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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RUDOLF FUCHS

Appeal 2020-000294
Application 13/818,411
Technology Center 3700

Before JAMES P. CALVE, MICHAEL J. FITZPATRICK, and
BRANDON J. WARNER, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 3–9. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ “Appellant” refers to the applicant as defined in 37 C.F.R. § 1.42. Appellant identifies Robert Bosch, GmbH, as the sole real party in interest. Appeal Br. 2.

STATEMENT OF THE CASE

The Specification

The Specification discloses “a hand-held machine tool.” Spec. 1:8.

The Claims

Claims 3–9 are rejected. Final Act. 1. No other claims are pending. *Id.*; *see also* Appeal Br. 13–15. Claim 6, the sole independent claim, is representative and reproduced below.

6. Accessory mounting device of a hand-held machine tool, comprising:

a fastening unit including a cylindrical clamping ring having a circumference and defining a radial direction extending to and intersecting said circumference; and

at least one accessory coupling unit integral with said clamping ring at the intersection of said radial direction and said circumference of said clamping ring and including a holding element for receiving an accessory therethrough in a direction perpendicular to the radial direction at the intersection of said radial direction and said circumference and a fastening element for fastening the accessory to said holding element,

wherein the hand-held machine tool includes (i) a housing including a machining-side-facing end in a direction of principal extent of the housing, (ii) a drive unit, (iii) a gearbox unit disposed within said housing and configured to convert a rotary motion of the drive unit into an oscillating motion, the gearbox unit having an output shaft extending perpendicular to the direction of principal extent of the housing, (iv) a tool holder configured to fasten at least one insert tool, and further configured to be driven in an oscillating manner via the output shaft of the gearbox unit, and (v) a cylindrical clamping collar extending from said housing and configured to extend away from the machining-side-facing end and at least partially around the output shaft in a peripheral direction, the clamping collar defining a continuous circumferential groove,

wherein the accessory mounting device is configured to be fastened by the fastening unit to the clamping collar of the hand-held machine tool,

wherein the clamping ring is sized to be received entirely within said continuous circumferential groove, and

wherein the holding element and the fastening element are configured to permit adjustment of the accessory in said direction perpendicular to the radial direction at the intersection of said radial direction and said circumference.

Appeal Br. 13–14.

The Examiner’s Rejections

The rejections before us are the following:

1. claims 3–9, under 35 U.S.C. § 112 ¶2, as indefinite (Final Act. 2);
2. claims 3, 5–7, and 9, under 35 U.S.C. § 103(a), as unpatentable over Kimbel² and Frauhammer³ (*id.* at 3);
3. claims 4 and 8, under 35 U.S.C. § 103(a), as unpatentable over Kimbel, Frauhammer, and Esenwein⁴ (*id.* at 8);
4. claims 3, 5–7, and 9, under 35 U.S.C. § 103(a), as unpatentable over Flachenecker⁵ and Frauhammer (*id.* at 10); and
5. claims 4 and 8, under 35 U.S.C. § 103(a), as unpatentable over Flachenecker, Frauhammer, and Esenwein (*id.* at 14).

² US 5,957,765, issued Sept. 28, 1999 (“Kimbel”).

³ US 6,863,479 B2, issued Mar. 8, 2005 (“Frauhammer”).

⁴ US 2008/0200103 A1, published Aug. 21, 2008 (“Esenwein”).

⁵ US 4,905,420, issued Mar. 6, 1990 (“Flachenecker”).

DISCUSSION

Rejection 1 (Indefiniteness)

The Examiner rejected claims 3–9 as indefinite based on claim 6’s recitation of “the intersection” as having “insufficient antecedent basis.” Final Act. 2.

But the lack of an antecedent basis does not render a claim indefinite as long as the claim appraises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by [35 U.S.C. § 112 ¶2]. Thus, a claim term that lacks an antecedent basis may, but does not necessarily, render a claim indefinite.

In re Downing, 754 F. App’x 988, 996 (Fed. Cir. 2018) (internal quotation marks and citation omitted); *see also Energizer Holdings, Inc. v. Int’l Trade Comm’n*, 435 F.3d 1366, 1370 (Fed. Cir. 2006) (“The requirement of antecedent basis is a rule of patent drafting, administered during patent examination. The *Manual of Patent Examining Procedure* states that ‘[o]bviously, however, the failure to provide explicit antecedent basis for terms does not always render a claim indefinite.’ MPEP § 2173.05(e)”).

Claim 6 recites, in relevant part:

a fastening unit including a cylindrical clamping ring having a circumference and defining a radial direction extending to and intersecting said circumference; and

at least one accessory coupling unit integral with said clamping ring at the intersection of said radial direction and said circumference of said clamping ring.

Appeal Br. 13. We think it is sufficiently clear that “a radial direction extending to and *intersecting* said circumference” (emphasis added) is by implication a sufficient antecedent basis for “the intersection.” *See Energizer Holdings*, 435 F.3d at 1371 (“Here, it is apparent that the claim

can be construed. In that regard, we conclude that ‘anode gel’ is by implication the antecedent basis for ‘said zinc anode.’”).

Rejections 2–5 (Obviousness)

In all of the obviousness rejections, the Examiner relies on Frauhammer for teaching “a holding element for receiving an accessory therethrough in a direction perpendicular to the radial direction at the intersection of said radial direction and said circumference and a fastening element for fastening the accessory to said holding element,” as recited in claim 6. *See, e.g.*, Final Act. 5 (with respect to Rejection 2).

Frauhammer discloses “a supplemental handle for a hand-held machining tool with at least one grip element, or handle, which is connectable to a housing of the hand-held machining tool by means of an insulating device for vibration or oscillation insulation.” Frauhammer 1:19–23. Figure 1 of Frauhammer is reproduced below.

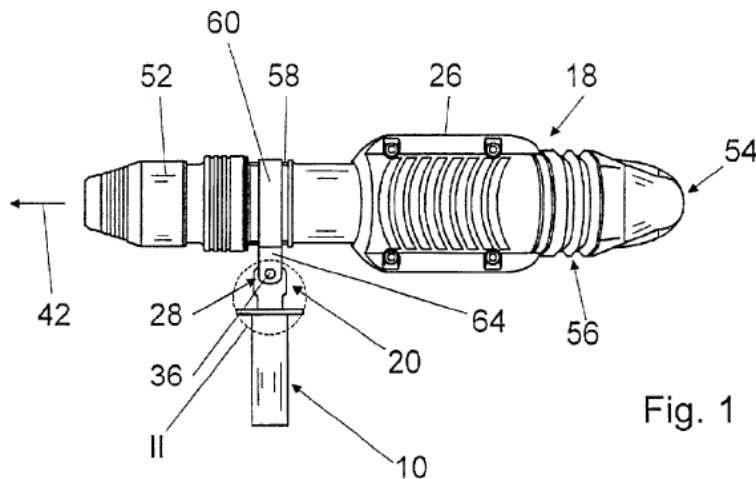


Fig. 1

Figure 1 of Frauhammer, reproduced above, “shows a drilling and chipping hammer with a pivotably supported supplemental handle.” *Id.* at 3:26–28.

Figure 3 of Frauhammer is reproduced below.

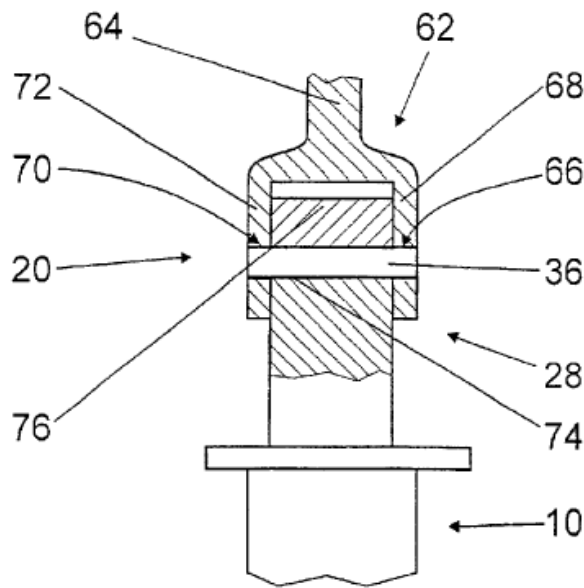


Fig. 3

Figure 3 of Frauhammer, reproduced above, shows “bearing unit 28 with a torsion spring, formed as bearing bolt 36, around which the grip element 10 [or supplemental handle] is pivotably supported.” *Id.* at 4:1–3.

Relying on Figure 3, the Examiner found that Frauhammer teaches:

at least one accessory coupling unit (64 and 62 collectively in Figure 3) integral with said clamping ring (60) at an intersection of said radial direction (shown in Figure 1x below) and said circumference of said clamping ring (60) (apparent from Figure 1x below) and including a holding element (72 in Figure 3) for receiving an accessory (36 in Figure 3) therethrough in a direction perpendicular to the radial direction at the intersection of said radial direction and said circumference (apparent when Figure 1x below is viewed in relation to Figure 3) and a fastening element (68 in Figure 3) for fastening the accessory (36) to said holding element (72) (Col. 4 lines 1–11).

Final Act. 5.⁶

⁶ “Figure 1x” refers to the Examiner’s annotated version of Frauhammer Figure 1. *See* Final Act. 6.

Appellant argues that the asserted fastening and holding elements of Frauhammer are merely two legs of a yoke structure and, in any event, the asserted fastening element (first leg 68) does not fasten the asserted accessory (bearing bolt 36) to the asserted holding element (second leg 72). Appeal Br. 10–11. Rather, according to Appellant, “a first end (66) of the bearing bolt (36) is non-rotatably supported in the first leg (68), and the second end (70) of the bolt (36) is rotatably supported in the second leg (72).” *Id.* at 10. Appellant is correct. Frauhammer states:

The bearing bolt 36 is mounted such that its first end 66 is non-rotatably supported in a first leg 68 of a U-shaped receiving area 62 of a stepped extension of the collar 60 that extends radial to the housing 26. The second end 70 of the bearing bolt 36 is rotatably supported in a second leg 72 of the receiving area 62 (FIG. 3).

Frauhammer 4:5–11. Thus, the bearing bolt is “rotatably supported” in the asserted holding element. Even if being “rotatably supported” constituted “fastening” within the meaning of the claims, the asserted fastening element, i.e., first leg 68, does not provide or cause the alleged fastening.

For this reason, we reverse the obviousness rejections of claims 3–9.

SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
3-9	112 ¶2	Indefiniteness		3-9
3, 5-7, 9	103(a)	Kimbel, Frauhammer		3, 5-7, 9
4, 8	103(a)	Kimbel, Frauhammer, Esenwein		4, 8
3, 5-7, 9	103(a)	Flachenecker, Frauhammer		3, 5-7, 9
4, 8	103(a)	Flachenecker, Frauhammer, Esenwein		4, 8
Overall Outcome				3-9

REVERSED