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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FRANK LEWIN, THOMAS HEROLD, JAN FABIAN MEYER,
MARTIN GERHARDS, DIETER KLATT, and ROLF BAUMGARTE

Appeal 2019–005085
Application 14/911,676
Technology Center 1700

Before BEVERLY A. FRANKLIN, MONTÉ T. SQUIRE, and JANE E.
INGLESE, *Administrative Patent Judges*.

FRANKLIN, *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 36–42 and 44–48. 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(a). Appellant identifies the real party in interest as KHS Corpoplast GmbH. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Claim 36 is illustrative of Appellant's subject matter on appeal and is set forth below:

36. A device for manufacturing blow-molded containers which are sterile in at least some areas, that device comprising: a heating section for temperature controlling preforms of a thermoplastic material; at least one blowing station for blow-molding the preforms to form containers, wherein the blowing station has a stretching rod for stretching the preform and a blowing nozzle for impinging the preform with a pressurized fluid; and a sterilization installation disposed in the blowing station, wherein the sterilization installation has at least one radiation source that emits a sterilizing radiation onto the stretching rod and/or onto the blowing nozzle, wherein the radiation source is arranged outside of a blow mold and is disposed so as to be positionally fixed in relation to the blowing station such that the radiation source emits radiation onto a side of the blowing nozzle that faces the preform and/or onto a mouth area of the preform.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Dundas	US 2002/0171179 A1	Nov. 21, 2002
Winzinger	US 2011/0037187 A1	Feb. 17, 2011
Voth	US 2012/0091636 A1	Apr. 19, 2012
Krueger (as translated)	EP 2 138 298 A2	Dec. 30, 2009
Pagliarini	WO 2011/154868 A2	Dec. 15, 2011

REJECTIONS

1. Claims 36–42 and 44–46 are rejected under 35 U.S.C. § 103 as being unpatentable over Winzinger in view of Krueger or Voth or Pagliarini.

2. Claims 47 and 48 are rejected under 35 U.S.C. § 103 as being unpatentable over Winzinger in view of Krueger or Voth or Pagliarini, and in further view of Dundas.

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 argued claims and each of Appellant’s arguments, we are persuaded of reversible error in the appealed rejections.

The instant application is directed to a device for manufacturing blow-molded containers 2 (*see* page 13, line 20 of the Specification; Figure 2) which are sterile in at least some areas. The device comprises a heating section 24 (*see* page 16, ll. 1–6 of the Specification; Figure 3) for temperature controlling preforms 1 of a thermoplastic material (*see* page 1, ll. 6–7 of the Specification; Figure 2). At least one blowing station 3 (*see* page 13, ll. 20–22 of the Specification; Figure 3) is provided for blow-molding the preforms 1 to form containers 2 (*see* Figure 2). The blowing station 3 has a stretching rod 11 for stretching the preform 1 (*see* page 14, line 15 of the Specification; Figure 2) and a blowing nozzle 10 (Figure 1) for impinging the preform 1 with a pressurized fluid (*see* page 14, lines 1–3 of the Specification). A sterilization installation is disposed in the blowing

station 3 (*see* page 19, ll. 1–3 of the Specification). The sterilization installation has at least one radiation source 51, 60, 73 (Figure 6) that emits sterilizing radiation 52, 61, 74 (Figure 5) onto the stretching rod 11 (*see* page 19, ll. 13–15 of the Specification; Figure 5) and/or onto the blowing nozzle 10 (*see* page 22, ll. 15–13 of the Specification; Figure 6). The radiation source 51, 60, 73 is arranged outside of a blow mold 4 (Fig. 6) and is disposed so as to be positionally fixed in relation to the blowing station 3 such that the radiation source 51, 60, 73 emits radiation 52, 61, 74 onto a side of the blowing nozzle 10 that faces the preform 1 (*see* page 23, l. 20–page 24, l. 2; Figure 6) and/or onto a mouth area 21 of the preform 1 (*see* Figures 3 and 6, page 22, ll. 17–22 and page 24, ll. 5–7).

With regard to Rejection 1, we refer to the Examiner’s statement of the rejection made on pages 4–10 of the Answer. Therein, the Examiner recognizes that Winzinger is silent regarding the recited elements of claim 36 pertaining to the arrangement of a sterilization installation disposed in the blowing station, wherein the sterilization installation has at least one radiation source that emits a sterilizing radiation onto the stretching rod and/or onto the blowing nozzle, wherein the radiation source is arranged outside of a blow mold and is disposed so as to be positionally fixed in relation to the blowing station such that the radiation source emits radiation onto a side of the blowing nozzle that faces the preform and/or onto a mouth area of the preform as recited in claim 36. Ans. 7. Appellant’s Figure 5 depicts the sterilization installation.

The Examiner proposes to modify Winzinger by introducing a sterilization medium comprising a radiation source into the preform based upon the teachings found in Krueger, Voth, and Pagliarini by incorporating at least one additional supply line to be connected to the valve block 46 of Winzinger. Ans. 7–8.

Appellant argues, *inter alia*, that the Examiner’s rejection is based upon the Examiner’s misunderstanding of the technology involved. Appeal Br. 14–15. Appellant argues that the Examiner seems to believe that radiation can be conducted over a line. Appeal Br. 15. Appellant argues that, contrary to a gas or a fluid (which is involved in Winzinger), radiation cannot be simply conducted over a supply line connected to the valve block 46 of Winzinger. *Id.* Appellant submits that UV radiation must instead be conducted over a specifically conducted wave carrier, and such a wave carrier is in no way comparable with the lines for conducting fluids or gas of Winzinger. *Id.*

Appellant also argues that it is unclear how UV radiation would be supplied using the valve block 46, since valve block 46 (as shown in Figure 1 of Winzinger) is arranged far above the blowing nozzle or the stretching rod and is thus not in a position to provide sterilization radiation that contacts the blowing nozzle or the stretching rod as required by claim 36.

We are persuaded by the aforementioned line of argument. Notably, in response (Ans. 18–19), the Examiner does not adequately address this line of argument. On pages 18–19 of the Answer, the Examiner merely reiterates the position that the combination of teachings suggests incorporating at

least one additional supply line to supply radiation to valve block (46) of Winzinger, and that Appellant has failed to provide any evidence showing that radiation cannot be supplied over the at least one additional supply line as suggested by the combination. However, we note that the Examiner has the initial burden of establishing a *prima facie* case of obviousness based on an inherent or explicit disclosure of the claimed subject matter under 35 U.S.C. § 103. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992) (“[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.”). Also, no response is made regarding Appellant’s point that it is unclear how UV radiation would be supplied using the valve block 46 in order to provide sterilization radiation that contacts the blowing nozzle or the stretching rod as required by claim 36.

Also, the Examiner responds and states that claim 36 does not require a wave carrier (Ans. 19), but this misses the point being made by Appellant which is that the proposed modification is not doable and not operable using the valve block (46) of Winzinger. Appellant reiterates this line of argument in the Reply Brief. Therein, Appellant states (Reply Br. 3–4) that the Examiner’s position does not take into consideration what a person of ordinary skill in the art understands from the term “valve block”. Appellant explains that a person skilled in the art understands a valve block controls the flow of fluids by way of a plurality of valves arranged in a single component, i.e. a valve block (as taught in Winzinger). Appellant submits that a person of ordinary skill in the art would not find it obvious to conduct radiation to the valve block of Winzinger since such a conventional

valve block is not capable of handling radiation. Reply Br. 3. Appellant therefore submits that the Examiner's proposal to modify Winzinger in this manner is flawed. We agree. The Examiner has not adequately resolved this line of argument in the record and therefore we reverse Rejection 1. We also reverse Rejection 2 for the same reasons.

CONCLUSION

We reverse the Examiner's decision.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Reversed	Affirmed
36-42, 44-46	103	Winzinger, Krueger, Voth, Pagliarini	36-42, 44-46	
47, 48	103	Winzinger, Krueger, Voth, Pagliarini, Dundas	47, 48	
Overall Outcome			36-42, 44-48	

REVERSED