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LEVEL 3 COMMUNICATIONS, LLC			GARFT, CHRISTOPHER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOEL S. SKOGLUND and JOSEPH NGUYEN

Appeal 2020-000179
Application 15/282,624
Technology Center 3600

Before JILL D. HILL, LEE L. STEPINA, and ARTHUR M. PESLAK,
Administrative Patent Judges.

PESLAK, *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, 5, 6, 9–11, 13, and 14.² *See* Final Act. 1. 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 Level 3 Communications, LLC, which is a subsidiary of CenturyLink, Inc. Appeal Br. 3.

² Claims 2–4, 7, 8, and 15–18 are withdrawn from consideration. Final Act. 1.

THE CLAIMED SUBJECT MATTER

Appellant's invention relates to an elevated cable support structure.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A cable support device comprising:
 - a first member comprising a base portion, a first portion, and a second portion spaced apart from the first portion, the first portion and the second portion extending upwards from opposite ends of the base portion; and
 - a support member downwardly extending from the base portion of the first member and configured to couple with a safety cone, wherein the support member comprises:
 - a post, connected to the base portion at an upper end of the post and to a lower member at a lower end of the post such that the post terminates at the lower member, wherein the lower member has a frustum shape, wherein an upper portion of the lower member defines a ledge, and wherein a cross-sectional area of the lower member at the ledge is configured to be larger than a cross-sectional area of an opening in the safety cone; and
 - a hollow conical member connected to the post at a connection position that defines a space between the connection position and the ledge.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Neil	US 4,840,345	June 20, 1989
Adams	US 7,503,528 B2	Mar. 17, 2009
Henderson	US 8,777,512 B2	July 15, 2014

REJECTIONS

1. Claims 1, 5, 9–11, 13, and 14 are rejected under 35 U.S.C. § 103 as unpatentable over Adams and Henderson.
2. Claim 6 is rejected under 35 U.S.C. § 103 as unpatentable over Adams, Henderson, and Neil.

ANALYSIS

Rejection 1; Adams and Henderson

The Examiner finds that Adams discloses many of the limitations of claim 1 including, *inter alia*, a post connected to a lower member having an upper portion that defines a ledge, wherein a cross-sectional area of the lower member at the ledge is configured to be larger than a cross-sectional area of an opening, albeit, not in a safety cone. Final Act. 2–3 (citing Adams, 3:50–51, Fig. 13). The Examiner relies on Henderson to disclose an alternate cable support that is configured to couple with a safety cone. *Id.* at 4 (citing Henderson, Figs. 6, 7).

Appellant argues that the portion of Adams upon which the Examiner relies only discloses that wedge 20 requires a greater amount of force than that applied to projections 18 to free the cable mount after installation. Appeal Br. 9. According to Appellant, this is not a disclosure of the size of the cross-sectional area of wedge 20, and because wedge 20 is made up of projections 54 and 56 having a gap there between, the cross-section of wedge 20 would likely be smaller than the opening due to the gap. *Id.* at 10. Appellant asserts, moreover, because Adams does not define the “thickness” of wedge 20 or describe opening 58 into which wedge 20 is inserted, the Examiner’s assertions as to the cross-sectional area at the top of the opening is based on speculation. *Id.* at 11. Appellant further asserts that the way Adams removes the cable mount would require tilting the cable mount, which would explain the increase in force. *Id.* at 11–12. Appellant, thus, asserts that the Examiner’s characterization of Adams is unreasonable, and that Henderson does not remedy the deficiencies of Adams. *Id.* at 12.

In response, the Examiner provides copies of Figures 3 and 4 of Adams with annotations added to explain the “thickness” and why the width (and thus, the cross-section) of wedge 20 is greater than the opening. *See* Ans. 7. Specifically, the Examiner explains that the thickness of projections 54 and 56 of wedge 20 in Adams is measured across the top surfaces of the projections 54 and 56 so that these surfaces have an increased thickness compared to projections 18. *Id.* at 8. According to the Examiner, this increased thickness corresponds to an increased diameter, otherwise there would be no effect on the removing force. *Id.* The Examiner asserts that wedge 20 having a larger cross-sectional area than the opening is also supported by Adams’ disclosure of centering tabs 40. In particular, the Examiner states that because centering tabs 40 contact the opening to keep the mount centered and have a smaller width than wedge 20, the projections 54 and 56 must be larger than the opening. Ans. 8–9. For the reasons discussed below, we are not apprised of Examiner error.

Although we appreciate that Adams discloses that “projections 54 and 56 comprise a smaller width dimension W than plurality of projections 18,” we agree with the Examiner that because Adams further discloses that the thickness of projections 54 and 56 is greater than that of the plurality of projections 18, the cross-sectional area of projections 54 and 56 must be greater than the cross-sectional area of the opening. Specifically, we agree with the Examiner that if this were not the case, no force, let alone an increased force, would be required to free cable mount 10 once projections 18 were free of opening 58. Indeed, wedge 20 having opposing projections 54, 56 is formed as a frustum to aid insertion and “act as a lead-in,” but this

same shape requires increased force for removal due to the contact force it creates with the opening. *See Adams*, 3:47–54; *see also* Ans. 8.³

In addition, we agree with the Examiner that because Adams' centering tabs 40 are “for centering cable mount 10 within an aperture” (Adams, 3:4–5) and because tabs 40 appear to have a smaller cross-sectional area than projections 54, 56 (*see* Ans. 7), projections 54, 56 would be larger than the opening. In view of the above, the Examiner's finding that Adams' wedge 20 defines a ledge with a cross-sectional area larger than that of opening 58 is supported by the requisite preponderance of the evidence. Therefore, we sustain the rejection of claim 1. Appellant does not argue separately for the patentability of dependent claims 5, 9–11, 12, and 14. Appeal Br. 7–14. We sustain the rejection of claims 5, 9–11, 12, and 14 for the same reasons.

Rejection 2; Adams, Henderson, and Neil

Claim 6 depends from claim 1. Appeal Br. 16 (Claims App.). Appellant does not argue separately for the patentability of dependent claim 6. Appeal Br. 13. We, therefore, sustain the rejection of claim 6 as unpatentable over Adams, Henderson, and Neil for the same reasons discussed above in connection with Rejection 1.

DECISION

The Examiner's rejections are affirmed.

³ We note that wedge 20 is split at its perimeter. *See Adams*, Figs. 1–3. The split supports the Examiner's finding that the cross-sectional area of wedge 20 is larger than the cross-sectional area of the opening because the split would allow wedge 20 to contract as it is inserted into the opening.

More specifically,

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 5, 9–11, 13, 14	103	Adams, Henderson	1, 5, 9–11, 13, 14	
6	103	Adams, Henderson, Neil	6	
Overall Outcome:			1, 5, 6, 9–11, 13, 14	

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