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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CLAUS LUETH and DARIJO ZEKO

Appeal 2019-005951
Application 15/252,173
Technology Center 1700

Before LINDA M. GAUDETTE, FRANCISCO C. PRATS, and
LILAN REN, *Administrative Patent Judges*.

REN, *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 1–4 and 9–17. *See* Final Act. 2, 5. 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 “Agilent Technologies, Inc.” Appeal Br. 3.

CLAIMED SUBJECT MATTER

“The present invention relates to fluidically coupling fluidic components, in particular in a high performance liquid chromatography application.” Spec. ¶ 2. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A fitting male piece for providing a fluid connection between a capillary and a fluidic conduit of a female piece, the fitting male piece comprising:
 - a housing with a capillary reception configured for receiving the capillary;
 - an elastic biasing mechanism being arranged at least partially within the housing and being configured for biasing the capillary towards the female piece; and
 - a locking mechanism being arranged at least partially within the housing and being configured for locking the capillary to the elastic biasing mechanism, wherein the locking mechanism is configured so that the locking of the capillary is releasable with the capillary being removable from the locking mechanism by applying a locking release force for removing the capillary from the capillary reception via a back side of the fitting male piece.

Claims Appendix (Appeal Br. 17).

REFERENCES

The prior art references relied upon by the Examiner are:

Name	Reference	Date
Warchol	US 5,595,406	Jan. 21, 1997
Ellis	US 2012/0014848 A1	Jan. 19, 2012

REJECTIONS

Claims 1–4, 10–12, and 15–17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Warchol. Final Act. 2.

Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Warchol. Final Act. 5.

Claims 13 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Warchol in view of Ellis. Final Act. 5.

OPINION

*Claim 1*²

Appellant argues that the Examiner reversibly erred in rejecting claim 1 over Warchol because “the only way to make the [prior art] capillary releasable is by disassembly of the spring from body 122” and therefore Warchol does not disclose a locking mechanism that is “configured so that the locking of the capillary is releasable with the capillary being removable from the locking mechanism by applying a locking release force for removing the capillary from the capillary reception via a back side of the fitting male piece” as recited. Appeal Br. 14–15.

More specifically, Appellant argues that

[a]fter installation of the capillary 134 into biferrule 174, any pulling of capillary 134, in downwards direction of Figure 1 to remove it, ***increases the axial force*** onto the cone arrangement 160/174, and thus further increases the radial gripping of the capillary 134, so that the capillary 134 cannot be removed from

² Appellant does not separately argue the rejection of claims 2–4, 10–12, and 15–17. *See* Appeal Br. 11–15. Claims 1–4, 10–12, and 15–17 stand or fall together. *See id.*; *see also* 37 C.F.R. § 41.37(c)(1)(iv).

the fitting by pulling capillary 134 in the downwards direction of Figure 1.

Appeal Br. 14. We are not persuaded by this argument because it is unsupported by evidence. “Attorneys’ argument is no substitute for evidence.” *Johnston v. IVAC Corp.*, 885 F.2d 1574, 1581 (Fed. Cir. 1989). We further note that Appellant’s argument is incommensurate in scope with the claim language which does not require the removal of the capillary in the downward direction. All claim 1 requires is that the locking mechanism be “configured so that the locking of the capillary is releasable” – which does not require the locking to be released – “with the capillary being removable from the locking mechanism” – which does not require the capillary to be removed.

Moreover, Appellant does not identify error in the Examiner’s finding that Warchol teaches “[a] substantial force could be applied to the capillary to the backside of the fitting male piece, such that the force is great enough to overcome the axial force which is applied to the capillary, therefore, allowing the capillary to be removed via a backside of the fitting male piece.” *Compare* Reply Br. 2–4, *with* Ans. 3.

It is well-established that “apparatus claims cover what a device is, not what a device does.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1468 (Fed. Cir. 1990). In this case, the Examiner finds that “there is no structure present in the claims which correlate[s] with the releasing [of] the capillary via a back side of the fitting male piece” and claim 1 is anticipated based on the structural identity between the prior art and the claim. Ans. 3. Appellant does not challenge these findings – specifically, Appellant does not present evidence showing a structural distinction

between Warchol and the apparatus recited in claim 1. No reversible error has therefore been identified in the Examiner's findings in support of the rejection.

Claims 9, 13, & 14

Appellant's sole argument with regard to the obviousness rejection of claims 9, 13, and 14 is that the asserted deficiencies of Warchol "are not remedied by Ellis." Appeal Br. 15. The obviousness rejections of claims 9, 13, and 14 are affirmed for the reasons provided with regard to claim 1 *supra*. See 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

The Examiner's rejections are affirmed.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-4, 10-12, 15-17	102(b)	Warchol	1-4, 10-12, 15-17	
9	103(a)	Warchol	9	
13, 14	103(a)	Warchol, Ellis	13, 14	
Overall Outcome:			1-4, 9-17	

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).

Appeal 2019-005951
Application 15/252,173

AFFIRMED