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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MICHAEL DEGEL, PETER HOFMANN, and  
UDO ENDERLE

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Appeal 2019-005202  
Application 15/093,050  
Technology Center 1700

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Before LINDA M. GAUDETTE, KAREN M. HASTINGS, and  
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> requests our review under 35 U.S.C. § 134(a) of the Examiner's decision rejecting claims 1–18 under 35 U.S.C. § 103 as unpatentable over the combined prior art of Brown (US 2014/0169120 A1, published June 19, 2014) and Falster-Hansen (US 2014/0137897 A1,

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<sup>1</sup> We use the word “Appellant” to refer to the “Applicant” as defined in 37 C.F.R. § 1.42(a). “NETZSCH-Feinmahltechnik GmbH” is identified as the real party in interest (Appeal Br. 2).

published May 22, 2014 (hereinafter “Hansen”). An oral hearing was held on May 19, 2020.

We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

#### CLAIMED SUBJECT MATTER

Claim 1 is illustrative of the subject matter on appeal (emphasis added to highlight key disputed limitations):

1. A cleaning system for a mixing container with at least one stirring element inside a working chamber, the cleaning system comprising:

a stationary spraying device; and

*a mobile spraying device;*

wherein the stationary spraying device is disposed and orientated *such that cleaning jets of the stationary spraying device cover a spray shadow of the mobile spraying device.*

(Appeal Br., Claims Appendix 2.)

Independent claim 9 is directed to a “dissolver with a cleaning system” identical to the cleaning system of claim 1 (Claims Appendix 3).

Appellant relies upon the same arguments for all of the claims (Appeal Br. 3–14), except it is also further contended that the Examiner failed to identify where the applied prior art disclose the limitation of dependent claim 6 (Appeal Br. 14).

#### OPINION

Upon consideration of the evidence of record and each of Appellant’s contentions as set forth in the Appeal Brief, as well as the Reply Brief, we determine that Appellant has not identified reversible error in the

Examiner’s rejections (*e.g.*, *generally Ans.*). *In re Jung*, 637 F.3d 1356, 1365–66 (Fed. Cir. 2011) (explaining the Board’s long-held practice of requiring Appellant(s) to identify the alleged error in the Examiner’s rejection). We sustain the rejections for the reasons expressed by the Examiner in the Final Office Action and the Answer.

We add the following primarily for emphasis.

It has been established that “the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007); *see also In re Fritch*, 972 F.2d 1260, 1264–65 (Fed. Cir. 1992) (a reference stands for all of the specific teachings thereof as well as the inferences one of ordinary skill in the art would have reasonably been expected to draw therefrom).

Appellant argues that the claim phrase “mobile spraying device” does not encompass Hansen’s spray device as relied upon by the Examiner, because its spray head does not move along an axis as described in Appellant’s Specification (*e.g.*, Appeal Br. 6; Reply Br. 2). Appellant also argues that Hansen’s left-most spray head does not cover a spray shadow of the second left-most spray head (Appeal Br. 7, 8; Reply Br. 3). Appellant contends that the Examiner relies upon prohibited conclusory reasoning (Appeal Br. 8, 9). Finally, Appellant contends there is no reason to combine the disparate systems of Brown and Hansen, as it would result in redundant components, that Brown teaches away from the proposed modification, and that the proposed modification would have made Brown inoperable for its

intended purpose (Appeal Br. 10–14). These arguments are reiterated in the Reply Brief.

These arguments are not persuasive of reversible error (Ans. 6–9).

It is well established that “the PTO must give claims their broadest reasonable construction consistent with the specification. . . . Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation.” *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) (“[A]s applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee.”)

Here, the plain language of claim 1 clearly encompasses the moveable spray head of Hansen (*e.g.*, Ans. 6). Contrary to Appellant’s argument, Appellant’s Specification lacks any limiting definition. The Specification describes that a “mobile spraying device is understood to mean a cleaning lance *or for example* a generic spraying device, the spray head whereof is moved along an axis inside the mixing container during a cleaning process” (Spec. ¶ 12 (emphasis added)). Notably, the Specification does not appear to describe *any* specific axis that the spray head is moved along. While Appellant contends that Hansen’s spray head does not appear to move from one point to another point along a single straight line of movement, nothing in the claim language requires such movement. Indeed, Appellant has not provided persuasive evidence that the Specification’s description of “moved along an axis” requires such movement. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (the absence in the prior art of subject matter that is not included in the claims does not preclude unpatentability of the claimed subject matter).

The Examiner correctly determined that the disputed claim recitation reasonably encompasses the moveable spray head of Hansen which moves/rotates along either of two axes A1 and A2 of Hansen (Ans. 6; see the Examiner’s annotated Figure 1 of Hansen; Hansen ¶¶ 33, 34<sup>2</sup>). In any event, Appellant admits that cleaning lances (that move along an axis in the manner Appellant urges the claim should be limited to) are known (Spec. ¶¶ 5, 7).<sup>3</sup>

Appellant’s contention that the Examiner did not reasonably interpret the recited spray shadow (Appeal Br. 7) is likewise not persuasive of reversible error. The plain language of the claim encompasses any spray shadow of the mobile spraying device, and it is reasonable that a lower nozzle would spray into a spray shadow, e.g., located under a nozzle located relatively higher and to the side of the lower nozzle (e.g., Ans. 7). While the Appellant urges us to limit the spray shadow to one as depicted in Appellant’s Figure 4, Appellant does not direct us to any limiting definition in the Specification (noting that paragraph 30 states “in this embodiment” the spray shadow is “essentially due to a stirrer shaft 16”). There is also no

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<sup>2</sup> Indeed, the movement of the spray nozzle from the rotation about the first bearing 108 to result in R1 to rotation about bearing 111 to result in rotation R2 as may also be reasonably viewed as movement along an axis (Hansen 33, 34).

<sup>3</sup> An applicant cannot defeat an obviousness rejection by asserting that the cited references fail to teach or suggest elements which the applicant has acknowledged are taught by the prior art. *Constant v. Advanced Micro-Devices, Inc.*, 848 F. 2d 1560, 1570 (Fed. Cir. 1988) (“A statement in a patent that something is in the prior art is binding on the applicant and patentee for determinations of anticipation and obviousness.”); *In re Nomiya*, 509 F.2d 566, 571n.5 (CCPA 1975) (a statement by an applicant that certain matter is prior art is an admission that the matter is prior art for all purposes).

persuasive merit to Appellant's contention that the Examiner is impermissibly assuming Brown's drawings are drawn to scale (Appeal Br. 8), since the Examiner is merely relying upon the relative locations of the spray nozzles depicted therein.

Appellant's remaining arguments fail to consider the breadth of the claim language (which, for example, encompasses spray nozzles that perform any cleaning in any location within the mixing tank), the applied prior art as a whole, and the inferences that one of ordinary skill would have made. As the Examiner point out, both references are directed to cleaning mixing tanks and combining a known movable spray head with a stationary spray head would merely be combining two known types of cleaning nozzles (stationary and mobile) for predictable results (*generally* Ans.). Appellant has not sufficiently explained why the claimed subject matter is "more than the predictable use of prior art elements according to their established functions." *KSR*, 550 U.S. at 417; *cf. In re Kerkhoven*, 626 F.2d 846, 850 (CCPA 1980) ("It is [generally considered] prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition which is to be used for the very same purpose.")

Appellant's argument that the Examiner has failed to sufficiently explain how the applied prior art rendered dependent claim 6 obvious is also not persuasive of error as failing to consider the applied prior art as a whole and the inferences that one of ordinary skill would have made. Under the flexible inquiry set forth by the Supreme Court, the PTO must take account of the "inferences and creative steps," or even routine steps, that an ordinary artisan would employ. *Ball Aerosol and Specialty Container, Inc. v. Limited*

*Brands, Inc.*, 555 F.3d 984, 993 (Fed. Cir. 2009) (citation omitted). The use of a control device for the cleaning nozzles as exemplified in Hansen for the modified Brown/Hansen combination of cleaning nozzles would have been within the skill and creativity of one of ordinary skill in the art (*e.g.*, Hansen ¶¶ 21, 22; Final Action 3, 4).

Accordingly, we sustain the Examiner's rejection of independent claims 1 and 9, as well as all claims dependent thereon, noting that Appellant relies upon the arguments made for claim 1 for all the other claims except with respect to claim 6, addressed above (*generally* Appeal Br.).

#### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-18	103	Brown, Hansen	1-18	

#### 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)(1)(iv).

**AFFIRMED**