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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRANDON W. SPANGLER,
CORNEIL S. PAAUWE, and DOMINIC J. MONGILLO

Appeal 2015-001066
Application 11/679,958
Technology Center 3700

Before JENNIFER D. BAHR, HYUN J. JUNG, and
SUSAN L. C. MITCHELL, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Brandon W. Spangler et al. (Appellants)[1] appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1, 3, 4, 10, 12–15, and 20–26, which are the only claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] According to Appellants, the real party in interest is United Technologies Corporation. Appeal Br. 1.

THE CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter.

> 1. A featherseal for engagement with a turbine engine component comprising:
>
> a featherseal having a linear longitudinal side opposite to and parallel to a tab side which define a longitudinal axis therebetween, said featherseal having a first lateral tab which extends from said tab side transverse to said longitudinal axis and a second lateral tab which extends from said tab side transverse to said longitudinal axis, said first lateral tab spaced from said second lateral tab, said first lateral tab having a different length, relative to said longitudinal axis, than said second lateral tab.

REJECTIONS

I. Claims 1, 3, 4, 10, 12–15, and 20–26 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

II. Claims 1, 3, 4, 10, 12–15, 20–22, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sandy (US 4,573,866, iss. Mar. 4, 1986) and Stec (US 6,171,058 Bl, iss. Jan. 9, 2001).

III. Claims 1, 3, 4, 10, 12–15, and 20–26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Worley (US 5,609,469, iss. Mar. 11, 1997) and Stec.

DISCUSSION

Rejection I—Written Description

The Examiner finds that the limitation that the first lateral tab has a different length than the second lateral tab in independent claims 1, 10, and

14, and the limitation in claim 26 that the first opening has a different length than the second opening, lack written description support in the present application because "[t]he claimed limitation is broader than the subject matter taught by the original disclosure" and, thus, "includes embodiments not originally disclosed." Ans. 2–3.

The Examiner acknowledges that Figure 3, which forms part of the original application on its filing date, discloses the forward tab (tab 80) having a smaller length than the aft tab (tab 82), but finds no disclosure of the forward tab having a larger length than the aft tab, which is also encompassed by "the broad limitation of a 'different length.'" Ans. 3, 13.

Appellants contend that the disclosure of Figure 3 properly supports "at least one embodiment that is consistent with the claimed combination" and "[t]he fact that the Examiner can come up with another, undisclosed arrangement that would fit within the scope of the claims is irrelevant." Reply Br. 1–2.

We agree with Appellants that, in this case, the disclosure of one embodiment wherein the forward tab has a different (i.e., smaller) length than the aft tab and wherein the forward slot opening has a different (i.e., smaller) length than the aft slot opening is sufficient to provide support for the claim limitations in question, notwithstanding that the claim limitations that the first and second tabs and the first and second openings have different lengths also cover another embodiment (i.e., the forward tab having a larger length than the aft tab and the forward opening having a larger length than the aft opening) not specifically disclosed in the application. The Specification does not specifically address the relative lengths of the first and second tabs or the first and second openings and, in particular, gives no

indication that the specific arrangement illustrated (i.e., the forward tab and opening having shorter lengths than the aft tab and opening) is critical to the invention or is the only possible arrangement for the tabs and openings. Thus, unlike the patent disclosure in, for example, *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 1479 (Fed. Cir. 1988) ("the original disclosure clearly identifies the console as the only possible location for the controls" and the claims did not limit the location of the controls to the console), the original disclosure in the present application does not restrict the scope of the invention to the forward tab and opening having smaller lengths than the aft tab and opening.

We do not sustain the rejection of claims 1, 3, 4, 10, 12–15, and 20–26 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Rejections II and III—Obviousness

We discuss these rejections together because Appellants argue both of these rejections together, grouping together all of the claims subject to each ground of rejection. Appeal Br. 3–6. We select claim 1 as representative for each of these rejections, and the remaining claims subject to each rejection under 35 U.S.C. § 103(a) stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellants argue that Stec teaches away from the Examiner's proposed further modification of the featherseal of Sandy or Worley (either as modified by Stec) to resize one of the tabs to have a different length than the other tab. Appeal Br. 4–5; *see* Ans. 6 (explaining the rationale for the proposed modification). Appellants additionally contend that this proposed

"modification would render Stec unsatisfactory for its intended purpose (of providing two correct installations)." Appeal Br. 5.

The disclosure of Stec cited by Appellants as teaching away from providing tabs of different lengths reads as follows: "The damper is preferably symmetrical end-to-end for permitting two correct installation orientations, with two Murphy-proofed incorrect installation orientations which prevent assembly." Stec 6:54–57. Along these same lines, Stec also states:

> In the preferred embodiment illustrated in FIG. **2**, the damper body **28** is symmetrical across the neck **50** from forward-end-to-aft-end of the damper along the longitudinal axis **38**. Correspondingly, the damper is nonsymmetrical side-to-side across the longitudinal axis **38** in the circumferential direction. In this way, of the four possible orientations of installing the damper **28** in it[s] corresponding pocket **26**, two of the orientations are correct, with two orientations being incorrect and not achievable in view of the nonsymmetry of the side notches **34**,**48**.

Id. 5:34–43.

Thus, Stec expresses a preference for asymmetry across the longitudinal axis and symmetry along the longitudinal axis to provide two correct installation orientations and two incorrect installation orientations. This preference for symmetry over asymmetry along the longitudinal axis does not constitute a teaching away from providing tabs of different lengths. A reference does not teach away if it merely expresses a general preference for an alternative invention from amongst options available to the ordinarily skilled artisan, and the reference does not discredit or discourage investigation into the invention claimed. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) ("mere disclosure of alternative designs does not teach

away"). A person having ordinary skill in the art would have readily appreciated that Stec's damper may be shaped so as to provide one, two, or four possible correct installation orientations, depending on whether the shape is asymmetrical both along and across the longitudinal axis, symmetrical both along and across the longitudinal axis, symmetrical along the longitudinal axis and asymmetrical across the longitudinal axis, or asymmetrical along the longitudinal axis and symmetrical across the longitudinal axis. Stec expresses a preference for two possible correct installation orientations by providing symmetry along the longitudinal axis and asymmetry across the longitudinal axis, but does not discredit or discourage selection of one of the other alternatives. In fact, as the Examiner points out (Ans. 15), Stec expressly teaches that while certain embodiments considered to be "preferred and exemplary embodiments" have been disclosed, other modifications falling "within the true spirit and scope of the invention" may be apparent to those of ordinary skill in the art. Stec 6:64–7:3.

We also agree with the Examiner that providing tabs of different lengths would not render Stec's damper unsatisfactory for its intended purpose, as Appellants contend. Ans. 15–16. A damper/featherseal provided with tabs of different lengths, thereby being asymmetrical along its longitudinal axis, would have only one correct installation orientation (assuming asymmetry across its longitudinal axis, as taught by Stec), rather than the two correct installation orientations preferred by Stec, but would still function satisfactorily as a damper/featherseal with means for axial retention. *See* Stec 2:11–14 (stating a desire "to provide an improved

turbine blade vibration damper having sufficient damping mass with self retention for preventing damage and liberation thereof during operation").

For the above reasons, Appellants' arguments do not apprise us of error in the rejections of claim 1 under 35 U.S.C. § 103(a). Accordingly, we sustain the rejection of claims 1, 3, 4, 10, 12–15, 20–22, 25, and 26 as unpatentable over Sandy and Stec, and the rejection of claims 1, 3, 4, 10, 12–15, and 20–26 as unpatentable over Worley and Stec.

DECISION

The Examiner's decision rejecting claims 1, 3, 4, 10, 12–15, and 20–26 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement is REVERSED.

The Examiner's decision rejecting claims 1, 3, 4, 10, 12–15, 20–22, 25, and 26 under 35 U.S.C. § 103(a) as unpatentable over Sandy and Stec is AFFIRMED.

The Examiner's decision rejecting claims 1, 3, 4, 10, 12–15, and 20–26 under 35 U.S.C. § 103(a) as unpatentable over Worley and Stec is AFFIRMED.

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