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EXAMINER
UHLIR, CHRISTOPHER J

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TADEUSZ WITCZAK, DARYL J. MARVIN, and ZBIGNIEW PIECH

Appeal 2019-006330
Application 15/101,145
Technology Center 2800

Before JEFFREY T. SMITH, BEVERLY A. FRANKLIN, and JEFFREY R. SNAY, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 1–20. 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 OTIS ELEVATOR COMPANY. (Appeal Br. 1.)

STATEMENT OF THE CASE

Claim 1 illustrates the subject matter on appeal and is reproduced below:

> 1. A ropeless elevator system comprising:
>
> a plurality of hoistways in which a plurality of elevator cars circulate to a plurality of floors, each hoistway assigned to a respective single direction of travel for the elevator cars, wherein the single direction of travel is either upward or downward, wherein a first quantity of upward hoistways is unequal to a second quantity of downward hoistways, and wherein a speed of each of the plurality of elevator cars in the upward hoistways is greater than a speed of each of the plurality of elevator cars in the downward hoistways;
>
> wherein the speed of each of the plurality of elevator cars in the upward hoistways and the speed of each of the plurality of elevator cars in the downward hoistways is responsive to the assigned respective single direction for each hoistway.

Appeal Br. 11, Claims Appendix.

The following rejections are presented for our review:

I. Claims 1–7 and 9–15 rejected under 35 U.S.C. § 103 as unpatentable over the combination of Duenser ’376 (US 7,621,376 B2, Nov. 24, 2009) in view of Allwardt (US 2010/0133046 A1, June 3, 2010).

II. Claims 16 and 18–20 rejected under 35 U.S.C. § 103 as unpatentable over the combination of Duenser ’089 (US 7,537,089 B2, May 26, 2009) in view of Okada (US 6,360,847 B1, Mar. 26, 2002).

III. Claim 8 rejected under 35 U.S.C. § 103 as unpatentable over the combination of Duenser '376, Allwardt, and Duenser '089.

IV. Claim 17 rejected under 35 U.S.C. § 103 as unpatentable over the combination of Duenser '089, Okada, and Duenser '376.

OPINION

After review of the respective positions provided by Appellant and the Examiner, we AFFIRM the Examiner's rejections under 35 U.S.C. § 103.[2]

We consider the record to determine whether Appellant has identified reversible error in the Examiner's rejection. *See 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 . . . ." (citing *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential))).

Rejection I

Claims 1–7 and 9–15 rejected under 35 U.S.C. § 103 as unpatentable over the combination of Duenser '376 and Allwardt.

We sustain the rejection because we discern no reversible error in the Examiner's obviousness determination. We add the following for emphasis only.

[2] The complete statement of the rejection on appeal appears in the Final Office Action. (Final Act. 3–14.)

Claims 1–7 and 9[3]

The Examiner finds Duenser '376 teaches a ropeless elevator system comprising a plurality of hoistways in which a plurality of elevator cars circulate to a plurality of floors as required by the claimed invention. The Examiner finds Duenser '376 fails to disclose the speed of each of the plurality of elevator cars in the upward and downward hoistways. (Final Act. 3.) The Examiner finds Allwardt teaches an elevator system where the speed of the elevator cars is assigned responsive to the elevator traffic and the direction of travel. (Final Act. 3.) The Examiner finds Allwardt discloses the speed of the elevator cars is adjusted to assure readiness to respond to elevator calls as quickly as possible. (Final Act. 4; Allwardt ¶ 1218.) The Examiner determined it would have been obvious for a person of ordinary skill in the art to assign the speed of the elevator cars in the upward and downward hoistways as specified by the claimed invention. (Final Act. 4.)

Appellant argues that the combination of Duenser '376 and Allwardt does not teach or suggest a system where speed of elevator cars is responsive to an assigned respective single direction for a hoistway as required in claim 1. (Appeal Br. 4–6.) Appellant argues Allwardt is a roped elevator system and therefore the elevator cars travel in both directions in the hoistway not only in a single direction. (Appeal Br. 5.) Appellant further argues the speed of the elevator cars described in Allwardt is contrary to the claimed

[3] We limit our discussion to the independent claim 1 as argued by Appellant. 37 C.F.R. § 41.37(c)(1)(iv). Claims 2–7 and 9 stand or fall with independent claim 1.

invention that requires the elevator cars traveling upward to travel faster than the downward traveling elevator cars. (Appeal Br. 6.)

Appellant's arguments lack persuasive merit. The claims are "system" claims, but in order to be patentable the subject matter of a claim must fit into one and only one of the statutory claims of invention enunciated in 35 U.S.C. § 101, i.e., a process, machine, manufacture, or composition of matter. Claims cannot be directed to combinations of those classes of invention. *See IPXL Holdings, L.L.C. v. Amazon.com, Inc.*, 430 F.3d 1377, 1384 (Fed. Cir. 2005) (claims to a combination of statutory claims of invention are not permitted and are indefinite).

We interpret the system claims as directed to an apparatus, i.e., a structure which can be termed a machine or manufacture under 35 U.S.C. § 101. Claims directed to an apparatus must be distinguished from the prior art in terms of structure. *See In re Danly*, 263 F.2d 844, 848 (CCPA 1959) ("Claims drawn to an apparatus must distinguish from the prior art in terms of structure rather than function."); *In re Gardiner*, 171 F.2d 313, 315–16 (CCPA 1948) ("It is trite to state that the patentability of apparatus claims must be shown in the structure claimed and not merely upon a use, function, or result thereof."). Choosing to define an element functionally, i.e., by what it does, carries with it a risk: Where there is reason to conclude that the structure of the prior art is inherently capable of performing the claimed function, the burden shifts to the applicant to show that the claimed function patentably distinguishes the claimed structure from the prior art structure. *See In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997); *In re Hallman*, 655 F.2d 212, 215 (CCPA 1981).

The claim invention is directed to a ropeless elevator system comprising a plurality of hoistways in which a plurality of elevator cars circulate to a plurality of floors. Appellant has not refuted the Examiner's position that the structure of Duenser '376 meets the structural requirements of the claimed ropeless elevator system. The claim language "wherein a speed of each of the plurality of elevator cars in the upward hoistways is greater than a speed of each of the plurality of elevator cars in the downward hoistways" describes the method of operation of the ropeless elevator system and does not structurally distinguish the invention.

Notwithstanding the above, the Examiner correctly determined that adjusting operational conditions including the speed at which the elevator cars travel in the hoistways would have been obvious to a person of ordinary skill in the art. Specifically, the Examiner cites Allwardt discloses the speed of the elevator cars is adjusted to assure readiness to respond to elevator calls as quickly as possible. (Final Act. 4; Allwardt ¶ 1218.) Allwardt discloses a central control is utilized to optimize the operation of the elevator cars. (Allwardt ¶ 1218.) A person of ordinary skill in the art would have reasonably expected that the elevator system of Duenser '376 operates utilizing a central control system to regulate the operation of the individual elevator cars. A person of ordinary skill in the art would have had sufficient skill to determine the appropriate speed for the elevator cars traveling in the upward and downward directions. *See KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (In making an obviousness determination one "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ."); *In re Venner*, 262 F.2d 91, 95 (CCPA 1958) (explaining that the provision of "automat[ed] means to replace manual

activity which has accomplished the same result" is well within the ambit of one of ordinary skill in the art); *see also Soverain Software LLC v. Newegg Inc.*, 705 F.3d 1333, 1344 (Fed. Cir. 2013) (concluding that claims directed to an online shopping system were invalid as obvious given that the patentee "did not invent the Internet, or hypertext, or the URL" and using hypertext to communicate transaction information was no more than "a routine incorporation of Internet technology into existing processes"), *amended on reh'g*, 728 F.3d 1332 (Fed. Cir. 2013).

Claims 10–15[4]

Independent claim 10 is directed to a method for dispatching a plurality elevator cars within a plurality of hoistways and an elevator system.

Appellant's arguments for patentability are the same as those that were presented for independent claim 1. (Appeal Br. 6–8.)

These arguments are not persuasive for the reasons set forth above.

Rejection II

Claims 16 and 18–20 are rejected under 35 U.S.C. § 103 as unpatentable over the combination of Duenser '089 and Okada.[5]

The Examiner finds Duenser '089 teaches a ropeless elevator system comprising a plurality of hoistways in which a plurality of elevator cars circulate to a plurality of floors as required by the claimed invention. The

[4] We limit our discussion to the independent claim 10 as argued by Appellant.
[5] We limit our discussion to the independent claim 16 as argued by Appellant. 37 C.F.R. § 41.37(c)(1)(iv). Claims 18–20 stand or fall with independent claim 16.

Examiner finds Duenser ’089 fails to disclose the speed of each of the plurality of elevator cars in the upward and downward hoistways. (Final Act. 3.) The Examiner finds Okada teaches an elevator system where the speed of the ascending/descending elevator cars is regulated. (Final Act. 10.) The Examiner determined it would have been obvious for a person of ordinary skill in the art to assign the speed of the elevator cars in the upward and downward hoistways as specified by the claimed invention. (Final Act. 10.)

Appellant argues that the combination of Duenser ’089 and Okada does not teach or suggest a system where speed of elevator cars is responsive to an assigned respective single direction for a hoistway as required in claim 16. (Appeal Br. 8–9.) Appellant argues Okada is a roped elevator system and therefore the elevator cars travel in both directions in the hoistway not only in a single direction. (Appeal Br. 9.)

The thrust of Appellant’s arguments for the combination of Duenser ’089 and Okada is the same as those presented for the combination of Duenser ’376 and Allwardt addressed above. Independent claim 16 is directed to a ropeless elevator system. Appellant has not refuted the Examiner’s position that the structure of Duenser ’089 meets the structural requirements of the claimed ropeless elevator system.

Rejections III and IV

Claim 8 is rejected under 35 U.S.C. § 103 as unpatentable over the combination of Duenser ’376, Allwardt, and Duenser ’089; and claim 17 is rejected under 35 U.S.C. § 103 as unpatentable over the combination of Duenser ’089, Okada, and Duenser ’376.

Regarding the rejections of claims 8 and 17, we sustain these rejections advanced by the Examiner. Appellant has only presented arguments as to independent claims 1 and 16 (rejections discussed above) and has not otherwise presented separate arguments on the merits for the rejections of claims 8 and 17. In this regard, Appellant does not assert non-obviousness based on the additional limitations set forth in claims 8 and 17 subject to these rejections by explaining how the additional references applied thereto by the Examiner fail to establish the obviousness of the additional features recited in these separately rejected dependent claims. Because we do not find Appellant's arguments persuasive as to independent claims 1 and 16, it follows that these arguments are unpersuasive as to claims 8 and 17.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–7, 9–15	103	Duenser '376, Allwardt	1–7, 9–15	
16, 18–20	103	Duenser '089, Okada	16, 18–20	
8	103	Duenser '376, Allwardt, Duenser '089	8	
17	103	Duenser '089, Okada, Duenser '376	17	
Overall outcome			1–20	

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).

AFFIRMED