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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 15/488,781 | 04/17/2017 | Michael P. Hanley | 405393-517001US | 7755 |
| 133139 | 7590 | 12/31/2019 | EXAMINER | |
| Adler Pollock & Sheehan P.C. One Citizens Plaza 8th floor Providence, RI 02903 | | | STERLING, AMY JO | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3631 | |
| | | | NOTIFICATION DATE | DELIVERY MODE |
| | | | 12/31/2019 | ELECTRONIC |

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL P. HANLEY

Appeal 2019-004739
Application 15/488,781
Technology Center 3600

Before JOSEPH A. FISCHETTI, PHILIP J. HOFFMANN, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–13 and 18–20.² 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 Kenney Manufacturing Company. Appeal Br. 2.

² We note that Appellant indicates that claims 4, 7, 11, and 13 have been cancelled. *See* Appeal Br. 20–21. However, the amendment to the claims which cancelled those claims was not entered by the Examiner. *See* Advisory Action, mailed Nov. 26, 2018. Further, Appellant addresses the rejection of these claims in the Appeal Brief. *See* Appeal Br. 17. Thus, we

BACKGROUND

The Specification discloses that “[t]he present invention relates generally to rod brackets and more specifically to a rod bracket for hanging curtains and the like which is configured for easy install.” Spec. ¶ 2.

CLAIMS

Claims 1, 10, and 20 are the independent claims on appeal. Claim 1 is illustrative of the appealed claims and recites:

1. A rod bracket, comprising:

a bracket base, wherein the bracket base defines a first bracket mounting cavity and a second bracket mounting cavity and includes a base front, a base rear, a base top and a base bottom,

a bracket arm, wherein the bracket arm includes a first bracket arm end and a second bracket arm end and wherein the first bracket arm end is securely associated with the bracket base, and a curtain rod cradle integral with the second bracket arm end,

wherein the bracket base further includes a first base side and a second base side and wherein the first bracket mounting cavity is located on the first base side and the second bracket mounting cavity is located on the second base side and wherein the first bracket mounting cavity and second bracket mounting cavity are configured at an angle between about 30° and about 60° relative to a horizontal plane.

Appeal Br. 20.

consider the listing of these claims as cancelled to be an inadvertent error and we address these claims herein.

REJECTIONS

1. The Examiner rejects claims 1–3, 5–12, and 18–20 under 35 U.S.C. § 103 as unpatentable over Goldstein³ in view of Cabanes.⁴
2. The Examiner rejects claims 4 and 13 under 35 U.S.C. § 103 as unpatentable over Goldstein in view of Cabanes and Castellanos.⁵

DISCUSSION

Claims 1–3, 5–12, and 18–20

With respect to the first rejection, Appellant groups all claims together and raises arguments only with respect to the rejection of claim 1. *See* Appeal Br. 13–17. We address claim 1 as representative of this group, and the claims 2, 3, 5–12, and 18–20 will stand or fall with claim 1. *See* 37 C.F.R. 41.37(c)(1)(iv).

Regarding claim 1, the Examiner finds that Goldstein discloses a rod bracket as claimed, except that Goldstein does not disclose the claimed angle for the mounting cavities. Final Act. 2–3. The Examiner finds that Cabanes teaches a wall mounted device that includes angled mounting cavities, as claimed, which may be used in Goldstein’s device to more securely fasten the device to the wall. *Id.* at 3. We agree with and adopt the Examiner’s findings and conclusions with respect to claim 1. *See id.* at 2–3; Ans. 3–6. As discussed below, we are not persuaded of error by Appellant’s arguments

Appellant first argues that Cabanes is not analogous art. Appeal Br. 13. Appellant asserts that “no person of skill in the art of Appellant’s claimed rod bracket would ever look to a device that hangs picture frames to

³ Goldstein, US 2009/0032659 A1, pub. Feb. 5, 2009.

⁴ Cabanes, US 9,687,092 B2, iss. June 27, 2017.

⁵ Castellanos, US 8,500,078 B2, iss. Aug. 6, 2013.

aid in hanging curtain rods.” *Id.* Appellant further asserts that one of ordinary skill would not consider “a picture frame as being reasonably pertinent to a bracket for a rod.” Reply Br. 2.

We are not persuaded of error by this argument.

A reference is considered analogous if the reference is from the same field of endeavor as the claimed invention, or if the reference is not within the same field of endeavor, but is reasonably pertinent to the particular problem with which the inventor is involved. *See In re Klein*, 647 F.3d 1343 (Fed. Cir. 2011). Here, we agree with the Examiner that the Cabanes is at least reasonably pertinent to the problem with which the inventor was involved. *See* Ans. 4. The Specification makes clear that the problems addressed by the inventor relate to problems associated with mounting curtain rods to walls and window casings easily using a bracket. Spec. ¶¶ 2–3. Cabanes is concerned with providing an easy to install bracket for hanging pictures that allows for easy leveling. *See* Cabanes col. 1, ll. 14–40. Based on this evidence, we find that Cabanes’s disclosure of a wall bracket for hanging pictures is reasonably pertinent to problems related to hanging curtain wall brackets as addressed in the present Specification.

Next, Appellant argues that the art of record fails to teach “a curtain rod cradle integral with the second bracket arm end.” Appeal Br. 13. Appellant asserts that the rejection does not articulate where this feature is present in Goldstein, and that “Goldstein’s cradle is made up of several very distinct, non-integral, parts” including a tray 15, clamping piece 23, and screw 21. *Id.* at 13–14. We disagree. We agree with the Examiner that Goldstein’s element 17 forms an integral part of the apparatus. In particular, Figure 6 shows that element 17 with element 15 are a permanently attached

portion of the device and thus, may be considered integral thereto.

Goldstein Fig. 6. And, without further explanation by Appellant, we fail to see why elements 17 along with tray 15 may not be considered a cradle without the additional elements noted by Appellant. We agree with the Examiner that one of ordinary skill in the art would consider these elements to form a cradle as they form a base and side walls in which curtain rod 1 rests. *See id.* at Figs. 3, 6. Finally, we find that these elements are integral to the device even if we apply the definition of “integral” proposed by Appellant. *See Reply Br. 2.*

Appellant also argues that the art of record does not teach or suggest mounting cavities on first and second base sides because Goldstein only discloses mounting cavities that are centrally located on top and bottom sections of the device. Appeal Br. 14–15. Appellant asserts that the top and bottom do not equate to the sides and that Goldstein’s device cannot be used if it were rotated ninety degrees. *Id.* at 15. Although one might conclude that Goldstein’s device cannot be used when turned ninety degrees, we agree with the Examiner that the broadest reasonable interpretation of the terms “first base side” and “second base side” would include a top side and a bottom side of Goldstein’s bracket, particularly because the claim includes no further directional limitations that would limit the locations of the claimed sides. Ans. 5–6 (emphasis omitted). Further, we disagree with Appellant to the extent the Reply Brief indicates that a side must be interpreted as a surface face of the device, as the Specification does not use the term side in this manner. *See Reply Br. 2.* Specifically, the Specification refers to the first and second bracket sides as opposing lateral portions of the same surface of the bracket. *See, e.g., Spec. ¶ 4; Figs. 1, 2.*

Finally, Appellant argues that the art of record does not teach or suggest the claimed mounting cavity angle of between 30 and 60 degrees. Appeal Br. 16–17. The rejection relies on the angled cavities shown in Cabanes to show that it would have been obvious to include angled cavities in Goldstein’s apparatus. Final Act. 3; Ans. 6 (citing Cabanes Fig. 6). We agree with the Examiner that Cabanes shows angled mounting cavities through which nails are driven to attach the bracket to a wall. *See* Cabanes col. 3, l. 64–col. 4, l. 9; Fig. 6. Further, we agree with the Examiner that the figures at least suggest an angle within the claimed range. *See* Final Act. 3. Without further explanation from Appellant, we are not persuaded of error with respect to the Examiner’s findings on this point.⁶

Based on the foregoing, we are not persuaded of reversible error in the rejection of claim 1. Accordingly, we sustain the rejection of claim 1. We also sustain the rejection of claims 2, 3, 5–12, and 18–20 for the same reasons.

Claims 4 and 13

With respect to the rejection of claims 4 and 13, Appellant does not present any arguments, and instead relies on those arguments addressed above with respect to claim 1. Thus, for the reasons discussed above, we also sustain the rejection of claims 4 and 13.

CONCLUSION

We AFFIRM the rejections of claims 1–13 and 18–20.

⁶ To the extent Appellant refers to cavities 80 in Cabanes regarding this claim limitation, we note that the Examiner has identified the cavities in the wall mount as disclosing the claimed angle. *See* Final Act. 3; Ans. 6.

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)(l)(iv).

In summary:

| Claims Rejected | 35 U.S.C. § | Basis | Affirmed | Reversed |
|------------------------|--------------------|--------------------------------|------------------|-----------------|
| 1-3, 5-12, 18-20 | 103 | Golstein, Cabanes | 1-3, 5-12, 18-20 | |
| 4, 13 | 103 | Golstein, Cabanes, Castellanos | 4, 13 | |
| Overall Outcome | | | 1-13, 18-20 | |

AFFIRMED