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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN A. ROTH

Appeal 2020-001394
Application 15/278,755
Technology Center 3600

Before DANIEL S. SONG, BRETT C. MARTIN, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

SONG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), the Appellant¹ appeals from the Examiner's decision to reject claims 6–14 and 18–24.² We have jurisdiction under 35 U.S.C. § 6(b).

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). The Appellant identifies the real party in interest as the inventor Steven A. Roth. Appeal Br. 3.

² The Examiner indicates that claims 4 and 5 would be allowable if rewritten to be in independent form. Final Act. 8; Appeal Br. 5. Claims 25–27 have been canceled. Appeal Br. 26, Claims App.; *see also* Advisory Action, mailed August 15, 2019.

We AFFIRM.

CLAIMED SUBJECT MATTER

The claims are directed to a method of clamping a strut channel.

Claim 22, reproduced below, is illustrative of the claimed subject matter:

22. A method of clamping a strut channel to an element with a clamp, where the element is a rigid element having a first element side and a second element side parallel to the first element side, where the clamp includes a clamp bottom having a threaded aperture, a pair of clamp sides that are parallel and extend from the clamp bottom, and a threaded element having a distal end, where the threaded element passes through the threaded aperture with the distal end between the pair of clamp sides, where each of the pair of clamp sides has a notch defining one of a pair of clamp surfaces, where the pair of clamp surfaces are coplanar, and where the strut channel has a rectangular cross section defined by a strut back, a strut front opposite the strut back, and a pair of strut sides extending from the strut back to the strut front, and where the strut front includes an aperture forming a strut opening, such that an inner surface of the strut back faces the strut opening, said method comprising:

placing the clamp and the strut channel on the element, where the pair of clamp surfaces is adjacent to the first element side, where the distal end of the threaded element fits through the strut opening and extends towards the inner surface of the strut back, and where the strut back contacts the second element side, and where the strut opening is adjacent to the clamp bottom; and

tightening the threaded element against the strut channel, and where tightening the threaded element advances the distal end of the threaded element against the inner surface of the strut back, such that the clamp forces the strut back against the second element side.

Appeal Br. 25–26, Claims App., emphasis added.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Stamper	US 3,126,182	Mar. 24, 1964
Pflieger	US 4,717,102	Jan. 5, 1988
Myers	US 8,480,041 B2	July 9, 2013

OPINION

The Examiner rejects claims 6–14 and 18–24 under 35 U.S.C. § 103 as unpatentable over Stamper in view of Myers and Pflieger. Final Act. 2. As to independent claim 22, the Examiner finds that Stamper discloses the method substantially as claimed, but “discloses a pipe rather than a strut channel.” Final Act. 3–4. The Examiner finds that “Myers discloses a method of clamping wherein the element being clamped can be either a pipe (Fig. 4) or a strut channel having a square cross section (Fig. 3).” Final Act. 3. The Examiner concludes that it would have been obvious to a person of ordinary skill in the art to have “substitute[d] the pipe of Stamper with a strut channel as suggested by Myers,” and that such substitution of known conduit types yields no extraordinary or unexpected results. Final Act. 3. The Examiner further concludes that it would have been obvious to one of ordinary skill to extend the threaded element of Stamper to “accommodate a strut channel as supported by Pflieger.” Final Act. 4. We agree with the Examiner’s findings and conclusions, and address the Appellant’s arguments *infra*.

The Appellant argues that the Examiner’s reliance on Pflieger as teaching that it is known in the art to have a threaded element advance to the inner surface of a strut back is in error. Appeal Br. 16. In that regard, the Appellant argues that Pflieger attains its clamping “by the force of the jaw

members against the strut side, and not by advancing a threaded member to the inner surface of the strut back.” Appeal Br. 16. Specifically, the Appellant argues that in Pflieger, “a connecting threaded member 33 [] is tightened to force jaw members 31, 32 towards one another and clamp to the strut side.” Appeal Br. 17. Accordingly, the Appellant contends that because “[t]here is no teaching or suggestion [in] Pflieger for ‘advancing a threaded element to the inner surface of the strut back,’” and no other reference teaches or suggests such a feature, the rejection should be reversed. Appeal Br. 17. The Appellant also argues that there is no motivation to combine the references to attain the claimed threaded element being tightened against the inner surface of the strut back because the configurations of Stamper and Pflieger are different, where Pflieger’s “threaded element does not and cannot contact the strut.” Appeal Br. 18–19.

The Appellant’s arguments are unpersuasive. In Pflieger, the head portion 33, the stem portion 32, and the lower arm portion 32, do not move relative to one another, but instead, are integral parts of the clamp 30. Pflieger, col. 3, ll. 20–20–23; Figs. 2, 3. In addition, contrary to the Appellant’s assertions, tightening the screw 36 (i.e., threaded member) of Pflieger causes the threaded member to contact the wall of the channel rail 13 to thereby cause the clamp to pivot and raise the cabinet structure 14 in contact position with the supporting rail assembly 11. Pflieger, col. 4, ll. 1–6; Figs. 3, 4.

It is apparent from careful review of the Appellant’s arguments and the annotated figure in its Appeal Brief, that the Appellant’s arguments are directed to U.S. Patent No. 4,846,431 to Pflieger (issued July 11, 1989) also of record, instead of U.S. Patent No. 4,717,102 to Pflieger (issued January 5,

1988), which was cited and relied upon by the Examiner in rejecting the claims. *Compare* Pflieger ('102), Fig. 3, *with* Appeal Br. 15 *and* Pflieger ('431), Fig. 3.

As discussed above, Pflieger relied upon in the rejection discloses that it is known in the art to have a threaded element advance to the inner surface of a strut as explained by the Examiner, and we agree with the Examiner that it would have been obvious to one of ordinary skill to extend the threaded element of Stamper to “accommodate a strut channel as supported by Pflieger.” Final Act. 4. In addition, to any extent that there may be some differences between the Appellant’s clamping and that disclosed in Pflieger, we agree with the Examiner that such differences are not “germane to the outstanding rejection in the instant case” because the rejection relies on Pflieger to establish that it would have been obvious to extend the threaded element of Stamper “to accommodate a strut channel.” Ans. 8; Final Act. 4.

Therefore, in view of the above, we affirm the Examiner’s rejection of independent claim 22. The Appellant does not submit any arguments directed to dependent claims 6–14, 18–21, 23, and 24, but relies on their ultimate dependency on claim 22 for patentability. Appeal Br. 19. Accordingly, these claims fall with claim 22.

CONCLUSION

The Examiner’s rejection is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
6-14, 18-24	103	Stamper, Myers, Pflieger	6-14, 18-24	

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