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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHELE VITALINI

Appeal 2019-006950
Application 15/686,395¹
Technology Center 3600

Before BIBHU R. MOHANTY, MICHAEL C. ASTORINO, and
BRUCE T. WIEDER, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1–19. 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 SIEMENS AG. (Appeal Br. 1.)

CLAIMED SUBJECT MATTER

Appellant's "invention relates to the technical field of a conveying system for items to be conveyed." (Spec. ¶ 2.)

Claims 1 and 10 are the independent claims on appeal. Claim 1 is illustrative. It recites (emphasis added):

1. A conveying system for transporting items to be conveyed along a main conveying direction, the conveying system comprising:
 - a control unit;
 - a conveying route formed of a plurality of segments;
 - each of said segments including a plurality of conveyors *arranged substantially in parallel* with one another and adjacent one another in a transverse direction perpendicular to the main conveying direction, each of said conveyors *extending in the main conveying direction* and being configured to transport the items to be *conveyed along the main conveying direction*;
 - said segments being arranged one behind another along the main conveying direction and said conveyors of adjacent said segments being laterally offset relative to one another perpendicularly to the main conveying direction; and
 - said conveyors being connected to said control unit and individually driven and individually activated by said control unit.

REJECTION

Claims 1–19 are rejected under 35 U.S.C. § 102(a)(1) as anticipated by Alleman (US 8,127,915 B2, iss. Mar. 6, 2012).²

² We note that on page 1 of the Final Action, the Examiner indicates that claims 1–19 are rejected. On page 2 of the Final Action, the Examiner indicates that "[c]laims 1, 3-10 and 12-19 are rejected," but makes no reference to claims 2 and 7. However, on page 3–4 of the Final Action, the Examiner provides separate paragraphs explaining why claims 2 and 7 are

ANALYSIS

“[A]n invention is anticipated if the same device, including all the claim limitations, is shown in a single prior art reference. Every element of the claimed invention must be literally present, arranged as in the claim.”

Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed. Cir. 1989).

“Anticipation can occur when a claimed limitation is ‘inherent’ or otherwise implicit in the relevant reference.” *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991).

The Examiner finds that claim 1 is anticipated by Alleman. (Final Action 2–3.) Specifically, the Examiner finds that Alleman discloses “each of said segments including a plurality of conveyors (Fig. 1, conveyors 30, 30 [sic, 32], and 40, 42, 44) arranged substantially in parallel with one another and adjacent one another in a transverse direction perpendicular to the main conveying direction (Fig. 1), said conveyors extending in the main conveying direction.” (*Id.*)

Appellant argues that “[i]n contrast with the claimed invention, [(1)] Alleman’s conveyors 30 and 32 are not arranged substantially parallel with one another and [(2)] they do not extend and transport in the conveying direction.” (Appeal Br. 6.)

Alleman discloses “[a] system for separating a cluster of interconnected food products.” (Alleman, Abstract.) Figure 1 of Alleman appears below.

rejected. In view of this, we treat the omission of claims 2 and 7 from the list of rejected claims on page 2 of the Final Action as a minor oversight.

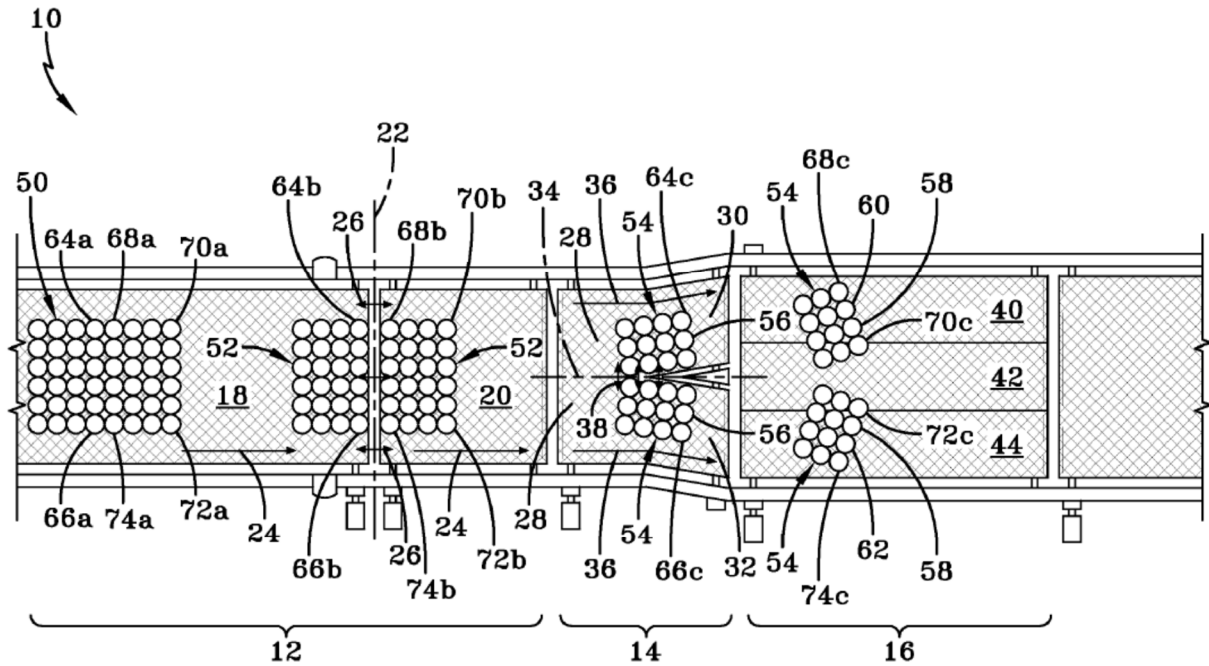


FIG-1

Figure 1 “is a top plan view of an exemplary embodiment of the [Alleman] invention, i.e., the system for separating a cluster of interconnected food products, and shows the system along with a series of clusters in various stages of the separation process.” (Alleman, col. 3, ll. 18–22.)

With regard to Appellant’s first argument, i.e., that conveyors 30 and 32 are not arranged substantially in parallel with one another, we begin by quoting Alleman’s description of the configuration of the conveyors. “As shown in FIG. 1, diverging conveyor 28 may include a third conveyor 30 and a fourth conveyor 32, which are configured to operate substantially in parallel (as opposed to in series) in a coordinated manner” (*Id.* at col. 4, ll. 9–13.) Moreover, we agree with the Examiner:

Applicant did not put in the specification the meaning applicant is trying to assert in the appeal brief. The meanings or definitions of the words “substantially parallel” are not set out

in the specification, nor in any other place else in the application. Where not set out in the specification or elsewhere in the application, the examiner must give the words their plain meaning, MPEP [§] 2111.01 [(I)], and may turn to well-known resources to determine a meaning of a word or phrase. One such resource is the Merriam-Webster online dictionary which defines “substantial[”] as: “*being largely but not wholly that which is specified*”. (<https://www.merriam-webster.com/dictionary/substantially?search-dict-box#other-words>). It is clear that the conveyors 30, 32 in Alleman are largely that which is specified, namely they are substantially parallel.

(Answer 4.) The Examiner also finds that regardless of “[t]he small divergence of the conveyors [30 and 32] from conveyor 28,” the conveyors still fall within the “substantially in parallel” language of claim 1. (*See id.*)

Claim 1 does not require the conveyors to be in parallel. It only requires the conveyors to be “substantially in parallel.” In view of the Examiner’s findings and the disclosures in Alleman discussed above regarding the relative positions of conveyors 30 and 32, Appellant has not persuasively argued why Alleman does not disclose conveyors 30 and 32 being “substantially in parallel.” (*See Answer 4, Alleman, col. 4, ll. 9–13; see also Claim 1.*)

With regard to Appellant’s second argument, i.e., that the conveyors 30 and 32 “do not extend and transport in the conveying direction” (Appeal Br. 6 (emphasis omitted)), Appellant more specifically argues that “the second direction of conveyance 36 [in Alleman] is not parallel to the first direction of conveyance 24 due to the divergence of the third and fourth conveyor 30, 32” (*id.* at 7). We are not persuaded of error.

We agree with the Examiner that “Applicant asserts a narrower interpretation of the words ‘main conveying direction’ than is warranted or

that the examiner is required to use. The conveying direction of the claims is from left to right, see Figs. 2, 3 and 4. Left to right describes the main conveying direction.” (Answer 4.)

The Examiner’s interpretation of the term “main conveying direction” is further supported by the language of claim 1 itself and Appellant’s Figures 2, 3, and 4. Specifically, claim 1 recites “said segments being arranged one behind another along the main conveying direction,” and Figures 2, 3, and 4 show one segment behind another with the main conveying direction (6) shown simply as an arrow pointing from left to right. (*See Spec.* ¶ 30, Figs. 2–4.) Like Appellant’s conveying system, the conveying system shown in Alleman’s Figure 1 arranges subsystems 14 and 16, i.e., the segments, one behind another along the main conveying direction. In other words, subsystem 14 (which includes conveyors 30 and 32) is positioned behind subsystem 16, with the main conveying direction being from left to right. Additionally, and as shown in Alleman’s Figure 1, Alleman’s conveying system transports product in the main conveying direction, i.e., from left to right.

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 1 under § 102. Claims 2–19 are not separately argued and fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

The Examiner’s rejection of claims 1–19 under 35 U.S.C. § 102(a)(1) is affirmed.

Appeal 2019-006950
Application 15/686,395

Specifically:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-19	102(a)(1)	Alleman	1-19	

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