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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/072,069	03/16/2016	Derek Roberts	BPMDL0119DR (11366U)	4286
27939	7590	07/01/2020	EXAMINER	
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			ART UNIT	PAPER NUMBER
			3723	
			NOTIFICATION DATE	DELIVERY MODE
			07/01/2020	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DEREK ROBERTS

Appeal 2019-006944
Application 15/072,069
Technology Center 3700

Before JOSEPH A. FISCHETTI, MICHAEL C. ASTORINO, and
BRUCE T. WIEDER, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), the Appellant¹ appeals from the Examiner's decision to reject claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. The Appellant identifies the real party in interest as Medline Industries, Inc. Appeal Br. 2.

STATEMENT OF THE CASE

Subject Matter on Appeal

The Appellant’s invention “relates generally to cleaning devices, and more particularly to cleaning mops having attachable cleaning devices.”

Spec. ¶ 2. The invention includes embodiments that

provid[e] a mop that includes a “hands free” head removal system that allows a user to detach a cleaning pad from a mop head without ever touching the pad. In one embodiment, a bottom surface of a housing defining a mop head includes two flappers that, when an associated actuator is actuated, pivot from a closed position, disposed within the housing and substantially parallel with the bottom surface, to an angularly displaced open position extending distally outward from the major surface, thereby detaching the cleaning pad from the mop head.

Id. ¶ 15.

Claimed Subject Matter

Claims 1 and 16 are the independent claims on appeal. Claim 1, reproduced below with added emphasis, is illustrative of the claimed subject matter.

1. A mop, comprising:
a housing defining a major surface to couple to a cleaning pad; and
one or more flappers disposed along the major surface, the one or more flappers to selectively pivot from a closed position *disposed within the housing* and substantially parallel with the major surface to an angularly displaced open position extending distally outward from the major surface.

Rejections

Claims 1–7 and 14–18 are rejected under 35 U.S.C. § 102(a)(1) as anticipated by Soller et al. (US 2014/0007367 A1, pub. Jan. 9, 2014) (hereinafter “Soller”).

Claim 8 is rejected under 35 U.S.C. § 103 as unpatentable over Soller in view of Niemeyer et al. (US 2007/0022553 A1, pub. Feb. 1, 2007) (hereinafter “Niemeyer”).

Claims 9, 19, and 20 are rejected under 35 U.S.C. § 103 as unpatentable over Soller in view of Bober et al. (US 2013/0340187 A1, pub. Dec. 26, 2013) (hereinafter “Bober”).

Claim 10 is rejected under 35 U.S.C. § 103 as unpatentable over Soller in view of Hull (US 473,004, iss. Apr. 19, 1892) (hereinafter “Hull”).

Claims 11–13 are rejected under 35 U.S.C. § 103 as unpatentable over Soller as modified by Hull in view of Wetzl et al. (EP 1 384 430 A2, pub. June 25, 2003) (hereinafter “Wetzl”).

ANALYSIS

Independent claim 1 calls for a mop having one or more flappers disposed within a housing. *Supra*. Independent claim 16 calls for a similar mop as claim 1. *See* Appeal Br. 32, Claims App.

The Examiner finds that the claimed one or more flappers and housing read on Soller’s wings 38a,b and cleaning material-supporting head 16, respectively. Final Act. 2. The Examiner finds that Soller’s wings 38a,b are disposed within head 16 because wings 38a,b are disposed within the perimeter of head 16’s lower base 29. *See id.* Accordingly, the Examiner’s finding is based on a construction of the claim phrase “disposed within the

housing” as meaning disposed within the perimeter of the housing. Ans. 11–12 (citing *Oxford English Dictionary* “‘within’ can also mean ‘[i]n the inner part or interior of, inside of, in (a space, region, receptacle, etc.)’ (‘within, adv., prep., and adj.’ OED Online, Oxford University Press, June 2019, www.oed.com/viewdictionaryentry/Entry/229671. Accessed 28 June 2019.)”).

The Appellant construes the term “within” in “disposed within the housing” as “inside (something).” Appeal Br. 13 (citing *New Oxford American Dictionary*, electronic version 2.2.2 (203.1) 2017). The Appellant submits that the term is used “consistently with this definition throughout the [S]pecification and [F]igures.” *Id.* at 14 (emphasis omitted); *see id.* at 11–13 (citing Spec. ¶¶ 26, 32–33, Figs. 2, 5). The Appellant has the better position.

The issue presented in this appeal concerns the broadest reasonable interpretation of one or more flappers “disposed within the housing,” as required by claim 1, when read in light of the Specification as interpreted by one of ordinary skill in the art. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted). We determine that one of ordinary skill in the art would understand that the broadest reasonable interpretation of one or more flappers “disposed within the housing,” when read in light of the Specification, refers to one or more flappers that are disposed inside of the housing. *See* Spec. ¶¶ 15, 18, 26, 32–33, 37, 38, Figs. 2, 3. Additionally, we determine that the Examiner’s construction of “disposed within the housing” as pertaining to the perimeter of the housing is not consistent with the Specification.

In view of the foregoing, we determine that the Examiner erred in finding that Soller discloses that wings 38a,b are disposed within head 16. *See also* Appeal Br. 15 (“the alleged flappers of Soller are *always* outside the mop head. They are never positioned inside the mop head.”); Soller Fig. 2.

Thus, we do not sustain the Examiner’s rejection of independent claims 1 and 16, and dependent claims 2–7, 14, 15, 17, and 18. In the remaining rejections the Examiner fails to rely on the teachings of Niemeyer, Bober, Hull, and/or Wetzl in any manner that would remedy the deficiency in the Examiner’s rejection as discussed above. Therefore, we do not sustain the rejections of claims 8–13, 19, and 20.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	References/Basis	Affirmed	Reversed
1–7, 14–18	102(a)(1)	Soller		1–7, 14–18
8	103	Soller, Niemeyer		8
9, 19, 20	103	Soller, Bober		9, 19, 20
10	103	Soller, Hull		10
11–13	103	Soller, Hull, Wetzl		11–13
Overall Outcome				1–20

REVERSED