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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HELMUT JERG, HANS-PETER NANNT, and
MICHAEL GEORG ROSENBAUER

Appeal 2019-005215
Application 15/820,472
Technology Center 1700

Before JEFFREY T. SMITH, KAREN M. HASTINGS, and
MERRELL C. CASHION, JR., *Administrative Patent Judges*.

SMITH, *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 and 2. 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. Appellant identifies the real party in interest as BSH Hausgeräte GmbH. Appeal Br. 2.

The following rejections are presented for appeal:²

I. Claim 1 is rejected under 35 U.S.C. § 103 as unpatentable over Berner (US 2008/0264458 A1; published Oct. 30, 2008).

II. Claim 2 is rejected under 35 U.S.C. § 103 as unpatentable over Berner in view of Fauth (US 2011/0197926 A1; published Aug. 18, 2011).

Appellant's invention relates generally to a dishwasher with improved drying performance. (Spec. ¶ 4.) Independent claim 1 is representative and reproduced below:

1. A domestic dishwasher, having a washing compartment, at least one washing basket, which is disposed in the washing compartment and serves to hold items for washing, and a door for closing the washing compartment wherein, when viewed with the door in a closed position, at least one guide structure, in the form of a number of individual guide elements which are spaced vertically apart from one another, projects in a raised manner from a planar surface, which forms an inner face of the door as a whole or a part thereof, into an interior of the washing compartment and is disposed in such a manner that a drying fluid flowing along the inner face of the door is guided onto the items for washing disposed in the washing compartment when the dishwasher is in a drying mode.

Appeal Br. 13, Claims Appendix.

OPINION

Having considered the respective positions the Examiner and Appellant present in light of this appeal record, we reverse the Examiner's

² The Examiner has withdrawn the double patenting rejections of claims 1 and 2. (Advisory Action 1.)

rejections based on the arguments Appellant presents. We add the following.

We limit our discussion to the independent claim 1.

The Examiner finds Berner teaches a dishwasher that differs from the claimed invention in that Berne fails to teach deflectors along the interior surface of the door that direct drying fluid onto the items in the washing chamber. (Final Act. 7–8.) The Examiner finds Berner teaches that the deflector arrangement can alternatively be arranged on a wall of spray chamber 4, which would include planar surface of the inner face of door (Final Act. 8; Berner ¶ 36, Fig. 3.) The Examiner further states:

[I]t would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the planar surface of the inner face of the door with the alternative arrangement of the deflector arrangement to achieve the predictable result of a dishwasher comprising a door having a planar surface which forms an inner face and a deflector arrangement projects in a raised manner from the planar surface disposed in such a manner that, when viewed with the door in a closed position, a drying fluid flowing along the inner face of the door is guided onto the items for washing disposed in the washing compartment when the dishwasher is in a drying mode. See MPEP § 2144.04, VI, C. Rearrangement of Parts.

(Final Act. 8.)

During examination, the Examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)); *see also*,

Ball Aerosol and Specialty Container, Inc. v. Ltd. Brands, Inc., 555 F.3d 984, 993 (Fed. Cir. 2009) (“[T]he analysis that ‘should be made explicit’ refers not to the teachings in the prior art of a motivation to combine, but to the court’s analysis.”).

The dispositive issue on appeal is:

Did the Examiner err in determining that Berner teaches or suggests an inner face of a dishwasher door comprising a number of vertically spaced apart individual guide elements (projections) disposed in such a manner that a drying fluid flowing along the inner face of the door is guided onto the items for washing disposed in the washing compartment of the dishwasher as required by claims 1 and 2?³

We answer this question in the affirmative.

Appellant argues Berner fails to teach or suggest a dishwasher comprising the deflector arrangement on the same planar surface of the inner face of the door as required by claims 1 and 2. (Appeal Br. 7–9.) Appellant argues Berner teaches the air inlet (14) into the spray chamber (4) is arranged below the door (8) that is at a point lower than the region for the items to be washed. (Appeal Br. 7.) Appellant acknowledges that Berner discloses the deflector arrangement can be adjusted. (Appeal Br. 7.) However, Appellant argues Berner provides no details for modifying or adjusting the deflector arrangement in a manner that one skilled in the art would arrive at the claimed invention from Berner’s teachings. (Appeal Br. 7.)

³ The Examiner cited Fauth to address other claim limitations not related to the dispositive issue.

The airflow in Berner is directed away from the door as shown in Figure 3 is reproduced below:

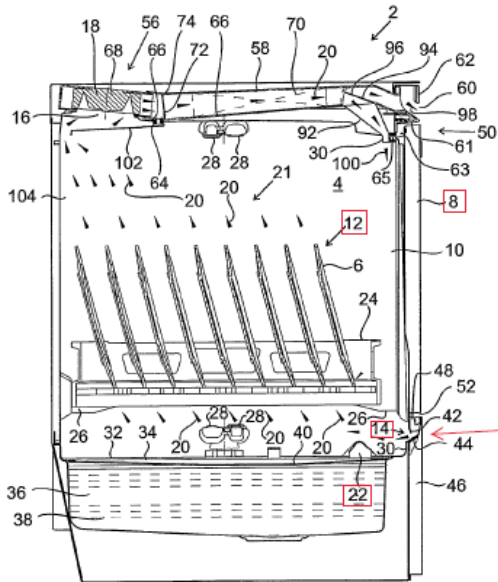


Fig. 3

Berner's Figure 3 depicts a dishwasher wherein the air inlet (14) into the spray chamber (4) is located below the door (8) at a point which is lower than region (12) containing the items to be washed. Figure 3 depicts deflector (22) located in the flow path of the air entering the lower portion of the chamber moving across bottom of the chamber of away from the door. The Examiner has not provided a technical basis for one skilled in the art to modify Berner's dishwasher by arranging the deflector as claimed.⁴ Thus,

⁴ We review the appealed rejection for error based upon the issues identified by Appellant and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Nevertheless, we note that Appellant's Specification describes dishwasher drying systems in which drying fluid (air) is made to flow by a convection or fan forced flow throughout the washed chamber including along the interior face of the front door was known. (Spec. ¶ 3.) While the Board is authorized to enter a new ground of rejection, this authority is discretionary.

we agree with Appellant that the Examiner benefitted from impermissible hindsight in rejecting the subject matters of claims 1 and 2. (Appeal Br. 8; *see In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) (“A rejection based on section 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art.”)).

Therefore, we do not sustain the Examiner’s decision to reject claims 1 and 2 under 35 U.S.C. § 103 over Berner alone or in combination with Fauth for the reasons Appellant presents and we give above.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1	103	Berner		1
2	103	Berner, Fauth		2
Overall outcome	103			1, 2

REVERSED

See 37 C.F.R. § 41.50(b). We leave it to the Examiner to decide whether a new ground of rejection based on this disclosure and the Berner’s dishwasher arrangement should be made.