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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KENNETH J. JONAS and BENJAMIN THORPE PUFFER

Appeal 2019-003993
Application 14/593,883
Technology Center 3700

Before STEFAN STAICOVICI, MICHAEL J. FITZPATRICK, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

MARSCHALL, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–3, 6–14, and 17–30. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word “Appellant” to refer to the “applicant” as defined in 37 C.F.R. § 1.42(a), namely Broan-NuTone LLC. Appellant identifies itself as the sole real party in interest. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The invention relates to “humidity wall controls having a sensor for measuring ambient humidity.” Spec. 1:4–5. Claims 1, 12, and 23 are independent. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A humidity monitoring system mountable to a wall, comprising:

a housing comprising a housing wall defining an internal space and a front opening;

a face plate comprising a base portion and an extended portion extending outward from the base portion to define a secondary space, the extended portion comprising:

a primary face defining at least one inlet opening for receiving an inlet humid airflow into the secondary space, the primary face angled along a primary axis configured to be oriented transverse to a vertical axis when the face plate is mounted to the housing such that the primary face is oriented downward such that rising humid air enters the at least one inlet opening to create a humid airflow along the airflow path in the secondary space; and

a secondary face angled along a secondary axis transverse to the primary axis, the secondary face defining at least one outlet opening for passing an outlet humid airflow from the secondary space; and

a humidity sensor positioned within the internal space proximate the front opening, the base portion of the face plate being mountable to the housing wall to obstruct at least a portion of the front opening and to arrange the secondary space outside of the internal space and adjacent the humidity sensor.

Appeal Br. 12 (Claims App.).

REJECTIONS ON APPEAL

1. Claims 1–3, 6–11, 23–26, 29, and 30 are rejected under 35 U.S.C. § 103 as being unpatentable over Eckel² and Back.^{3,4}
2. Claims 12–14, 17–22, 27, and 28 are rejected under 35 U.S.C. § 103 as being unpatentable over Eckel, Back, and Acker.^{5,6}

ANALYSIS

Independent claims 1 and 12 require “a housing comprising a housing wall defining an internal space” and “a humidity sensor positioned within the internal space.” Appeal Br. 12–13 (Claims App.). Independent claim 23 contains nearly identical limitations. *Id.* at 14–15 (claiming a “sensor” rather than “humidity sensor”). For each of these limitations, the Examiner finds that Eckel discloses a humidity sensor 48 positioned within an internal space formed by housing wall 50. Final Act. 2, 6, 9. The Examiner further finds that Eckel’s Figure 8 shows sensor 48 within the internal space because it depicts sensor 48 “within . . . space/hole” of wall 50 that accommodates sensor 48. Ans. 5 (emphasis removed).

Appellant argues that Eckel fails to disclose its sensor within the housing’s internal space because Eckel’s sensor 48 protrudes outside of the housing. Appeal Br. 7 (citing Eckel Fig. 4A). Appellant further argues that Eckel’s Figure 8 shows, at most, that sensor 48 resides within an aperture

² US 6,122,678, issued September 19, 2000 (“Eckel”).

³ US 7,262,705 B2, issued August 28, 2007 (“Back”).

⁴ We view the Examiner’s omission of claims 29 and 30 from the heading of this rejection as a typographical error. *See* Final Act. 2, 8.

⁵ US 6,935,570 B2, issued August 30, 2005 (“Acker”).

⁶ We view the Examiner’s inclusion of claims 15 and 16 in the heading of this rejection as a typographical error because these claims are canceled. *See* Final Act. 8; Appeal Br. 14.

defined by “housing wall 50, which does not place it within the housing defined by that housing wall.” Reply Br. 4. Appellant also relies on portions of Eckel stressing that sensor 48 resides in a space separated from the space behind wall 50. *Id.* at 4–5 (citing Eckel, 13:51–55, 14:11–13, 15:22–25, 15:28–29).

We agree with Appellant that the Examiner erred in finding that Eckel discloses a sensor “positioned within the internal space.” Both the Examiner and Appellant appear to agree that Eckel discloses sensor 48 that is seated within an aperture of wall 50. *See* Ans. 5 (finding that sensor 48 is within “space/hole of 50 that accommodates the sensor 48” (emphasis removed)); Reply Br. 4 (“At best, the figure shows that the sensor is within an aperture defined by the housing wall 50.”). We do not read the claimed “internal space” so broadly that it includes the thickness of the “wall defining an internal space.” Instead, we construe the “internal space” as beginning at the interior face of the wall that defines the internal space, which does not include apertures in the wall. Such a construction comports with the ordinary meaning of the claim language—the “internal space” of a room having walls that define the internal space generally does not include the thickness of a doorway as part of that internal space. The Specification also supports this reading of the claim language, as it discloses humidity sensor 26 completely within the internal space of housing 22 defined by wall 32. *See* Figs. 7, 10A, 10B, 4:26–29.

Based on the proper construction of the claim, the humidity sensor must be positioned within at least a portion of the internal space defined by the interior face of the housing wall. Eckel discloses humidity sensor 48 positioned partially within an aperture in its housing wall 50. *See* Eckel Fig.

8. We do not view Eckel as disclosing a sensor positioned past the interior face of its housing wall and therefore within the internal space defined by the housing wall. Based on the foregoing, the Examiner erred in finding that Eckel discloses “a humidity sensor positioned within the internal space.” The same reasoning applies to each of independent claims 1, 12, and 23 because they employ virtually identical language as to the “within the internal space” limitation, the Examiner relies on the same findings based on Eckel in support of the rejections, and Appellant raises the same arguments as to each claim. *See* Final Act. 2, 6, 9; Appeal Br. 7, 9–10. Accordingly, and because the Examiner does not rely on Back and Acker in a manner that remedies the deficiency of Eckel, we do not sustain the rejections of independent claims 1, 12, and 23, or claims 2, 3, 6–11, 13, 14, 17–22, and 24–30 that depend from those claims.

CONCLUSION

We reverse the Examiner’s rejection of claims 1–3, 6–14, and 17–30.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–3, 6–11, 23–26, 29, 30	103	Eckel, Back		1–3, 6–11, 23–26, 29, 30
12–14, 17–22, 27, 28	103	Eckel, Back, Acker		12–14, 17–22, 27, 28
Overall Outcome				1–3, 6–14, 17–30

REVERSED