied upon by the Examiner is:

Name	Reference	Date
Tsuchiya	US 2009/0217060 A1	Aug. 27, 2009

REJECTIONS

Claims 1–5 and 9–15 are rejected under 35 U.S.C. § 112, first paragraph, for failure to comply with the written description requirement. Final Act. 4–5.

Claims 1–5 and 9–15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Final Act. 6

Claims 1, 5, and 12–15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Tsuchiya. Final Act. 7.

OPINION

*Written Description*²

The Examiner rejects all claims for failing to comply with the written description requirement. Final Act. 5. The Examiner finds that claim elements such as “power consumption information providing system,” “power consumption information providing sub units,” “power supply control system,” and “power supply control sub unit/units” recited in claim 1

² Appellant argues for reversal of the written description rejection of claims 1–5, and 9–15 as a group, and they stand or fall together. *See* Appeal Br. 12–17; *see also* 37 C.F.R. § 41.37(c)(1)(vii).

invoke 35 U.S.C. § 112(f) but the Specification does not disclose the necessary description of the corresponding structures. *Id* (finding that claim 14 recites “power consumption information providing system,” “power consumption information providing sub units,” “power supply control system,” and “power supply control sub units,” claim 2 recites “electrical consumer control unit,” and claims 12 and 14 each recite “power supply control sub unit/units,” all of which invoke § 112(f)).

Compliance with the written description requirement is determined by whether the disclosure shows the inventor’s possession of the claimed subject matter to a person of ordinary skill in the art. *Union Oil Co. of Cal. v. Atl. Richfield Co.*, 208 F.3d 989, 997 (Fed. Cir. 2000). “To fulfill the written description requirement, the patent specification must clearly allow persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed.” *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 1479 (Fed. Cir. 1998)

Here, Appellant tabulates the specific parts of the Specification in support of the written description of claim 1. Appeal Br. 16. For example, for the claim element “power consumption information providing system,” Appellant cites as support Spec at 16:16–20³ which states: “the power consumption information providing system 307 is integrated in the power supply control system 310, wherein the power consumption information providing system 307 is adapted to determine the power consumption information based on the control of the electrical consumers 4 by the power supply control unit 310.” *Id*; Spec. 16.

³ Line numbers are absent in the Specification as filed.

The Examiner, on the other hand, finds the claim language invokes § 112(f) and the disclosure “fails to disclose the corresponding structure, material or acts for the claimed elements; the specification is entirely silent as to what the corresponding structure, material or acts correspond to the claimed elements.” Ans. 6.

[I]f one employs means-plus-function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112.

In re Donaldson Co., 16 F.3d 1189, 1195 (Fed. Cir.1994) (en banc).

Appellant does not clearly disagree with the Examiner’s invocation of 35 U.S.C. § 112(f) but instead argues: “[w]hen invoking 35 U.S.C. § 112(f), MPEP [§] 2181(1) recites that ‘the standard is whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.’” Appeal Br. 14. Appellant thus argues that the elements at issue recited in claim 1 “are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure”—although Appellant’s argument is not supported by factual evidence. *Id.* (arguing only that “the claim itself recites at least some of the structural features included in the power supply control system, i.e., power supply control units” and that the Specification “recites that the power supply control sub-units are configured to control the respective power supply unit depending on the power consumption information determined by the power consumption information system”). Unsupported by factual evidence, Appellant argues that the invocation of 35

U.S.C. § 112(f) is inappropriate because the ordinary artisan “would appreciate the structure associated with the components recited” but does not specify what these structures might be. *Id.* at 15.

Construing a means-plus-function claim limitation is a two-step process. First, the claim must be analyzed to determine whether the claim language actually invokes the provisions of 35 U.S.C. § 112, sixth paragraph (pre-AIA applications) or § 112(f) (post-AIA applications). *See Enviroco Corp. v. Clestra Cleanroom, Inc.*, 209 F.3d 1360, 1364 (Fed. Cir. 2000) (“If a claim element contains the word ‘means’ and recites a function, th[e] court presumes that element is a means-plus-function element under § 112, ¶ 6. . . . That presumption falls, however, if the claim itself recites sufficient structure to perform the claimed function.”). The second step is to “determine what structures have been disclosed in the specification that correspond to the means for performing that function.” *Kemco Sales, Inc. v. Control Papers Co.*, 208 F.3d 1352, 1361 (Fed. Cir. 2000).

In this case, the Examiner finds that the functional elements recited in claim 1 are “mere blank box[es]” without corresponding “specific, known structures.” Ans. 7. The Examiner finds that “Appellant does not even point out what specific structures a person of ordinary skill in the art would associate with the above-claimed elements.” *Id.* Appellant’s tabulation of the Specification as written description support of the claim does not specify any structural components to refute the Examiner’s findings. *See, e.g.*, Appeal Br. 14–15, 18.⁴ For example, the Specification discloses the recited “power consumption information providing system” based on its functionality—that

⁴ No Reply Brief was filed.

it “is integrated in the power supply control system 310, wherein the power consumption information providing system 307 is adapted to determine the power consumption information based on the control of the electrical consumers 4 by the power supply control unit 310.” Spec. 16; Appeal Br. 16 (citing Spec. 16:16–20). Likewise, the Specification discloses no more than that the recited power consumption information providing sub unit “is adapted to provide the power consumption information for the respective power supply unit 3” without any structure. Appeal Br. 16 (citing Spec. 12:13–15); Spec. pg. 12.

The Examiner’s invocation under 35 U.S.C. § 112(f) therefore has not been shown to be erroneous. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1350 (Fed. Cir. June 16, 2015) (“‘Module’ is a well known nonce word that can operate as a substitute for ‘means’ in the context of § 112, para. 6. . . . Generic terms such as ‘mechanism,’ ‘element,’ ‘device,’ and other nonce words that reflect nothing more than verbal constructs may be used in a claim in a manner that is tantamount to using the word ‘means’ because they ‘typically do not connote sufficiently definite structure’ and therefore may invoke § 112, para. 6.”).

Appellant does not identify error in the Examiner’s finding that the Specification lacks structure for the recited functional elements. *See Appeal Br. 16* (acknowledging that “[t]he specification and claims recite the acts the claimed features are intended to carry-out/perform). Appellant does not provide factual evidence to support the assertion that a skilled artisan would understand the structure corresponding to the functional limitations. *See id.* We accordingly sustain the written description rejection.

*Indefiniteness*⁵

Based on the findings that claim elements such as “power consumption information providing system” invoke 35 U.S.C. § 112(f) and that the Specification lacks a disclosure of the corresponding structures, the Examiner rejects all claims for indefiniteness. Final Act. 6 (finding that elements such as “power consumption information providing system,” “power consumption information providing sub units,” “power supply control system,” and “power supply control sub units” recited in claim 1 and 14, “electrical consumer control unit” recited in claim 2, and “power supply control sub unit/units” recited in claims 1, 12, and 14 invoke § 112(f)).

As with the written description rejection, Appellant does not identify any structure in the Specification but only argues that the invocation of 35 U.S.C. § 112(f) is inappropriate based on the same assertion that the ordinary artisan “would appreciate the structure associated with the components recited.” Appeal Br. 18. Appellant does not support this statement with evidence, nor does Appellant specify what these structures might be.

As analyzed *supra* with regard to the written description rejection, the Examiner’s invocation under 35 U.S.C. § 112(f) has not been shown to be erroneous. *See Williamson*, 792 F.3d at 1350 (“‘Module’ is a well known nonce word that can operate as a substitute for ‘means’ in the context of § 112, para. 6. . . . Generic terms such as ‘mechanism,’ ‘element,’ ‘device,’ and other nonce words that reflect nothing more than verbal constructs may

⁵ Appellant argues for reversal of the indefiniteness rejection of claims 1–5, and 9–15 as a group, and they stand or fall together. *See Appeal Br. 18–19; see also 37 C.F.R. § 41.37(c)(1)(vii).*

be used in a claim in a manner that is tantamount to using the word ‘means’ because they ‘typically do not connote sufficiently definite structure’ and therefore may invoke § 112, para. 6.”).

Although paragraph six [of § 112] statutorily provides that one may use means-plus-function language in a claim, one is still subject to the requirement that a claim ‘particularly point out and distinctly claim’ the invention. Therefore, if one employs means-plus-function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112.

Donaldson Co., 16 F.3d at 1195.

In this case, Appellant argues, without evidentiary support, that “the recited features are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” Appeal Br. 18. We are not persuaded of reversible error by such an unelaborated and ambiguous statement. *See Miles Labs. Inc. v. Shandon Inc.*, 997 F.2d 870, 875 (Fed. Cir. 1993) (“The test for definiteness is whether one skilled in the art would understand the bounds of the claim when read in light of the specification.”). We sustain the Examiner’s indefiniteness rejection.

*Anticipation*⁶

Review of the anticipation rejection would require considerable speculation as to the scope of the claims. Such speculation would not be

⁶ Appellant argues for reversal of the anticipation rejection of claims 1, 5, and 12–15 as a group, and they stand or fall together. *See* Appeal Br. 19–23; *see also* 37 C.F.R. § 41.37(c)(1)(vii).

appropriate given our affirmance of the indefiniteness rejection. *See In re Steele*, 305 F.2d 859, 862 (CCPA 1962) (“[W]e do not think a rejection under 35 U.S.C. § 103 should be based on such speculations and assumptions.”). We, therefore, decline to reach the merits of the anticipation rejection based on the indefiniteness rejection.

We, however, alternatively sustain the anticipation rejection even if the claims are found to comply with the definiteness requirement under § 112. From the outset, the Examiner construes, under the broadest reasonable interpretation, that “the claimed determination by each distributed power consumption information providing sub unit of the output power of the respective power supply unit includes determining output power of the power supply unit based on the expected power use” which is disclosed by Tsuchiya. Final Act. 8 (citing Tsuchiya ¶ 52). Appellant does not address the Examiner’s interpretation of the claim limitation at issue. *See Appeal Br. 20–21* (arguing merely that “the Tsuchiya is entirely silent as to adjusting, in any way, the output power of DC-DC power supply (24)” which is not commensurate in scope with the claim language). We are therefore not persuaded that reversible error has been identified.

Furthermore, claim 1 recites a system whose patentability “depends on the claimed structure, not on the use or purpose of that structure.” *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 809 (Fed. Cir. 2002). Because Appellant’s argument with regard to the anticipation rejection does not structurally distinguish the prior art, we sustain the rejection. *See Appeal Br. 23* (arguing instead that the prior art system “‘calculates’ the power information supplied to management module (5) based on known component parts of the CPU modules (2)”).

CONCLUSION

The disposition of the Examiner's rejections is summarized below.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-5, 9-15	112, first	written description	1-5, 9-15	
1-5, 9-15	112, second	indefiniteness	1-5, 9-15	
1, 5, 12-15	102(b)	Tsuchiya	not reached (in the alternative 1, 5, 12-15)	
Overall Outcome:			1-5, 9-15	

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