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FAY SHARPE LLP 1228 Euclid Avenue, 5th Floor The Halle Building Cleveland, OH 44115			DURDEN, RICHARD KYLE	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BENYAMIN AHARONI

Appeal 2019-006916¹
Application 14/928,984
Technology Center 3700

Before PHILLIP J. KAUFFMAN, TARA L. HUTCHINGS, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

FINAMORE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the Examiner’s decision to reject claims 1–5, 7, and 10–20. We have jurisdiction under § 6(b).

We AFFIRM.

¹ The citations herein refer to the Specification filed October 30, 2015 (“Spec.”), Final Office Action mailed December 31, 2018 (“Final Act.”), Appeal Brief filed May 29, 2019 (“Appeal Br.”), Examiner’s Answer mailed July 26, 2019 (“Ans.”), and Reply Brief filed September 25, 2019 (“Reply Br.”).

² “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies R.F.G. Trading Ltd. as the real party in interest. Appeal Br. 1.

SUBJECT MATTER ON APPEAL

The invention “relates to a pilot valve system useful for operating control valves.” Spec. ¶ 2. Claims 1 and 15 are independent. Appeal Br., Claims App. Independent claim 1 is illustrative of the claimed subject matter and reproduced below with italics to emphasize the limitations at issue.

1. A pilot valve system, comprising:
 - a lower chamber formed from:
 - a pilot body having a fluid passageway defined along a central longitudinal axis thereof, the fluid passageway connecting an inlet to a first outlet and a second outlet and having an upper portion, a lower portion, and a middle portion, wherein the upper portion of the fluid passageway is substantially the same width as the lower portion of the fluid passageway and *the middle portion has a width that is constant along the central longitudinal axis of the pilot body and fluid passageway*, wherein the constant width of the middle portion is less than the width of the upper and lower portions of the fluid passageway; and
 - a stem in the fluid passageway, the stem including:
 - an upper section, a middle section, a lower section, and first and second intermediate sections;
 - wherein the upper, middle, and lower sections are all of substantially the same width;
 - wherein the first intermediate section separates the upper section from the middle section and the second intermediate section separates the lower section from the middle section; and
 - wherein the first and second intermediate sections are of substantially the same width, the width of the first and second intermediate sections being greater than the width of the upper, middle, and lower sections;

wherein the first and second intermediate section pass through the middle portion of the fluid passageway; and

a first stationary seal and a second stationary seal located on internal sides of the middle portion of the fluid passageway and adapted to form a substantially fluid-tight closure with the stem; and

an upper chamber separated from the lower chamber by a diaphragm, the upper chamber including:

a compression spring; and

an adjusting screw for controlling the amount of force provided by the compression spring against the diaphragm;

wherein the pilot valve system is adapted to deliver fluid from the inlet to one outlet while ensuring that fluid does not flow to the other outlet at the same time.

Id. (emphasis added, claim status identifier omitted).

REJECTIONS

Claims Rejected	35 U.S.C. §	References/Basis
1-5, 7, 10-20	112(b)	Indefiniteness
1-5, 7, 10-20	112(a)	Written Description
1-5, 7, 10-20	103	King ³ , Loveless ⁴ , Seeloff ⁵

ANALYSIS

Indefiniteness

Independent Claims 1 and 15

Independent claim 1 recites a fluid passageway having a middle portion, wherein “the middle portion has a width that is constant along the

³ King, U.S. 1,575,771, issued Mar. 9, 1926.

⁴ Loveless, U.S. 3,661,182, issued May 9, 1972.

⁵ Seeloff, U.S. 2,524,142, issued Oct. 3, 1950.

Figures 4 and 5 are enlarged cross-sectional views of a section of the pilot valve system. Spec. ¶¶ 23–24. Figure 4 shows stem 120 within the fluid passageway, whereas Figure 5 shows the fluid passageway without the stem. *Id.* With specific reference to Figure 4, seals 180, 182 are located on the internal sides of fluid passageway 160 for engaging first and second intermediate sections 123, 125, respectively of stem 120. *Id.* ¶ 43, Fig. 4. As shown in Figure 5, fluid passageway 160 includes upper portion 162, middle portion 164, and lower portion 166. *Id.* ¶ 44, Fig. 5. Figure 5 also shows, but does not label, seals 180, 182 located in middle portion 164 of fluid passageway 160. *Id.* at Fig. 5. According to Appellant, the interior walls of pilot body 110 may have different widths, but the width of middle portion 164, which is shown as the area between the vertical dashed lines labeled “WFP” in Figure 5, is constant over the entire length of the middle portion. Reply Br. 2–3.

Appellant’s argument is unenlightening as it does not address the inconsistency between the Specification and the claims on which the Examiner’s indefiniteness determination is based. The Specification, particularly Figure 5, shows middle portion 164 having a constant width when seals 180, 182 are not considered part of the interior thereof. On the other hand, independent claims 1 and 15 recite a middle portion having a constant width, and first and second stationary seals on the interior sides thereof. In view of the inconsistency between the claims and the Specification regarding whether the middle portion has a constant width with the stationary seals, we agree with the Examiner that claims 1 and 15 are indefinite. *See, e.g., In re Cohn*, 438 F.2d 989, 993 (Fed. Cir. 1971) (sustaining an indefiniteness rejection where the claims are inconsistent with

the specification); *see also* MPEP § 2170.03 (9th ed. Rev. 08.2017, Jan. 2018). We, therefore, sustain the rejection of independent claims 1 and 15 and claims 2–5, 7, 10–14, and 16–20 depending therefrom.

Claim 5

The Examiner determines claim 5 is indefinite because it is unclear whether the limitation “a longitudinal axis of the fluid passageway” refers to the “central longitudinal axis” recited in independent claim 1 or to a separate, distinct axis. Final Act. 6. Appellant does not refute the Examiner’s rejection of claim 5.

In view of the similar, but slightly different, terminology, we agree with the Examiner that it is unclear whether “a longitudinal axis of the fluid passageway” recited in claim 5 refers to the “central longitudinal axis” recited in independent claim 1 from which claim 5 depends. We, therefore, sustain the rejection of claim 5.

Remaining Rejections

In view of the determination that claims 1–5, 7, 10–20 are indefinite, we cannot reach the merits of the remaining rejections without engaging in speculative assumptions as to the meaning of the claims. We, therefore, do not sustain, *pro forma*, the remaining rejections of claims 1–5, 7, and 10–20. *See, e.g., In re Steele*, 305 F.2d 859, 862 (CCPA 1962) (A prior art rejection cannot be sustained if the hypothetical person of ordinary skill in the art would have to make speculative assumptions concerning the meaning of claim language.).

CONCLUSION

We sustain the rejection of claims 1–5, 7, and 10–20 under 35 U.S.C. § 112(b) for failure to particularly point out and distinctly claim the subject matter Appellant regards as the invention. We do not sustain, *pro forma*, the remaining rejections.

DECISION SUMMARY

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–5, 7, 10–20	112(b)	Indefiniteness	1–5, 7, 10–20	
1–5, 7, 10–20	112(a)	Written Description		1–5, 7, 10–20
1–5, 7, 10–20	103	King, Loveless, Seeloff		1–5, 7, 10–20
Overall Outcome			1–5, 7, 10–12	

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