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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte RICHARD P. FENNELLY

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Appeal 2020-002210
Application 14/544,293
Technology Center 3700

_____

Before STEFAN STAICOVICI, EDWARD A. BROWN, and JILL D. HILL, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's decision in the Non-Final Office Action (dated May 2, 2019, hereinafter "Non-Final Act.") rejecting claims 1–4. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We REVERSE.

[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. CoilPod LLC is identified as the real party in interest in Appellant's Appeal Brief (filed June 25, 2019, hereinafter "Appeal Br."). Appeal Br. 1.

INVENTION

Appellant's invention is directed to a method for "signaling the need to clean the condenser coils in an operating refrigerator or freezer appliance." Spec. 1.

Claim 1, the sole independent claim, is representative of the claimed invention and reads as follows:

> 1. A method for signaling the need to clean condenser coils having dirt and debris on the outside of the coils in an operating refrigeration appliance which comprises directly connecting a temperature monitor to the coil as the only means to signal a need for coil cleaning when a predetermined rise in temperature has occurred from a baseline temperature that exists when the coil is clean.

REJECTIONS

I. The Examiner rejects claims 1–4 under 35 U.S.C. § 112(a) as failing to comply with the written description requirement.

II. The Examiner rejects claims 1–4 under 35 U.S.C. § 112(b) as being indefinite.

III. The Examiner rejects claims 1–4 under 35 U.S.C. § 102(a)(1) as being anticipated by Koji.[2]

[2] Koji, JP 2002-150417 A, published May 24, 2002. We derive our understanding of this reference from the English language translation contained in the image file wrapper of this application. All references to the text of this document are to portions of the translation.

ANALYSIS

Rejection I

The Examiner finds that the phrase "as the only means" in the limitation of "directly connecting a temperature monitor to the coil as the only means to signal a need for coil cleaning" is not supported by the original disclosure. Non-Final Act. 3. According to the Examiner, "nowhere in the [S]pecification is it illustrated or [can it] be found that the temperature monitor is *the only means to signal a need for coil cleaning*." *Id.* at 5.

Appellant acknowledges that although there is no *in haec verba* requirement, nonetheless, when an explicit limitation in a claim is not present in the written description, it must be shown that a person of ordinary skill would have understood that the description requires that limitation. Appeal Br. 3–4 (citing *In re Lukach*, 442 F.2d 967, 969 (CCPA 1971)). Thus, Appellant asserts "there is no description in the [S]pecification of any other way in which the coil fouling process is detected or monitored ---- it is only done through monitoring of the temperature rise over time." *Id.* at 4 (bolding omitted) (citing Spec. 3; *Ex parte Narayanan*, Appeal No. 2008-6356 (BPAI May 18, 2009)).

In response, the Examiner notes that when an explicit limitation is not present in the Specification, in order for the limitation to have support in the original disclosure, it must be shown that a person of ordinary skill in the art would understand that the disclosure *requires* the limitation. Examiner's Answer (dated Aug. 16, 2019, hereinafter "Ans.") 3 (citing MPEP § 2163(II)(A)(3)(b)). Hence, the Examiner takes the position that "[t]he explicit limitation ['as the only means'] is not present in the description and

there is no evidence that the description requires" such a limitation. *Id.* at 4; *see also Hyatt v. Boone*, 146 F.3d 1348, 1353 (Fed. Cir. 1998).

We do not agree with the Examiner's position because the Specification describes using a temperature monitor to signal coil cleaning, which in contrast to prior art methods, represents a "more *simple* means to indicate a dirty condenser coil condition." Spec. 2–3 (emphasis added). In other words, a person of ordinary skill in the art would understand that the original disclosure *requires* the temperature monitor to be the "the only means" for signaling a need for coil cleaning because that is the way to provide for a "more *simple* means to indicate a dirty condenser coil condition." Moreover, *simplicity* of monitoring the temperature of a condenser coil as a way of indicating a need for coil cleaning provides a reason to exclude other means for signaling coil cleaning. *See Santarus, Inc. v. Par Pharm., Inc.*, 694 F.3d 1344, 1351 (Fed. Cir. 2012) (Negative claim limitations are adequately supported when the Specification describes a *reason to exclude* the relevant limitations.).

As such, for the foregoing reasons, we do not sustain the rejection under 35 U.S.C. § 112(a) of claims 1–4 as failing to comply with the written description requirement.

Rejection II

The Examiner finds that

> [I]t is not clear how the "a temperature monitor" is capable of performing the functions of signaling a need for coil cleaning, indicating an actual risen of temperature of the coil, lighting up at an actual risen of temperature of the coil, and displaying a message at an actual risen of temperature of the coil without the help of a controller or without having a controller integrated within.

Non-Final Act. 3.

Appellant argues that because "it is the temperature differential only that . . . is being measured and correlated with coil fouling," "[n]o controller, either separate or integrated with the temperature monitor is needed." Appeal Br. 5.

We are not persuaded by Appellant's argument because by not reciting a controller, the claims are merely broad, not indefinite. *See In re Johnson*, 558 F.2d 1008, 1016 n.17 (CCPA 1977) (breadth is not indefiniteness). That is to say, it is clear that the claims require a temperature monitor for performing the above noted functions; no further detail is necessary to know the metes and bounds of the claims. Moreover, Appellant's Specification describes a "temperature monitor" that provides a readout of the actual coil temperature, or in the alternative, a "programmed" temperature monitor, which a skilled artisan would understand to include a "controller." Spec. 3–4. Thus, Appellant's Specification describes an embodiment that does not include a controller.

Accordingly, for the foregoing reasons, we do not sustain the rejection under 35 U.S.C. § 112(b) of claims 1–4 as being indefinite.

Rejection III

The Examiner finds that Koji discloses a method for signaling the need to clean condenser coils 18 in an operating refrigeration appliance 14 including, *inter alia*, directly connecting temperature monitor 21, 22 to coil 18 to signal when the temperature increases beyond a baseline temperature corresponding to a clean coil. Non-Final Act. 4 (citing Koji, Abstract, paras. 9, 10, Fig. 1).

Appellant argues that "[t]he last four lines in paragraph [0011] in the machine translation of Koji very clearly indicate that this reference only teaches a system where temperature **and** air flow differential readings are needed to detect coil fouling." Appeal Br. 6. According to Appellant, "[a]t no point does Koji ever teach or even suggest measurement of the temperature differential ***alone***, apart from also measuring the air flow differential." *Id.* at 7. Moreover, Appellant points to "Figure 2 of Koji [as] reinforc[ing] the need for **both** temperature **and** air flow measurements . . . as respective inputs from temperature sensors 21 **and** 22, **and** air flow rate sensor 23 to controller 24." *Id.*

The Examiner responds that "[p]aragraphs 0009 and 0010 [of Koji], clearly explain the use of *either* temperature sensors (21, 22) *or* airflow sensor (23) to detect an abnormality." Ans. 5. Moreover, according to the Examiner, "[p]aragraph 0011 refers to the fact that control sensor (24) is obviously capable of compar[ing] the temperature sensors *and* the airflow sensors, whichever is being used." *Id.*

Koji discloses controller 24 for comparing the input from a sensor to a reference value corresponding to normal operation, and when the comparison exceeds an allowable value, outputting an alarm signal from controller 24 to lamp 25 to indicate that coil cleaning is required. *See* Koji, paras. 9–11, 13. Koji further discloses that because the sensor can be temperature sensors 21, 22 or air flow sensor 23, the input value is compared to a reference temperature value or a reference airflow value. *See id.* Moreover, Figure 2 of Koji illustrates controller 24 accepting input from both temperature sensors 21, 22 and airflow sensor 23.

At the outset, we do not agree with the Examiner's construction of independent claim 1 that reads out the phrase "as the only means" (*see* Non-

Final Act. 3; Ans. 4) because claims are construed with an eye toward giving effect to all terms in the claim. *Bicon Inc. v. Straumann Co*., 441 F.3d 945, 950 (Fed. Cir. 2006). Here, in light of Koji's disclosure, Appellant is correct that Koji "measure[s] both temperature and air flow differentials for *input* to its control section 24." Appeal Br. 7 (emphasis added); *see also In re Fritch*, 972 F.2d 1260, 1264 (Fed. Cir. 1992) ("[A] prior art reference is relevant for all that it teaches to those of ordinary skill in the art."). We do not agree with the Examiner that Koji employs *either* temperature sensors 21, 22 *or* airflow sensor 23 (*see* Ans. 5) separately, but rather uses both temperature sensors 21, 22 and airflow sensor 23 to determine whether coil cleaning is required and then signal a need for coil cleaning. In other words, Koji's controller 24 compares input from all sensors, namely, temperature sensors 21, 22 and airflow sensor 23, to reference both temperature and airflow values, and, when the comparison of either a temperature or an airflow input value exceeds an allowable value, it outputs an alarm signal to lamp 25 to indicate that coil cleaning is required.

As such, because Koji employs *both* temperature sensors 21, 22 *and* airflow sensor 23 to determine whether coil cleaning is required, Koji's temperature sensors 21, 22, which the Examiner equates to the claimed "temperature monitor," do not constitute "the *only* means to signal a need for coil cleaning," as called for by independent claim 1. *See* Appeal Br. 9 (Claims App.). Therefore, we do not sustain the rejection under 35 U.S.C. § 102(a)(1) of claims 1–4 as anticipated by Koji.

CONCLUSION

Claim(s) Rejected	**35 U.S.C. §**	**Reference(s)/ Basis**	**Affirmed**	**Reversed**
1–4	112(a)	Written Description		1–4
1–4	112(b)	Indefiniteness		1–4
1–4	102(a)(1)	Koji		1–4
Overall Outcome				**1–4**

REVERSED