

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 ALFRED A. TAYLOR

Appeal No. 2006-1908
Application No. 10/371,161
Technology Center 3700

ON BRIEF

Before FRANKFORT, BAHR and HORNER, *Administrative Patent Judges*.
HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the examiner's final rejection of claims 1-3 and 9-11. Claim 5 has been canceled. The remaining claims 4 and 6-8 have been objected to as being dependent upon a rejected base claim.

We affirm.

BACKGROUND

The appellant's invention relates to a product delivery chute assembly. Claim 1 is representative of the subject matter on appeal, and a copy of this claim can be found in the appendix to the appellant's brief.

The examiner relies upon the following as evidence of unpatentability:

Bacon *et al.* (*Bacon*) 6,119,438 Sep. 19, 2000

There is only one rejection before us for review. The examiner rejected claims 1-3 and 9-11 under 35 U.S.C. § 102(b) as being anticipated by Bacon.

Rather than reiterate in detail the conflicting viewpoints advanced by the examiner and the appellant regarding this appeal, we make reference to the examiner's answer (mailed September 22, 2005) for the examiner's complete reasoning in support of the rejection and to the appellant's brief (filed August 22, 2005) for the appellant's arguments.

OPINION

In reaching our decision in this appeal, we have carefully considered the appellant's specification and claims, the applied prior art, and the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations that follow. It is our view that, after

consideration of the record before us, Bacon anticipates the subject matter recited in claims 1-3 and 9-11.

In the rejection of independent claim 1, the examiner has determined that Bacon discloses a product delivery chute assembly that includes a chute (102, 103) having a plurality of troughs (101) extending down the sidewall of the chute and along which batches travel after being delivered to the chute by a weigher (W). In particular, the examiner contends that the storage cups (101) disclosed in Bacon anticipate the claim limitation of a plurality of troughs. (Examiner's Answer, p. 5).

The appellant contends that storage cups of Bacon are not the claimed troughs. The appellant argues that the term "trough" is defined as an elongated structure and that Bacon's storage cups are short squat areas and are not elongated and do not extend along a sidewall such that batches travel along them after being delivered thereto by the weigher. (Appellant's Brief, pp. 4-5).

The examiner argues in response that the storage cups of Bacon have walls that project inwardly with respect to the central axis of the chute (102) and extend along the sidewall of the chute (102). The examiner notes that the claims do not define a particular limitation with regard to the length of the troughs beyond that they must extend along the sidewall, and the specification does not define the particular length of the troughs. (Examiner's Answer, pp. 7-8).

We agree with the examiner's position.

We first construe the meaning of the word "troughs" as used by the appellant in the claims. We determine the scope of the claims in patent applications "not solely on the basis of the claim language, but upon giving claims their broadest

reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) (quoting *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004)). We must be careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. See *Superguide Corp. v. DirectTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004) (“Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.”) The challenge is to interpret claims in view of the specification without unnecessarily importing limitations from the specification into the claims. See *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003).

As the examiner noted on page 6 in the Answer, the specification states only that the troughs are preferably defined between a pair of flanges which project inwardly with respect to the axis and extend longitudinally downwardly so as to direct product moving downwardly along the chute. As such, the specification does not require the troughs to be “elongated” structures as asserted by the appellant. Further, it appears from the definitions provided by the appellant that the definition of “trough” varies depending on the context in which the word is used. For example, the first definition provided by the appellant relates to a

receptacle to hold food or water for animals. One of ordinary skill in the art would not have understood the appellant to have intended this meaning of trough in the context of a product delivery chute assembly. The common ordinary meaning of “trough” as used in the context of industrial or commercial applications is “any of various containers used for some domestic or industrial purpose: as (1): a bowl, tank, or basin in which something is prepared or processed (as by kneading, washing, brewing, or tanning)....” Webster’s Third International Dictionary, unabridged, G. & C. Merriam Co., 1971, p. 2453. As such, we find that the broadest reasonable interpretation of “trough” in light of the specification as it would be interpreted by one of ordinary skill in the art does not require it to be an elongated structure.

We find that the storage cups (101) of Bacon have walls that project inwardly and extend down the sidewalls of the chute (102). (Bacon, Figure 1a). Each storage cup (101) necessarily has walls that project inwardly to form the cup, and the walls extend down the sidewalls of the chute as evidenced by Bacon’s description, “[T]he slope of the back wall of each cup 101 [matches] the slope of the annular wall of the collar 102.” (Bacon, col. 5, lines 27-28). We also find that the storage cups (101) of Bacon have walls along which batches travel after being delivered thereto by the weigher (W). In particular, Bacon discloses that the cup (101)/collar (102) combination form a part of the product flow path. (Bacon, col. 5, lines 29-30). As such, we find that Bacon discloses a chute having a plurality of troughs extending down the sidewall of the chute and along which batches travel

after being delivered thereto by the weigher. Accordingly, we sustain the examiner's rejection of claim 1.

The appellant did not separately argue the patentability of the remaining rejected dependent claims 2, 3, and 9-11. Rather, the appellant relied on his arguments for patentability of claim 1. Finding no separate basis for patentability of these dependent claims, we also sustain the examiner's rejection of these claims.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-3 and 9-11 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).

AFFIRMED

CHARLES E. FRANKFORT)
Administrative Patent Judge)
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) BOARD OF PATENT
JENNIFER D. BAHR) APPEALS
Administrative Patent Judge) AND
) INTERFERENCES
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LINDA E. HORNER)
Administrative Patent Judge)

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TOWNSEND AND TOWNSEND AND
CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

