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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LAZAR IZRADEL

Appeal 2020-002018
Application 16/031,195
Technology Center 2800

Before JEAN R. HOMERE, BARBARA A. BENOIT, and
PHILLIP A. BENNETT, *Administrative Patent Judges*.

BENNETT, *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 1–10, which constitute all of the pending claims. Appeal Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Gama Sonic USA, Inc. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to a solar LED (light emitting diode) light bulb. The light bulb is equipped with solar panels mounted in the neck portion of the bulb which are used to charge a battery which powers the array of LEDs to emit light. Spec., Abstract. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A light bulb comprising:

a light bulb body comprising a bulbous portion that narrows into a neck portion, said neck portion extending into a base portion;

an array of LEDs mounted in said bulbous portion;

one or more solar photovoltaic panels mounted inside said neck portion; and

a battery disposed in said light bulb body that powers said LEDs and which is charged by said one or more solar photovoltaic panels, and wherein said one or more solar photovoltaic panels extend from said neck portion into part of said bulbous portion.

Appeal Br. 11 (Claims Appendix).

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Waterbury	US 4,918,357	Apr. 17, 1990
Robinson	US 9,115,856 B1	Aug. 25, 2015

REJECTIONS

Claims 1, 2, 5, 7, 8, and 10 stand rejected under 35 U.S.C.

§§ 102(a)(1) and 102(a)(2) as being anticipated by Robinson. Final Act. 2–

4.

Claims 3, 4, 6, and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Robinson and Waterbury. Final Act. 5–9.

ISSUE

Has the Examiner erred in finding Robinson discloses “wherein said one or more solar photovoltaic panels extend from said neck portion into part of said bulbous portion,” as recited in claim 1?

ANALYSIS

The Examiner’s Findings

The Examiner rejects claim 1 as anticipated by Robinson. Final Act. 2–3. Relevant to the issue raised by Appellant, the Examiner finds that Robinson, with reference to Figures 1–5, discloses:

a light bulb body (see body of 20) comprising a bulbous portion (see lower portion of 20) that narrows into a neck portion (see mid portion of 20), said neck portion (see mid portion of 20) extending into a base portion (see upper portion of 20)

an array of LEDs (light emitting diodes 100) mounted in said bulbous portion (lower portion of 20);

one or more solar photovoltaic panels (individual photovoltaic panels 75) mounted inside said neck portion (mid portion of 20)

...

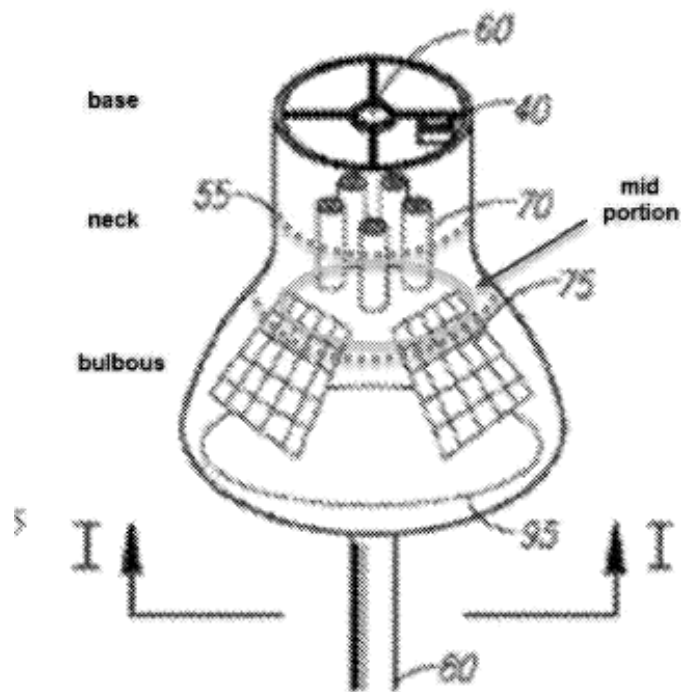
wherein said one or more photovoltaic panels (75) extend from said neck portion (mid portion of 20) to said bulbous portion (lower portion of 20).

Final Act. 2–3 (italics added). The Examiner explains that the recited “neck portion” is not defined in the Specification, and the lack of a definition warrants a broader interpretation:

The Examiner explains:

[S]ince the neck portion has not been defined in the claims or specification, the Examiner has given the term “portion” of the neck its broadest reasonable interpretation. Additionally, see annotated figure 3 of Robinson showing a circled mid portion, as an example of one of many possible portions of the neck. It is clear from figure 3 below, the photovoltaic panel extends from the neck portion into the bulbous portion, as required by claim 1.

Ans. 4. Additionally, the Examiner provides an annotated version of Robinson’s Figure 3 to illustrate the reasoning underlying the anticipation rejection, which is reproduced below.



Robinson’s Figure 3 with annotations added by the Examiner

Appellant’s Arguments

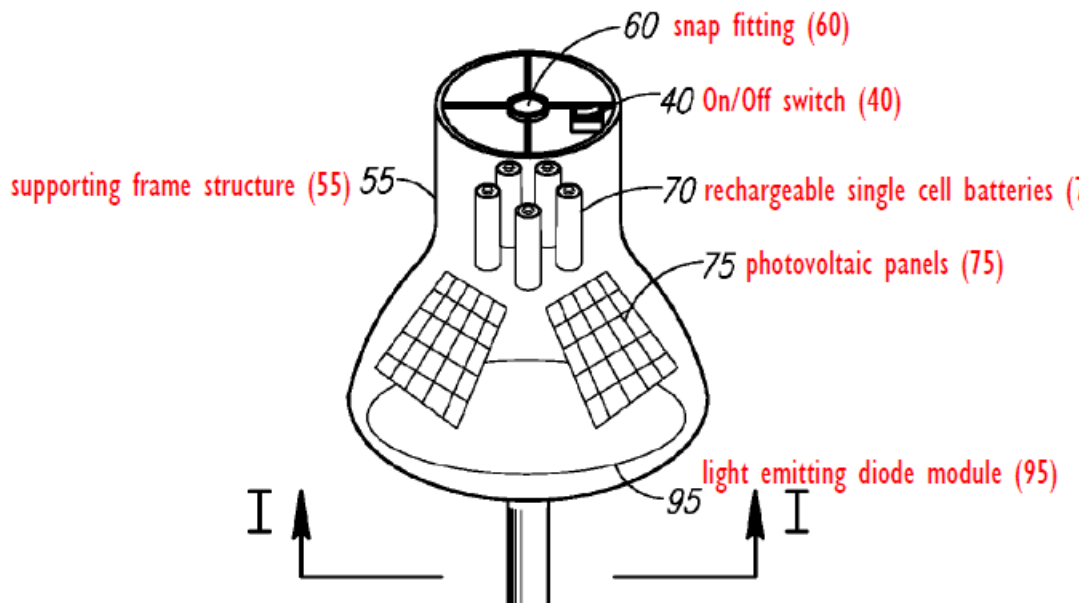
Appellant argues the Examiner has erred because Robinson does not disclose “wherein said one or more solar photovoltaic panels extend from said neck portion into part of said bulbous portion.” Appeal Br. 8–9. More specifically, Appellant argues “[t]he Oxford dictionary definition of neck is

either ‘the part of an animal that connects the head with the body’ or ‘a narrow connecting or end part of something; narrow piece of land or sea; narrow part near one end of an organ’.” Appeal Br. 8. Appellant maintains that under this definition, “it is clear that the neck must be a narrow connecting part between the bulbous portion and the base portion.” Appeal Br. 8. According to Appellant, Robinson discloses “[t]he bulbous portion of 20 is clearly continuously bulbous up to the beginning of the straight portion marked 55” which “is the only point where the bulbous portion narrows.” Appeal Br. 8. Thus, Appellant argues, “[t]he neck portion [in Robinson] can only be above the point where the lower bulbous portion meets the straight portion,” and “solar photovoltaic panels 75 do not reach this point.” Appeal Br. 8.

Our Review

We agree with Appellant that the Examiner has erred in rejecting claim 1 as anticipated by Robinson. Anticipation is a test of strict identity. *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1296 (Fed. Cir. 2002). That is, to meet the strict identity test for anticipation, all elements must be disclosed in exactly the same way as they are arranged or combined in the claim. *Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1325, 1332 (Fed. Cir. 2010). In this instance, the Examiner’s rejection of claim 1 fails to meet this exacting requirement.

To better explain our decision, we reproduce an annotated version of Robinson’s Figure 3 that identifies certain components of an interchangeable solar-powered light module (15) as described in the Robinson’s Specification:



Robinson's Figure 3 with annotations illustrates various components of a solar-powered light module (15)

As shown in the annotated drawing, Robinson's solar-powered light module (15) includes a supporting frame (55) that "includes a substantially bell-shaped shell defining an upper end, a lower end, and a hollow interior." Robinson, col. 5, ll. 23–24. Robinson further describes that the light module (15) includes a top snap fitting (60) and an ON/OFF switch (40) in the "upper portion of the supporting frame structure." *Id.* at col. 5, ll. 28–30. Robinson further describes that "the upper portion of the supporting frame structure also houses a multitude of rechargeable single cell batteries." *Id.* col. 5, ll. 31–32. Robinson also discloses that the "lower portion of the supporting frame structure 55 is provided with a plurality of individual photovoltaic panels 75" (*id.* at col. 5, ll. 35–36) and further includes "[a] light-emitting diode module 95 [that] is located at the bottom" of the light module (15) (*id.* at col. 5, ll. 47–48).

We note that in describing structure of the solar-powered light module, Robinson identifies an upper end, a lower end, and a hollow interior. Robinson, col. 5, ll. 23–24 (“The support frame includes a substantially bell-shaped shell defining an upper end, a lower end, and a hollow interior.”). Other than this generalized description of the shape of the device, Robinson does not provide any disclosure regarding different portions of the device. That is, the description provided in Robinson provides no demarcation points indicating where any part that can be reasonably described as a bulbous portion ends and where a neck portion begins.

Instead, noting the absence of a lexicographical definition of a “neck portion,” and under the rubric of broadest reasonable interpretation, the Examiner appears to have arbitrarily selected dividing lines to define the portions of the Robinson light module, as shown by the dashed lines in Examiner-annotated Figure 3. *See* Ans. 4 (“Since the neck portion has not been defined in the claims or specification, the Examiner has given the term ‘portion’ of the neck its broadest reasonable interpretation.”). However, the absence of an explicit definition for “neck portion” does not permit the Examiner to interpret the claim by selecting “an example of one of many possible portions of the neck” which encompasses the prior art. Rather, the Examiner is tasked with first ascertaining the scope of the claim, including the recited “neck portion,” and then comparing properly construed claim to the prior art. *Homeland Housewares, LLC v. Whirlpool Corp.*, 865 F.3d 1372, 1374–75 (Fed. Cir. 2017) (“Anticipation is a two-step analysis. The first step is properly interpreting the claims. The second step is determining whether the limitations of the claims, as properly interpreted, are met by the

prior art” (citations omitted)). Here, the Examiner erred by first comparing the prior art to the claim, and then by selecting a claim interpretation based on that comparison.

Appellant offers a definition for “neck portion.” Specifically, Appellant cites a dictionary definition which defines “neck” as, *inter alia*, “a narrow connecting or end part of something.” Appeal Br. 8 (citing “Oxford dictionary”). We discern no error in Appellant’s proposed construction, as it is consistent with the description in the Specification, and it accords with the ordinary and customary meaning of the term. Applying that definition, we agree with Appellant that the Examiner errs in characterizing the “mid-portion” of Robinson as a “neck portion.” The portion of Robinson characterized by the Examiner as the “neck portion” is not a narrow connecting or end part of light module. Rather, the part of the Robinson device identified by the Examiner as the “neck portion” is a rounded bulbous area of the device. As such, we agree with Appellant that the solar panels (75) in Robinson are positioned exclusively in the bulbous portion of the light module (15), while the claim requires that the solar panels be “mounted inside said neck portion” and “extend from said neck portion into part of said bulbous portion.” Appeal Br. 11 (Claims Appendix). As such, the light module (15) disclosed in Robinson is not *exactly the same as* what is claimed, and the strict identity requirement for anticipation is not met in this instance. We, therefore, do not sustain the rejection of claim 1 under 35 U.S.C. § 102. Independent claims 9 and 10 also include recitations that require the solar photovoltaic panels be “mounted inside said neck portion.” Appeal Br. 12 (Claims Appendix). For the same reasons, we also do not sustain the rejection of claims 9 and 10.

Remaining Claims

Claims 2, 5, 7, and 8 depend from claim 1, and are also rejected as being anticipated by Robinson. These claims stand together the claim 1.

Claims 3, 4, 6, and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Robinson and Waterbury. The Examiner makes no findings with respect to Waterbury that would cure the missing disclosure in Robinson. As such, we also do not sustain the rejection of claims 3, 4, 6, and 9 under 35 U.S.C. § 103.

CONCLUSION

We reverse the Examiner's rejections.

More specifically,

We reverse the rejection of claims 1, 2, 5, 7, 8, and 10 under 35 U.S.C. §§ 102(a)(1) and 102(a)(2) as being anticipated by Robinson.

We reverse the rejection of claims 3, 4, 6, and 9 under 35 U.S.C. § 103 as being unpatentable over Robinson and Waterbury.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 5, 7, 8, 10	102	Robinson		1, 2, 5, 7, 8, 10
3, 4, 6, 9	103	Robinson, Waterbury		3, 4, 6, 9
Overall Outcome				1-10

REVERSED