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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CRAIG D. RICHARD

Appeal 2019-004374
Application 15/292,418
Technology Center 1700

Before ADRIENE LEPIANE HANLON, LINDA M. GAUDETTE, and
JAMES C. HOUSEL, *Administrative Patent Judges*.

HOUSEL, *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. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

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 Pitney Bowes Inc. Appeal Brief (“Appeal Br.”) filed June 11, 2018, at 2.

² This Decision also refers to the Specification (“Spec.”) filed October 13, 2016, and the Examiner's Answer (“Ans.”) dated September 5, 2018.

CLAIMED SUBJECT MATTER

The invention relates to an improved moisture applicator brush for an envelope sealing system. Spec. 1, Title. Claim 1, reproduced below from the Claims Appendix to the Appeal Brief, is illustrative of the claimed subject matter:

1. A moistening brush assembly for moistening opened envelope flaps that are transported below a moistening brush so that adhesive on an interior side of the envelope flaps comes into contact with a lower end of the moistening brush, the moistening brush comprising:

bristles that are enclosed in a housing at an upper end of the bristles, and that are exposed at a lower end of the bristles, the bristles being supported in the housing at an inclined angle such that a liquid flows from the upper end to the lower end; and

wherein the housing includes a liquid supply opening located on a first side of the housing along a length of the bristles and proximal to the upper end of the bristles, the liquid supply opening being coupled to a liquid supply fitting that receives the liquid from a liquid supply, the housing further comprising a horizontal channel opening contiguous with the liquid supply opening, the horizontal channel opening extending across a majority of a width of the first side of the housing and the bristles of the moistening brush, and whereby the liquid entering the horizontal channel opening from the liquid supply opening is distributed evenly across the width of the bristles.

REFERENCES

The Examiner relies on the following prior art:

Name	Reference	Date
Stefely	US 3,304,573	Feb. 21, 1967
Auerbach	US 4,643,123	Feb. 17, 1987
Beckstrom	US 2005/0067108	Mar. 31, 2005
Sussmeier	US 2011/0084710	Apr. 14, 2011

REJECTIONS

The Examiner maintains, and Appellant requests our review of, the following rejections:

1. Claims 1–4 under 35 U.S.C. § 103 as unpatentable over Stefely in view of Beckstrom;³
2. Claim 5 under 35 U.S.C. § 103 as unpatentable over Stefely in view of Beckstrom, and further in view of Sussmeier; and
3. Claim 5 under 35 U.S.C. § 103 as unpatentable over Stefely in view of Beckstrom, and further in view of Auerbach.

OPINION

We review the appealed rejections for error based upon the issues Appellant identifies, 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

³ We note that the Examiner’s statement of this rejection indicates that these claims are rejected under pre-AIA 35 U.S.C. § 103(a). However, because the effective filing date of this application is after the March 16, 2013 effective date of the America Invents Act, we refer to the AIA version of the statute.

argued claims and each of Appellant's arguments, we are not persuaded of reversible error in the appealed rejections.

Rejection 1: Obviousness over Stefely and Beckstrom

The Examiner rejects claims 1–4 under 35 U.S.C. § 103 as unpatentable over Stefely in view of Beckstrom. A complete statement of the rejection is set forth in the Examiner's Answer, pages 3–6, paragraph 12.

Appellant first contends that Beckstrom is of no particular relevance to the features of claim 1 without any additional argument, explanation, or comment. Appeal Br. 5. Appellant then acknowledges that Stefely is more relevant in that it teaches a system for providing liquid to a brush, but contends that Stefely fails to describe the arrangement of the liquid supply opening in the housing, or of the channel. *Id.* Next, Appellant reproduces what is described as “the relevant portion of claim 1” which is the final “wherein” clause of claim 1 with emphasis added. *Id.* at 5–6. Lastly, Appellant states that the emphasized features in this “wherein” clause “are not disclosed or suggested by the asserted references, without any additional argument, explanation, or comment. *Id.* at 6.

Appellant's arguments are insufficient to identify reversible error in the Examiner's rejections. Contrary to Appellant's contention, the Examiner cites to Stefely, Figures 1, 2, 5, and 6, as well as column 5, lines 7–19, for a description of the arrangement of the liquid supply opening and channel in the housing. Ans. 3–4, 9–10. Appellant fails to respond to or otherwise identify error in the Examiner's findings. Appellant's other “arguments,” at best, amount to no more than a recitation of the limitations of the “wherein” clause of claim 1 and a generic denial that the applied references teach or suggest the limitations of this clause. Appellants' unexplained arguments

provide no basis to reject the Examiner’s findings on those points. *See* 37 C.F.R. § 41.37(c)(1)(iv) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (holding that “the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art”); *cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art.”).

Accordingly, we sustain the Examiner’s obviousness rejection of claims 1–4 over Stefely and Beckstrom.

Rejections 2 and 3: Obviousness over Stefely, Beckstrom, and either Sussmeier or Auerbach

Claim 5 depends from claim 1, and further requires that the lower end of the bristles is positioned over a cutout gap in a deck surface such that the bristles do not rest on any solid surface.

The Examiner rejects claim 5 under 35 U.S.C. § 103 as unpatentable over Stefely in view of Beckstrom, and further in view of Sussmeier or Auerbach. A complete statement of these rejections is set forth in the Examiner’s Answer, pages 6–8, paragraphs 13 and 14.

Appellant argues that Sussmeier and Auerbach fail to cure the deficiencies with regard to Stefely and Beckstrom. Appeal Br. 6. However, as discussed above, Appellant fails to identify any deficiencies in the Examiner’s combination of Stefely and Beckstrom.

Appellant contends that Sussmeier fails to disclose or suggest the features of claim 5 because Sussmeier describes a brush that is positioned under envelopes that pass over the brush. Appeal Br. 6. Appellant asserts that Sussmeier's brush is located in a tank of water, with its bristles pointing upwards and, therefore, fails to teach bristles "over a cutout gap." *Id.* Appellant also contends that although showing a suspended brush that does not rest on a solid surface, Auerbach fails to teach a cutout gap in a deck surface. *Id.*

Initially, we note that Beckstrom teaches an orientation of the bristles of an envelope moistening brush such that the lower end of the bristles is positioned over a cutout gap in a deck surface. *See* Beckstrom, Fig. 3. Although Beckstrom rests the lower end of the bristles on a solid surface within the cutout gap (i.e., fluid transfer member 70), when combined with Stefely, one of ordinary skill in the art would have removed fluid transfer member 70 as unnecessary since Stefely delivers fluid to the brush bristles through tube 95 within bristle housing 30 and outlet 104. As such, the combination of Stefely and Beckstrom results in the lower end of Stefely's bristles being positioned over a cutout gap in a deck surface such that the bristles do not rest on any solid surface. Therefore, the Examiner's reliance on Sussmeier or Auerbach is unnecessary.

As Appellant asserts, Sussmeier teaches the positioning of the brush in the tank of water to deliver fluid to the bristles. However, when combined with Stefely, the ordinary artisan would have understood that there is no need to position the brush within the tank of water because Stefely delivers fluid to the brush bristles through the housing. Since Beckstrom teaches the positioning of the brush over a cutout gap and Stefely delivers fluid to the

brush bristles, a combination of Stefely, Beckstrom, and Sussmeier similarly results in the lower end of Stefely's bristles being positioned over a cutout gap in a deck surface such that the bristles do not rest on any solid surface. Therefore, Appellant has not identified reversible error in the Examiner's combination of Stefely, Beckstrom, and Sussmeier as applied to claim 5.

With regard to Auerbach, the Examiner finds that opening 22 in the upper surface of Auerbach's device reads on the cutout gap in the deck surface. Ans. 8, 11. Appellant fails to challenge or otherwise address this finding. Therefore, Appellant has not identified reversible error in the Examiner's combination of Stefely, Beckstrom, and Auerbach as applied to claim 5.

Accordingly, we sustain the Examiner's obviousness rejections of claim 5 over Stefely and Beckstrom, and further in view of either Sussmeier or Auerbach.

CONCLUSION

The Examiner's decision to reject, under 35 U.S.C. § 103, claims 1-4 as unpatentable over Stefely in view of Beckstrom, and claim 5 as unpatentable adding either Sussmeier or Auerbach, is *affirmed*.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-4	103	Stefely, Beckstrom	1-4	
5	103	Stefely, Beckstrom, Sussmeier	5	
5	103	Stefely, Beckstrom, Auerbach	5	

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Overall Outcome			1-5	
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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