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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JARED OEHRING and BRANDON NEIL HINDERLITER

Appeal 2019-006056
Application 15/235,788
Technology Center 3600

Before WILLIAM A. CAPP, JEREMY M. PLENZLER and
ERIC C. JESCHKE, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ seeks our review under 35 U.S.C. § 134(a) of the final rejection of claims 1 and 3–21. 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(a). Appellant identifies US Well Services, LLC as the Applicant and real party in interest. Appeal Br. 3.

THE INVENTION

Appellant's invention relates to supplying electric power to components of an oil and gas well hydraulic fracturing operation. Spec. ¶ 2. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A fracturing system comprising:
 - a turbine generator having an electrical output;
 - an electric motor that is in electrical communication with the electrical output;
 - a variable frequency drive connected to the electric motor to perform electric motor diagnostics to prevent damage to the electric motor;
 - a fracturing pump that is driven by the electric motor; and
 - a wireline system that is in electrical communication with the electrical output and powered by the turbine generator.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

NAME	REFERENCE	DATE
Huber	US 5,025,861	June 25, 1991
Pettigrew	US 7,170,262 B2	Jan. 30, 2007
Sanborn	US 2013/0306322 A1	Nov. 21, 2013
Broussard	US 8,789,601 B2	July 29, 2014
Ayan	US 9,051,822 B2	June 9, 2015

The following rejections are before us for review:

1. Claims 1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, and 20 are rejected under 35 U.S.C. § 103 as being unpatentable over Sanborn and Broussard.

2. Claims 3 and 21 are rejected under 35 U.S.C. § 103 as being unpatentable over Sanborn, Broussard, and Ayan.

3. Claims 5, 14, and 16 are rejected under 35 U.S.C. § 103 as being unpatentable over Sanborn, Broussard, and Pettigrew.

4. Claim 18 is rejected under 35 U.S.C. § 103 as being unpatentable over Sanborn, Broussard, and Huber.

OPINION

Unpatentability of Claims 1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, and 20 over Sanborn and Broussard

Claim 1

The Examiner finds that Sanborn discloses the invention substantially as claimed except for performing electrical motor diagnostics, for which the Examiner relies on Broussard. Final Act. 2–3. The Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Sanborn to include a diagnostics feature. *Id.* at 3. According to the Examiner, a person of ordinary skill in the art would have done this as it achieves predictable results. *Id.* Implicit in the rejection is the notion that adding such capability would be a beneficial improvement to Sanborn.

Appellant first argues that Sanborn fails to disclose a “wireline system” that is in “electrical communication” with an “electrical output” that is powered by a “turbine generator.” Appeal Br. 6. Appellant asserts that Sanborn fails to disclose a “wireline system” as claimed. *Id.*

In response, the Examiner states that skilled practitioners know how to use whatever power source is available. Ans. 4.

Sanborn does not state that all of the other equipment is powered by electricity but that one skill in the art will know

how to deploy such equipment. One having ordinary skill in the art would know that the wireline requires power and would be in electrical communication with the gas turbine generator which is the source of electrical power.

Id.

In reply, Appellant accuses the Examiner of making a “conclusory dismissal” of the “practical realities” of wellsite operations. Reply Br. 4.

Sanborn is directed to a hydraulic fracturing system that includes power-subsystem 11 and electric motor-driven pumping sub-system 13. Sanborn ¶¶ 12, 17, 18, 45. In Sanborn’s system, electrical power is provided on-site. *Id.* ¶ 46. Sanborn’s system provides electrical power from a plurality of power generation units to electrical feed source 24. *Id.* ¶ 47, Fig. 2. Sanborn teaches that many different types of generators can be used and that the size of the generators will depend on a number of variables. *Id.* ¶ 46. Sanborn’s generators can be energized from any available source of mechanical energy, such as a gas turbine. *Id.* ¶¶ 19, 26. Sanborn further teaches that:

A variety of other equipment, tools, and the like, may be on site as well, such as transformers, power distribution components, switchgear (including fuses or circuit breakers), cables, hoses, air conditioning equipment, wireline, cranes, fluid pumps, and the like.

Id. ¶ 31.

Appellant’s arguments cannot be supported by the record before us. A person of ordinary skill in the art would have known that electrical equipment at a wellsite needs to be powered by a source of electricity. Sanborn teaches just such a source of electricity. Appellant presents neither evidence nor persuasive technical reasoning to support the position that a skilled practitioner, armed with the teachings of Sanborn, would not have

been able to provide electrical power to the electrical equipment disposed at a wellsite using Sanborn's portable, turbine powered generation means. Indeed, Sanborn explicitly acknowledges that utilizing and powering such equipment falls within the ambit of ordinary skill in the art.

Those familiar with drilling and fracturing operations understand the purpose of this other equipment, as well as the way in which it is deployed at the site.

Id. Moreover, it is well settled that a patent need not teach, and preferably omits, what is well known in the art. *Streck, Inc. v. Research & Diagnostic Sys., Inc.*, 665 F.3d 1269, 1288 (Fed. Cir. 2012). An artisan is presumed to know something about the art apart from what the references disclose. *In re Jacoby*, 309 F.2d 513, 516 (CCPA 1962).

Appellant's arguments really go to the issue of whether Sanborn's teachings are enabled. To be enabled, the prior art reference must teach a skilled artisan to make what it discloses in relation to the claimed invention without undue experimentation. *In re Antor Media Corp.*, 689 F.3d 1282, 1289–90 (Fed. Cir. 2012). The court, in *Antor Media*, maintains that examiners, during prosecution, are entitled to a presumption that prior art references are enabled. *Id.* at 1289. Such presumption shifts the burden to demonstrate non-enablement of Sanborn onto Appellant. *Id.*

Here, Appellant merely offers an unsubstantiated, generic description of what takes place during wellsite operations and a conclusory statement that such operations are challenging. Reply Br. 4–5. However, nothing in Appellant's briefs and the accompanying record calls into serious question whether Sanborn is enabled much less carries a burden of proof that has been shifted to Appellant. On the record before us, we determine that the Examiner's finding that Sanborn discloses a wireline system that is in

electrical communication with the electrical output and powered by the turbine generator is supported by a preponderance of the evidence.

Appellant next argues that the Examiner's rejection reflects hindsight reconstruction. Appeal Br. 7. However, Appellant never challenges the Examiner's findings that: (1) Broussard discloses diagnostics; and (2) Broussard's diagnostics capability could have been successfully incorporated into Sanborn's system using only ordinary skill. *See* Appeal Br. 7–8. Thus, we are at a loss to understand where the Examiner might have needed, must less used, hindsight to formulate the subject rejection. Built-in electrical diagnostics subsystems are ubiquitous in our modern-day technology driven economy. One can hardly buy a new car, washing machine, clothes dryer, or other appliance that lacks some degree of built-in diagnostics. Since there is no dispute that Broussard teaches diagnostics or that Broussard is combinable with Sanborn, we are left to speculate that Appellant believes that the Sanborn reference, itself, needs to be “reconstructed” using hindsight. This notion defies logic, reason, and common sense. “A reference may be read for all that it teaches.” *In re Mouttet*, 686 F.3d 1322, 1331 (Fed. Cir. 2012), citing *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418–21 (2007). Here, the portions of Sanborn's teaching relied on by the Examiner are sufficient to render claim 1 unpatentable.

Appellant spends several pages in the Appeal Brief addressing the Examiner's previous Office Actions during prosecution. Appeal Br. 8–10. However, this Appeal concerns the rejection on review before us, which is the Final Action dated April 27, 2018. We decline Appellant's invitation for us to review the Examiner's previous office actions.

In view of the foregoing discussion, we determine the Examiner's findings of fact are supported by a preponderance of the evidence and that the Examiner's legal conclusion of unpatentability is well-founded. Accordingly, we sustain the Examiner's unpatentability rejection of claim 1.

Claim 10

Claim 10 is an independent claim. Claims App. Appellant does not argue for the separate patentability of claim 10 apart from arguments presented with respect to claim 1 which we have previously considered. Appeal Br. 10–11. We sustain the Examiner's rejection of claim 10. *See* 37 C.F.R. § 41.37(c)(1)(iv) (failure to separately argue claims constitutes a waiver of arguments for separate patentability).

Claims 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, and 20

These claims depend, directly or indirectly, from either claim 1 or 10. Claims App. Appellant does not argue for their separate patentability apart from arguments which we have previously considered with respect to claims 1 and 10. Appeal Br. 11. Consequently, we sustain the Examiner's rejection of claims 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, and 20. 37 C.F.R. § 41.37(c)(1)(iv).

*Unpatentability of Claims 3, 5, 14, 16, 18, and 21
over Combinations Based on Sanborn and Broussard*

These claims depend, directly or indirectly, from either claim 1 or 10 and are not separately argued. Appeal Br. 11–12. We sustain the rejection of claims 3, 5, 14, 16, 18, and 21. 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

Claims Rejected	§	References	Affirmed	Reversed
1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, 20	103	Sanborn, Broussard	1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, 20	
3, 21	103	Sanborn, Broussard, Ayan	3, 21	
5, 14, 16	103	Sanborn, Broussard, Pettigrew	5, 14, 16	
18	103	Sanborn, Broussard, Huber	18	
Overall Outcome			1, 3–21	

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