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Cantor Colburn LLP - Hamilton Sundstrand 20 Church Street, 22nd Floor Hartford, CT 06103			GREENE, MARK L	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JESSE JOSEPH STIEBER

Appeal 2019-006888
Application 14/996,043
Technology Center 3700

Before MURRIEL E. CRAWFORD, PHILIP J. HOFFMANN, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's rejection of claims 1 and 3–5. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

According to Appellant, the “invention generally relate[s] to heat exchangers.” Spec. ¶ 2. Independent claim 1 is the sole independent claim

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies “HAMILTON SUNDSTRAND CORPORATION” as the real party in interest. Appeal Br. 1.

on appeal. Below, we reproduce claim 1 as representative of the appealed claims.

1. A crossflow heat exchanger comprising:
 - an outer housing;
 - an inlet that receives a hot fluid to be cooled on a first side of the outer housing;
 - a monolithic manifold includes a central receiving reservoir that is coupled to the inlet and one or more outer reservoirs, the hot fluid received at the inlet passes into the central receiving reservoir;
 - an outlet on an opposite side of the outer housing connected to the one or more outer reservoirs;
 - tubes disposed within the outer housing that connect the central receiving reservoir and the one or more outer reservoirs;
 - end caps disposed at opposing ends of the monolithic manifold; and
 - wherein the monolithic manifold includes a gap formed between the central receiving reservoir and the one or more outer reservoirs and the end caps establish the gap.²

REJECTION AND PRIOR ART

The Examiner rejects claims 1 and 3–5 under 35 U.S.C. § 103 as unpatentable over Wilcox et al. (US 6,918,598 B2, issued July 19, 2005) (“Wilcox”) and Hagnauer (US 3,734,176, issued May 22, 1973).

ANALYSIS

Briefly, we discuss portions of the application’s prosecution history, to discern a proper understanding of claim 1’s last recitation. On June 15, 2018, Appellant filed a Request for Continued Examination, as a result of

² As discussed in detail below, Appellant erroneously indicates, in the Appeal Brief, that claim 1 recites that “the end caps *define* the gap.” See Appeal Br., Claims App. (Claim 1) (emphasis added).

which the Examiner entered Appellant's Amendment filed on April 6, 2018. By this Amendment, claim 1 recites, in relevant part, that "the monolithic manifold includes a gap formed between the central receiving reservoir and the one or more outer reservoirs and the end caps *establish* the gap," as we set forth above. Amendment (filed April 6, 2018), 2 (emphasis added). After subsequent prosecution, on January 23, 2019, the Examiner issued a Final Office Action. It was not until after the Final Office Action that Appellant proposed to amend the above claim recitation to state that "the monolithic manifold includes a gap formed between the central receiving reservoir and the one or more outer reservoirs and the end caps *define* the gap."³ The Examiner denied entry of this amendment to claim 1, and indicated that even "[f]or purposes of appeal, the proposed amendment . . . will not be entered." Advisory Action (mailed April 15, 2019), 1. Accordingly, claim 1, as appealed, recites that the end caps *establish*, rather than define, the gap formed between the central receiving reservoir and the one or more outer reservoirs.

The Examiner relies on Wilcox's Figure 1 to disclose end caps that *establish* a gap between a central receiving reservoir and outer reservoirs. Final Action 3, 5. Here, the Examiner adequately supports the finding that Wilcox discloses the end caps establishing the gap, as claimed.

Nonetheless, in the Appeal Brief's Claims Appendix, Appellant erroneously states that the claim recites that "the monolithic manifold includes a gap formed between the central receiving reservoir and the one or more outer reservoirs and the end caps *define* the gap." Appeal Br., Claims

³ Response to Final Office Action (filed Mar. 22, 2019), 2 (emphasis added).

App. Further, throughout the Appeal Brief, Appellant’s arguments are directed to why, “in Wilcox . . . [n]one of these alleged gaps are *defined* by the endcaps as required in the claim.” Appeal Br. 3 (emphasis added); *see also id.* at 3–4. Nowhere in the Appeal Brief does Appellant argue that Wilcox fails to disclose end caps that *establish* the gap, as claimed. Thus, in the Appeal Brief, Appellant does not persuade us that the Examiner errs in determining that Wilcox discloses ends caps that *establish* the gap between the central receiving reservoir and the outer reservoirs. Consequently, we cannot do anything other than sustain the rejection.

In the Reply Brief, Appellant addresses the actual claim language, and argues that the Examiner’s construction of “establish,” relying on a dictionary definition, is in error, and should be construed according to a different dictionary definition. Reply Br. 1–3. As Appellant raises this argument for the first time in the Reply Brief, the argument is untimely, and Appellant waives the argument. *See Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative) (“[T]he reply brief [is not] an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner’s rejections, but were not.”). The Examiner advances the construction of “establish” as “to bring into existence” in the Final Action, and Appellant does not address this construction in the Appeal Brief. *See* Final Action 3.

For the above reasons, we sustain the Examiner’s obviousness rejection of independent claim 1 and its dependent claims 3–5.

CONCLUSION

We AFFIRM the Examiner’s obviousness rejection of all claims.

Appeal 2019-006888
Application 14/996,043

In summary:

Claim(s)	35 U.S.C. §	Basis/Reference(s)	Affirmed	Reversed
1, 3-5	103	Wilcox, Hagnauer	1, 3-5	

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