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MCKELLAR IP LAW, PLLC 784 SOUTH POSEYVILLE ROAD MIDLAND, MI 48640			WUJCIAK, ALFRED J	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WAYNE SOKOLY

Appeal 2019-006703
Application 15/937,049
Technology Center 3600

Before DANIEL S. SONG, MICHAEL L. HOELTER, and
BRETT C. MARTIN, *Administrative Patent Judges*.

HOELTER, *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, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE the Examiner's rejections of these claims.

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 the inventor. *See* Appeal Br. 2.

CLAIMED SUBJECT MATTER

The disclosed subject matter “relates generally to equipment hangers, [and] especially equipment hangers that can be used for hunting and camping.” Spec. 1:11–12. Apparatus claim 1 is the sole independent claim, is illustrative of the claims on appeal, and is reproduced below.

1. A utility hanger assembly, said assembly comprising a unitary structure comprised of:
 - a. a back wall, said back wall comprising a flat plate having a front surface, a back surface and two openings through said back wall, said back wall having four corners, said back wall having four integrally mounted spikes projecting rearward from said back surface, one from each said corner, said front surface having a top edge, and, projecting forwardly from said front surface top edge,
 - b. an extended arm with a terminating hook.

EVIDENCE

Name	Reference	Date
Rhodes et al. (“Rhodes”)	US 2,687,836	Aug. 31, 1954
Bogaerts	US 5,522,187	June 4, 1996
Zupan et al. (“Zupan”)	US 5,885,024	Mar. 23, 1999
Plowman	US 2007/0108357 A1	May 17, 2007

REJECTIONS

Claim 1 is rejected under 35 U.S.C. § 103 as unpatentable over Zupan and Bogaerts.

Claim 2 is rejected under 35 U.S.C. § 103 as unpatentable over Zupan, Bogaerts, and Plowman.

Claim 3 is rejected under 35 U.S.C. § 103 as unpatentable over Zupan, Bogaerts, and Rhodes.

Claim 4 is rejected under 35 U.S.C. § 103 as unpatentable over Zupan, Bogaerts, Rhodes, and Plowman.

Claim 1 is rejected under 35 U.S.C. § 103 as unpatentable over Bogaerts and Zupan.

Claim 2 is rejected under 35 U.S.C. § 103 as unpatentable over Bogaerts, Zupan, and Plowman.²

Claim 3 is rejected under 35 U.S.C. § 103 as unpatentable over Bogaerts, Zupan, and Rhodes.

Claim 4 is rejected under 35 U.S.C. § 103 as unpatentable over Bogaerts, Zupan, Rhodes, and Plowman.

ANALYSIS

The rejection of claim 1 as unpatentable over Zupan and Bogaerts

In this rejection, the Examiner primarily relies on the teachings of Zupan for disclosing nearly all the limitations of claim 1, with the exception that Zupan “fails to teach more than two integrally mounted spikes.” Final Act. 3. The Examiner relies on the additional reference to Bogaerts for this teaching. Final Act. 3. The Examiner concludes that it would have been obvious to combine Zupan with Bogaerts so as “to provide additional gripping surface for mounting on an object.” Final Act. 3 (referencing Bogaerts 4:4).

² The Examiner’s rejection does not list Zupan but instead states the rejection is “over Bogae[r]ts in view of and in further view of” Plowman. Final Act. 4. We understand the Examiner’s failure to list Zupan is an oversight. Appellant also understands the Examiner to have relied on Zupan for this rejection. *See* Appeal Br. 5.

Appellant contends that “Zupan is non-analogous art” because “it deals with a roof tile tie down clip as opposed to the instant invention which is a utility hanger.” Appeal Br. 3. Appellant contends that this is “two completely different uses.” Appeal Br. 3.

The Examiner responds that “Zupan’s device is in the same field of” endeavor as Appellant’s invention “because the appellant is very broad with [the] term hanger.” Ans. 6, 7. The Examiner also provides a dictionary definition of “hanger” as “one that hangs or causes to be hung or hanged.” Ans. 6 (referencing “Merria[m] Webster’s Dictionary online (www.m-w.com)”). Neither party addresses the other prong of the analogous art test, i.e., pertinent to the particular problem encountered by the inventor. *See K-TEC, Inc. v. Vita-Mix Corp.*, 696 F.3d 1364, 1375 (Fed. Cir. 2012).

Appellant’s Specification employs the term “hanger” in a somewhat broad manner. For example, as expressed above, Appellant states that the invention relates to “equipment hangers,” but more specifically for “hunting and camping” purposes.³ Spec. 1:11–12. Elsewhere, Appellant employs the term “hanger” in reference to “U.S. Patent 6,182,933 issued to Rapp” (hereinafter “Rapp”). Spec. 1:19–20. Rapp is entitled “Friction-Mountable Hanger” and is used “for hanging an object” from a cantilevered projection. *See Rapp Title, Abstract*. Appellant’s Specification also refers to the term “hanger” when discussing U.S. 5,337,986 which Appellant describes as “a post mounted hanger for plants.” Spec. 1:21–23. What all these usages have in common, however, is the hanging or the suspending of an object

³ Appellant’s Specification states, “the hangers of the instant invention are constructed for use during bow hunting for game and the hunter can hang any equipment on the arm 8 and hook 9.” Spec. 3:6–8.

from a support. This is also consistent with the Examiner's proffered dictionary definition above.

Zupan, on the other hand, is entitled "Roof Tile Tie Down Clip." Zupan Title. It is "for securing a roof tile to the surface of a roof." Zupan Abstract. Zupan's clips are used to apply a downward force against the tile to compress or hold the tile against a roof during installation. *See* Zupan 5:29–53. Zupan also discusses the use of these clips to counteract uplifting forces in areas of "high winds that can act against exposed surfaces of the tile." Zupan 6:20–24. Zupan is silent, however, as to any usage or suitability as a hanger for hanging or suspending an object therefrom (consistent with how this term is used in Appellant's Specification and the cited dictionary definition). As such, the Examiner's contention that "Zupan's device is designed to hang the roof tiles on the roof" (Ans. 6) is not a correct interpretation of Zupan, because there is no disclosure in Zupan that roof tiles "hang" (or are suspended) from the tie down clip. Consequently, it is not apparent that Zupan's clip can be properly characterized as a "hanger" (as this claim term is understood in view of Appellant's Specification and the cited dictionary definition) such that Zupan's and Appellant's devices can reasonably be deemed to be in the same field of endeavor.

The Examiner's further reliance on Bogaerts does not cure this defect. *See* Final Act. 3. Accordingly, we reverse the Examiner's rejection of claim 1 as being obvious over the combination of Zupan and Bogaerts.

The rejection of (a) claim 2 as unpatentable over Zupan, Bogaerts, and Plowman; (b) claim 3 as unpatentable over Zupan, Bogaerts, and Rhodes; and, (c) claim 4 as unpatentable over Zupan, Bogaerts, Rhodes, and Plowman

The Examiner relies on the additional reference to Plowman for teaching the use of “soft polymeric material” and on Rhodes for teaching “two arms.” Final Act. 3; *see also id.* at 4. Such usage does not cure the defect with respect to the primary reference to Zupan discussed above. Thus, we likewise reverse the Examiner’s rejections of claims 2–4 as being obvious in view of the above cited combinations of Zupan, Bogaerts, Rhodes, and Plowman.

*The rejection of claim 1
as unpatentable over Bogaerts and Zupan*

In this rejection, the Examiner primarily relies on the teachings of Bogaerts, but acknowledges that Bogaerts “fails to teach two openings.” Final Act. 4. The Examiner relies on the additional reference to Zupan for such teachings and provides a reason for their combination. *See* Final Act. 4.

Appellant contends that “the [E]xaminer has missed the intent of the openings.” Appeal Br. 5. We understand Appellant as contending, on a more basic level, that Bogaerts’ teachings and Appellant’s teachings are different and address different matters. There is merit to this understanding because Bogaerts, like Zupan above, is directed to a tie down clip for roof tiles. *See generally* Bogaerts; *see also* Bogaerts 1:21–27 (“The most important function of tile hooks is to prevent the tiles rattling and falling from the roof when the wind force is high . . . that is to say that in the event of strong wind suction there is a risk of the tiles rattling and coming loose.”).

Bogaerts' clips operate in the same manner discussed above with respect to Zupan, i.e., they apply a downward force to compress or hold roof tiles against a roof. *See* Bogaerts 4:10–15. Likewise, Bogaerts is silent as to any usage as a hanger for hanging or suspending roof tiles from the roof. Accordingly, for similar reasons already expressed, the Examiner's reliance on Bogaerts for disclosing the recited "hanger" is not supportable. Further, and as noted above, Zupan does not cure this defect. We reverse the Examiner's rejection of claim 1 as being obvious over Bogaerts and Zupan.

The rejection of (a) claim 2 as unpatentable over Bogaerts, Zupan, and Plowman; (b) claim 3 as unpatentable over Bogaerts, Zupan, and Rhodes; and, (c) claim 4 as unpatentable over Bogaerts, Zupan, Rhodes, and Plowman

The Examiner's further reliance on Plowman and Rhodes does not cure the defect with respect to the primary reference to Bogaerts above. Thus, we likewise reverse the Examiner's rejections of claims 2–4 as being obvious in view of the above cited combinations of Bogaerts, Zupan, Rhodes, and Plowman.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1	103	Zupan, Bogaerts		1
2	103	Zupan, Bogaerts, Plowman		2
3	103	Zupan, Bogaerts, Rhodes		3
4	103	Zupan, Bogaerts, Rhodes, Plowman		4
1	103	Bogaerts, Zupan		1

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2	103	Bogaerts, Zupan, Plowman		2
3	103	Bogaerts, Zupan, Rhodes		3
4	103	Bogaerts, Zupan, Rhodes, Plowman		4
Overall Outcome				1-4

REVERSED