The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TETSUYA KAWAMOTO, HIDEKI YAMADA, HIROYUKI KOBAYASHI, MINORU SHIMADA, KINGO OHMURA and ASAMI WAKABAYASHI

Appeal No. 2006-0005
Application No. 09/543,653

ON BRIEF

Before JERRY SMITH, BARRETT and OWENS, *Administrative Patent Judges.*

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1, 6, 8, 21 and 23-33. Claims 2-5, 7, 9-20 and 22 stand withdrawn from consideration by the examiner.

THE INVENTION

The appellants claim a temperature sensor comprising electrodes attached to elastic lead lines having semicircular kinked parts. Claims 1 and 26 are illustrative:

1. A temperature sensor comprising:

a temperature sensing element having electrodes thereon; and

elongated electrically conductive lead lines each attached to a corresponding one of said electrodes, said lead lines being elastic, said lead lines each having one end attached to a corresponding one of said electrodes and including an externally exposed semicircular kinked part proximal to the other end, said lead lines being bent in a same direction with respect to each other to form said kinked part such that the kinked parts on said lead lines are in a side-by-side relationship.

26. A temperature sensor comprising:

a temperature sensing element having electrodes thereon; and

elongated electrically conductive lead lines each attached to a corresponding one of said electrodes, said lead lines being elastic, said lead lines each having one end portion attached to a corresponding one of said electrodes and an externally exposed opposite end portion which includes a semicircular kinked part sandwiched between two mutually colinearly extending portions.

THE REFERENCES

McOrlly	3,087,134	Apr. 23, 1963
Wisnia	4,276,536	Jun. 30, 1981
Clem	5,367,282	Nov. 22, 1994
Katsuki[1] (Japan patent)	3-209704	Sep. 12, 1991

[1] The examiner relies upon an English abstract of Katsuki. The appellants do not argue that the abstract is incorrect or is not prior art.

THE REJECTIONS

The claims stand rejected as follows: claims 1, 21, 26, 29 and 30 under 35 U.S.C. § 102(b) as being anticipated by McOrlly; claims 1, 21, 26 and 28-30 under 35 U.S.C. § 102(b) as being anticipated by Katsuki; claims 6, 23, 24, 27, 31 and 32 under 35 U.S.C. § 103 as being obvious over Katsuki or McOrlly, in view of Clem; and claims 8, 25 and 33 under 35 U.S.C. § 103 as being obvious over Katsuki or McOrlly, in view of Wisnia.

OPINION

We reverse the rejections of claims 1, 6, 8, 21 and 23-25, and affirm the rejections of claims 26-33.

The appellants state that the claims stand or fall together (brief, page 6). Although additional references are applied to some of the dependent claims, the appellants do not argue the separate patentability of those claims. Thus, we would be within our right to address only one claim. *See In re Ochiai*, 71 F.3d 1565, 1566 n.2, 37 USPQ2d 1127, 1129 n.2 (Fed. Cir. 1995); 37 CFR § 1.192(c)(7)(1997). However, due to the difference in scope between 1) claims 1, 6, 8, 21 and 23-25, and 2) claims 26-33, we address one claim in each of these groups, i.e., claims 1 and 26.

Rejection over McOrlly

McOrlly discloses an electric heater comprising flexible electrical conductor members (32, 132) between current conductors (15, 115) and terminal conductor pins (16, 116) (col. 2, lines 4-5, 42 and 64-65; figure 2). The flexible electrical conductor members have a semicircular kinked portion and linear end portions (at 33 and 133; figure 2).

Claim 1

Claim 1 requires lead lines that are bent in the same direction with respect to each other to form kinked parts that are in a side-by-side relationship.

The examiner argues that the appellants' lead lines need not be bent in the same direction in the final product (answer, page 4). That argument is incorrect because the claims require that the claimed temperature sensor has lead lines bent in the same direction with respect to each other.[2] As shown in McOrlly's figure 2, the kinked flexible electrical conductor

[2] Even if the examiner's argument were correct, the examiner has not established that in the process McOrlly uses to make the product (col. 3, lines 15-27), the electrical conductor members (32, 132) are ever bent in the same direction with respect to each other.

members (32, 132) which the examiner relies upon as corresponding to the appellants' kinked parts (answer, page 3) are not bent in the same direction with respect to each other.

We therefore find that the examiner has not carried the burden of establishing a prima facie case of anticipation over McOrlly of the temperature sensor claimed in the appellants' claim 1. The examiner does not rely upon Clem or Wisnia for any disclosure that remedies the above-discussed deficiency in McOrlly. Accordingly, we reverse the rejections of claims 1, 6, 8, 21 and 23-25 wherein McOrlly is the primary reference.[3]

Claim 26

The examiner finds that 1) McOrlly's coiled resistor (12) is a sensing element and either the terminal conductor pins (16 and 116) attached thereto or the junctions between the coiled resistor and the terminal conductor pins are electrodes, and 2) the flexible electrical conductor members (32) are sandwiched between collinear end portions 16 and either 15 or 33, and 116 and either 115 or 133 (answer, page 4). Because the examiner's

[3] Claim 21, which is the only other independent claim among claims 1, 6, 8, 21 and 23-25, includes the above-discussed limitation.

findings have not been challenged by the appellants, we accept them as fact. *See In re Kunzmann*, 326 F.2d 424, 425 n.3, 140 USPQ 235, 236 n.3 (CCPA 1964).

The appellants' sole argument is that McOrlly's flexible conductor members (32) are not bent in the same direction in the finished product (brief, pages 7-8). This argument is not convincing because it is directed toward a limitation which is not in claim 26. *See In re Self*, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982). Consequently, we affirm the rejections of claim 26 and its dependent claims 27-33 wherein McOrlly is the primary reference.[4]

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[4] The appellants' brief "must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of patent [sic, Patent] Appeals and Interferences, unless good cause is shown." 37 CFR § 1.192(a)(1995). *See also, In re Kroekel*, 803 F.2d 705, 709, 231 USPQ 640, 642-43 (Fed. Cir. 1986) (an argument which was made

Rejection over Katsuki

Katsuki discloses a thermistor comprising an element (11) having electrodes (12) connected to lead wires (13) (abstract; figures 1a and 1b).

Claim 1

The examiner argues that Katsuki's thermistor has "externally exposed semicircular kinked parts proximal to the ends bent in the same direction with respect to each other. For example the bottom most bend and the first bend on the top are each bent to the right and downward" (answer, page 4). The examiner further argues that "the kinks are in a 'side-by-side' relationship even though there is a resistor between them where there is no disclosure for the term, and applicant's Fig. 4

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for the first time in a request for reconsideration to the board, which request was denied, was considered by the court to be waived in the appeal to the court).

discloses a circuit board between the leads so that the term 'side-by-side' does not preclude something between same" (answer, pages 4-5).

Even if Katsuki's element 11 were shrunk to zero, the upper and lower leads in figures 1(a) and 1(b) would not be bent in the same direction with respect to each other. In figure 1(a), the upper lead is first bent to the right, whereas the lower lead is first bent to the left. In figure 1(b), the upper lead is first bent to the left and the upper lead is first bent to the right. In either figure, if element 11 were folded such that the leads are on top of each other, the leads would bend in opposite directions.

Hence, the examiner has not established a prima facie case of anticipation of the appellants' claimed invention by Katsuki. The examiner does not rely upon Clem or Wisnia for any disclosure that remedies the above-discussed deficiency in Katsuki. We therefore reverse the rejections of claims 1, 6, 8, 21 and 23-25 wherein Katsuki is the primary reference.

Claim 26

The examiner argues that each of the lead wires in figure 1b has two semicircular kinked portions sandwiched between two

mutually collinearly extending portions (answer, page 4).

The appellants' sole argument is that Katsuki's two kinked portions are not in side-by-side relationship (brief, pages 9-10). That argument is not persuasive because it is directed toward a limitation which is not in claim 26. *See Self*, 671 F.2d at 1348, 213 USPQ at 5. Accordingly, we affirm the rejections of claim 26 and its dependent claims 27-33 wherein Katsuki is the primary reference.

DECISION

The rejections of claims 1, 21, 26, 29 and 30 under 35 U.S.C. § 102(b) over McOrlly, claims 1, 21, 26 and 28-30 under 35 U.S.C. § 102(b) over Katsuki, claims 6, 23, 24, 27, 31 and 32 under 35 U.S.C. § 103 over Katsuki or McOrlly, in view of Clem, and claims 8, 25 and 33 under 35 U.S.C. § 103 over Katsuki or McOrlly, in view of Wisnia, are reversed as to claims 1, 6, 8, 21 and 23-25, and affirmed as to claims 26-33.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(2004).

AFFIRMED-IN-PART

JERRY SMITH Administrative Patent Judge	)	
	)	BOARD OF PATENT
LEE E. BARRETT Administrative Patent Judge	)	APPEALS AND INTERFERENCES
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