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15/444,490	02/28/2017	Christophe SCHWARTZ	080437.69813US	3477
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CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			COLON MORALES, DAVID	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHE SCHWARTZ

Appeal 2020-000398
Application 15/444,490
Technology Center 3700

Before JOHN C. KERINS, BRETT C. MARTIN, and LISA M. GUIJT,
Administrative Patent Judges.

GUIJT, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ seeks our review under 35 U.S.C. § 134(a) of the rejection of claims 1, 3–11, 14, 17, and 18. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Bayerische Motoren Werke Aktiengesellschaft as the real party in interest. Appeal Br. 1.

THE INVENTION

Appellant's invention relates to "a device for protecting a high-pressure gas tank of a motor vehicle." Spec. ¶ 2. Claim 1, reproduced below as the sole independent claim on appeal, is illustrative of the subject matter on appeal.

1. A device for protecting a high-pressure gas tank of a motor vehicle, comprising:

at least one heat-conducting plate; and

a thermal triggering unit, wherein

the heat-conducting plate has a distal region and a proximal region,

the proximal region is disposed directly adjacent to the thermal triggering unit,

the heat-conducting plate is shaped so as to taper from the distal region to the proximal region, and

the heat-conducting plate at least in a region extends beyond a circumferential wall of the high-pressure tank.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

NAME	REFERENCE	DATE
Blumenthal	US 5,711,547	Jan. 27, 1998
Winter	US 2008/0066805 A1	Mar. 20, 2008

The following rejections are before us for review:

- I. Claims 4, 6, and 11 stand rejected under 35 U.S.C. § 112(b) as indefinite.

- II. Claims 1, 3–8, 10, 11, 14, 17, and 18 stand rejected under 35 U.S.C. §§ 102(a)(1), 102(a)(2), and 103 as anticipated, or alternatively, as unpatentable, over Winter.
- III. Claim 9 stands rejected under 35 U.S.C. § 103 as unpatentable over Winter and Blumenthal.

OPINION

Rejection I

The Examiner finds that claims 4, 6, and 11 are indefinite for ultimately depending from cancelled claim 2. Final Act. 3–4. Appellant does not present any argument for this rejection, and thus, Appellant has waived any argument of error. Appeal Br. 4–11; *see Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008) (explaining that summary affirmance without consideration of the substantive merits is appropriate where an appellant fails to contest a ground of rejection).

Accordingly, we summarily affirm the Examiner’s rejection of claims 4, 6, and 11 under 35 U.S.C. § 112(b) as indefinite.²

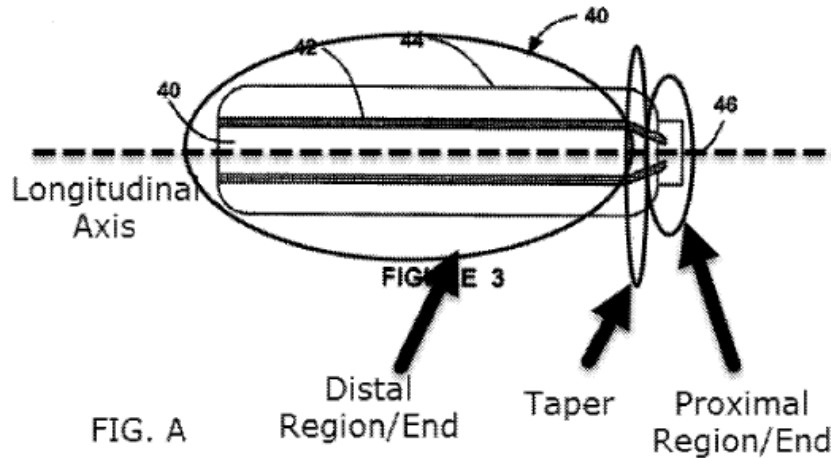
Rejection II

Anticipation

Regarding independent claim 1, the Examiner finds that the *assembly* of Winter’s heat conductive strips 42 discloses a heat-conducting *plate*, as

² *See also* 35 U.S.C. § 112(d) (“a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed”).

claimed. Final Act. 4 (citing Winter, Fig. 3); *see also* Ans. 13 (finding that “the strips 42 shown in Fig. 3 of Winter can be considered to be ‘a plate or a plate assembly’”). In support, the Examiner relies on a dictionary definition of the claim term “plate” as “a thin, flat sheet or strip of metal or other material” Ans. 13 (citing the Oxford dictionary). The Examiner also identifies distal and proximal regions of Winter’s *assembly* of strips, wherein the shape of the *assembly* tapers from the distal to the proximal region, as claimed. Final Act. 4. The Examiner’s annotated Figure 3 of Winter is reproduced below.



Ans. 17. The Examiner’s annotated Figure 3 of Winter depicts “a lengthwise view of a pressure tank system including heat conducting strips positioned along the pressure tank,” wherein the Examiner has indicated, with circles: a distal region of a plate, a taper (or tapered shape of the plate), and a proximal region of a plate, as required by claim 1. Winter ¶ 13.

Appellant argues that Winter’s *assembly* of heat conductive strips 42 is not a plate, as claimed. Appeal Br. 4–5; Reply Br. 2 (“Appellant claims a plate and Winter’s strips 42 are not a plate”). Appellant submits that the Examiner’s interpretation of the claim term “plate” is “not reasonable” and is “inconsistent” with both the use of the claim term “plate” in the

Specification and as the claim term “plate” is understood by a person of ordinary skill in the art. Appeal Br. 4–5; Reply Br. 1–3.

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Here, the Specification expressly discloses that “[a] heat-conducting plate is a plate, a panel or a layer which is capable of conducting away heat well or particularly well.” Spec. ¶ 9.

We are persuaded by Appellant’s argument. Winter discloses, with reference to Figure 3, that “heat conducting strips 42 are positioned in contact with a pressure tank 44.” Winter ¶ 18. Interpreting an assembly of Winter’s strips as a single plate is unreasonable, because the Examiner is arbitrarily grouping separate and non-intersecting structures to result in a plate, panel, or layer, as the claim term “plate” is defined in the Specification.³ The express definition of the claim term “plate” in the Specification does not include *an assembly* of plates, as the claim term plate is interpreted by the Examiner *supra*.

Accordingly, we do not sustain the Examiner’s rejection of independent claim 1, and claims 3–8, 10, 11, 14, 17, and 18 depending

³ Notably, we find that a *single* aluminum strip 42, as well as *each* of Winter’s steel, copper, or aluminum layer 20 and aluminum foil layer 36, separately disclose “a plate,” as claimed, because an ordinary definition of the claim term “panel” includes an aluminum strip (i.e., a thin, flat strip of metal), as provided by the Examiner *supra*, and a metal layer is expressly included in the definition of the claim term “plate” as defined in the Specification *supra* (i.e., defining plate as a plate, panel or *layer*). See Spec. ¶ 9; Winter ¶¶ 16, 17; *cf.* Appeal Br. 4 (concluding that Winter’s layers 20, 36 are not plates).

therefrom, under 35 U.S.C. §§ 102(a)(1) or 102(a)(2) as anticipated by Winter.

Obviousness

Alternatively, regarding the limitation of claim 1 requiring the plate to be shaped so as to taper from the distal region to the proximal region, the Examiner proposes modifying Winter's pressure tank system to "*optimize* the width and/or thickness of [Winter's] heat conducting strip *assembly* to have a greater width and/or thickness on the distal region that gradually tapers to a minimal width and/or thickness at the proximal region," to improve "remote heat detection" while "reducing material cost," to result in the claimed subject matter. Final Act. 5–6 (emphasis to "assembly" added) (citing Winter ¶ 18 ("[t]he number of strips 42, the thickness of the strips 42 and the width of the strips 42 can be designed for a particular tank system to be the most effective as possible")). Notably, the Examiner proposes modifying Winter's "strip *assembly*," and therefore, the Examiner's alternative rejection under 35 U.S.C. § 103 does not cure the deficiency in the Examiner's finding with regard to the claim term "plate" as discussed *supra* pursuant to the Examiner's rejection of claim 1 under to 35 U.S.C. §§ 102(a)(1) or 102(a)(2).

Accordingly, we also do not sustain the Examiner's rejection of independent claim 1, and claims 3–8, 10, 11, 14, 17, and 18 depending therefrom, under 35 U.S.C. § 103, as unpatentable over Winter. Final Act. 5–6.

Rejection III

The Examiner's reliance on Blumenthal for disclosing concave side edges in at least one area and in a longitudinal direction of the plate does not cure the deficiency in the Examiner's finding *supra* that the *assembly* of Winter's strips 42 discloses a plate, as claimed; therefore, we do not sustain the Examiner's rejection of claim 9, which depends from claim 1, under 35 U.S.C. § 103, as unpatentable over Winter and Blumenthal. Final Act. 12–13.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)	Affirmed	Reversed
4, 6, 11	112(b)	Indefiniteness	4, 6, 11	
1, 3–8, 10, 11, 14, 17, 18	§§ 102(a)(1), 102(a)(2), 103	Winter		1, 3–8, 10, 11, 14, 17, 18
9	103	Winter, Blumenthal		9
Overall Outcome			4, 6, 11	1, 3–11, 14, 17, 18

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED–IN–PART