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Richard P. Fennelly
2320 Depeyster Dr.
Cortlandt Manor, NY 10567

EXAMINER

HINCAPIE SERNA, GUSTAVO A

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD P. FENNELLY

Appeal 2020-002284
Application 15/731,262
Technology Center 3700

Before MICHAEL J. FITZPATRICK, WILLIAM A. CAPP, 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 1–8. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ “Appellant” refers to the applicant as defined in 37 C.F.R. § 1.42. Appellant identifies CoilPod LLC as assignee and sole real party in interest. Appeal Br. 1.

STATEMENT OF THE CASE

The Specification

The Specification discloses a “METHOD OF RETROFITTING REFRIGERATION UNITS FOR MORE EFFICIENT OPERATION.”

Spec., Title.

The Claims

Claims 1–8 are rejected. Final Act. 1. No other claims are pending.

Id. Claim 1, the sole independent claim on appeal, is illustrative and reproduced below.

1. A method of retrofitting a refrigeration unit, which contains dirty condenser coils, for more efficient operation which comprises:

(a) cleaning the dirty condenser coils which are contained in an enclosure, having an opening that had been covered with a cover containing vents that allowed the entry of dust and other debris thereto, within such refrigeration unit; and

(b) covering the opening to the enclosure after those coils have been cleaned with a cover that comprises an air-cleaning blower mounted on the outer surface of the cover over an orifice communicating with the enclosure to supply cleaned air to the enclosure containing the condenser coils, said retrofitted cover otherwise being non-vented.

Appeal 9 (paragraphing adding).

The Examiner's Rejections

There are two rejections before us, both of which are pursuant to 35 U.S.C. § 103:

1. claims 1–4 as unpatentable over Yoo,² Roston,³ Aeroconditioner,⁴ and Hellwig⁵ (Final Act. 2); and
2. claims 5–8 as unpatentable over Yoo, Roston, Aeroconditioner, Hellwig, and Lamstaes⁶ (*id.* at 4).

DISCUSSION

Rejection 1

Appellant argues against the rejection of all claims together. Appeal Br. 2–7. We choose claim 1 as representative. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner found that Yoo “discloses a method of retrofitting a refrigeration unit” and all of the subject matter of claim 1, save step (b). Final Act. 1 (citing Yoo, Abstract and Fig. 7). The Examiner found that Roston teaches “air-cleaning blowers are widely used in customized designs that include the use of air-cleaning blowers attached into another machine or ductwork . . . for the purpose of more effectively supplying clean air while doing so more reliably, economically, and effectively for [sic, prolonged] periods.” *Id.* at 2–3 (citing Roston 4:36–43). The Examiner found that Aeroconditioner teaches air-cleaning blowers (1) come with integral covers

² US 8,182,611 B2, issued May 22, 2012 (“Yoo”).

³ US 9,259,675 B2, issued Feb. 16, 2016 (“Roston”).

⁴ “How Aero Conditioner’s Air-Cleaning BlowersTM Differ from Filters and Canisters” and “Air Cleaners Used for Feed Air” (both downloaded/printed Aug. 12, 2015, from www.aeroconditioner.com (collectively, “Aeroconditioner”). *See* Nov. 20, 2017, List of References Cited.

⁵ US 4,942,805, issued July 24, 1990 (“Hellwig”).

⁶ US 6,976,368 B1, issued Dec. 20, 2005 (“Lamstaes”).

to facilitate mounting and (2) are commonly used to help keep dust off coils and other equipment, thereby reducing costs of operation. *Id.* at 3 (citing Aeroconditioner). The Examiner found that Hellwig teaches “air circulation fans (14) can be provided in removable panel cover portions (10, 12) for the purpose of improving circulation of air or removing/dissipating heat as an arrangement provided as a retrofit in the field.” *Id.* at 3 (citing Hellwig, Abstract, 1:30–34). Based on these findings, the Examiner concluded that it would have been obvious “to incorporate in Yoo the teachings of Roston, Aeroconditioner and Hellwig to cover the opening to the enclosure of Yoo, after those coils have been cleaned, with” a cover having the structure recited in step (b) “in order to keep dust off the condenser coil, optimizing reliability and reducing costs of operation of the refrigeration unit.” *Id.*; *see also id.* at 5:

The combination of Roston and Aeroconditioner provides the motivation of more effectively supplying clean air into another machine or even a ductwork by doing so more reliably, economically, and effectively for prolonged periods (Roston) and to different environments such evaporative coolers, furnaces, and air compressors, etc. to help keep dust off coils and other equipment, reducing costs of operation (Aeroconditioner), while the teachings of Hellwig are pertinent to air circulation fans provided in removable panel cover portions as a *retrofit* in the field (see Hellwig [sic, Hellwig] abstract). A person of skill in the art will find those combined teachings desirable and pertinent to modify the cleaning method of Yoo in order to more effectively supplying clean air while doing so more reliably, economically, and effectively for prolonged [sic, prolonged] periods while reducing costs of operation.

Appellant does not dispute any of the Examiner’s underlying findings regarding what the cited prior art references teach, but for the Examiner’s

finding that both Yoo and Hellwig teach the concept of “retrofitting.” Appeal Br. 3–4. With respect to Yoo, Appellant argues that “it is incorrect for the Examiner to preliminarily state that it ‘discloses a method of retrofitting a refrigeration unit’, with his citation of Fig. 7 therein.” *Id.* at 3 (quoting Final Act. 2)). With respect to Hellwig, Appellant argues it “too is absent of any teaching, suggestion or motivation of any type of retrofit operation, let alone the one particularly recited in Claim 1.” *Id.* at 4.

These arguments do not apprise us of error in the Examiner’s rejection. First, Hellwig *explicitly* teaches retrofitting. Hellwig, Abstract (“Thus, the air circulation arrangement may be provided as an original specification or added as a retrofit in the field.”), 3:4–9 (“This arrangement also allows the retrofit of panels in accordance with the changing requirements of the user and in accordance with the changing characteristics of the environment.”). Second, Yoo implicitly teaches the concept of retrofitting by disclosing providing a vacuum cleaning apparatus (66) to a refrigerator apparatus (60) as a long-term solution to the problem of dirty evaporator coils. Yoo 1:52–55, Fig. 7.

Appellant also argues that its own Specification discloses prior art solutions that teach away from the claimed invention. Appeal Br. 5 (citing Spec. 2:4–10). According to Appellant’s Specification, those prior art solutions are “[c]ondensing units [that] have been modified to include automated brushing means (see U.S. Patent Publication No. 2007/0062211) or [in which] the direction of rotation of the fan has been designed to reverse periodically (see U.S. Patent Nos. 6,792,769 and 7,024,878).” Spec. 2:5–8. This argument is not persuasive for multiple reasons.

First, an alternative solution to a problem does not constitute teaching away from a claimed solution to the problem. This is true even if the alternative would be preferred. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) (“The prior art’s mere disclosure of more than one alternative does not constitute a teaching away from . . . alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed.”); *Syntex (U.S.A.) LLC v. Apotex, Inc.*, 407 F.3d 1371, 1380 (Fed. Cir. 2005) (“[A] reference will teach away when it suggests that the developments flowing from its disclosures are unlikely to produce the objective of the applicant’s invention. A statement that a particular combination is not a preferred embodiment does not teach away absent clear discouragement of that combination.” (citations omitted)).

Second, in the very next sentence of the Specification, Appellant concedes that it was also known in the prior art to provide the panel/grille with *clean air* by “placing filter media over the panel or grille containing the vents to trap dust and other debris before it enters the enclosure holding the coils.” Spec. 2:8–10. Thus, even if the other solutions properly could be characterized as teachings away (here, they are not), they would not dictate a reversal of the Examiner’s rejection. *See Medichem S.A. v. Rolabo S.L.*, 437 F.3d 1157, 1165 (Fed. Cir. 2006) (“Where the prior art contains ‘apparently conflicting’ teachings (i.e., where some references teach the combination and others teach away from it) each reference must be considered ‘for its power to suggest solutions to an artisan of ordinary skill. . . . consider[ing] the degree to which one reference might accurately discredit another.’”) (quoting *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991)).

Appellant also argues that the “Aeroconditioner Pictame document,” which admittedly “is dated **after** the filing date of the instant application, . . . clearly **demolishes** any argument that the applicant’s instant invention would have been obvious to the person of ordinary skill in the art.” Appeal Br. 6. Appellant explains that this document proves that “the problem of coil fouling is to be solved according to this document **by redesign of the spacing of the coils, not** by any type of retrofit to the cover, as claimed herein, where an air-cleaning blower is employed to pre-scrub the dirty air before it contacts the coils.” *Id.* at 7. This argument is also unpersuasive of error in the Examiner’s rejection. The “Aeroconditioner Pictame document” might be evidence that a person of ordinary skill in the art sought to solve the problem of dirty coils through a different approach than Appellant. That document, however, proves nothing vis-à-vis the Examiner’s rationale for modifying the asserted prior art teachings from Yoo, Roston, Aeorconditioner, and Hellwig. Two solutions can be obvious at the same time. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) (“The prior art’s mere disclosure of more than one alternative does not constitute a teaching away from . . . alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed.”).

None of Appellant’s arguments apprise us of error in the Examiner’s rejection of claim 1. Accordingly, we affirm the rejection of claim 1, as well as that of claims 2–4, which fall therewith. 37 C.F.R. § 41.37(c)(1)(iv).

Rejection 2

Each of claims 5–8 ultimately depends from claim 1 and additionally recites “placing in the refrigeration unit a thermal sensor.” Appeal Br. 9. Appellant’s sole argument, unique to Rejection 2, is that “[t]he additional

citation of Lamstaes, which only discloses a thermal sensor, fails to cure the lack of suggestion of the applicant’s invention” in Rejection 1. *Id.* at 7. Thus, for essentially the same reasons as discussed above, we likewise affirm the rejection of claims 5–8.

SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–4	103	Yoo, Roston, Aeroconditioner, Hellwig	1–4	
5–8	103	Yoo, Roston, Aeroconditioner, Hellwig, Lamstaes	5–8	
Overall Outcome			1–8	

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