

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL KEITH MOROSIN, ROSE CHAN MOROSIN and
DAVID K. HELFENSTEIN

Appeal 2006-2288
Application 10/846,942
Technology Center 3600

Decided: August 31, 2007

Before TERRY J. OWENS, LINDA E. HORNER, and
ANTON W. FETTING, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants appeal from a rejection of claims 1-19, which are all of the pending claims.

THE INVENTION

The Appellants claim a self-cleanable brush and a method for cleaning it. Claim 1 is illustrative:

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1. A brush comprising:

a brushing element that includes a bristle head and a multiplicity of bristles extending from said bristle head; and

a cleaning element that includes a frame and strands extending across said frame;

a pivoting hinge that mounts said frame to said bristle head, allowing said frame to swing across said bristles when said brush is being used and to swing away from said bristles when said brush is being cleaned, such that when said frame swings across said bristles, said frame lies substantially flat against said bristle head and said strands lie between said bristles, and when said frame swings away from said bristles, said strands carry away any debris that may have collected amongst said bristles during use of said brush.

THE REFERENCES

Dick	US 2,781,739	Feb. 19, 1957
Tsuruzawa	US 3,421,171	Jan. 14, 1969
Hartmann	US 5,862,563	Jan. 26, 1999

THE REJECTIONS

The claims stand rejected as follows: claims 1-4, 6, 8-14 and 17-19 under 35 U.S.C. § 102(b) as anticipated by Dick; claim 7 under 35 U.S.C. § 103 as obvious over Dick; claim 5 under 35 U.S.C. § 103 as obvious over Dick in view of Hartmann; and claims 15 and 16 under 35 U.S.C. § 103 as obvious over Dick in view of Tsuruzawa.

OPINION

We reverse the aforementioned rejections and enter a new ground of rejection of claims 17-19.

New ground of rejection

The following new ground of rejection is entered under 37 C.F.R. § 41.50(b).

Claims 17-19 are rejected under 35 U.S.C. § 112, second paragraph, as failing to claim the subject matter which the Appellants regard as the invention.

The Appellants' Specification indicates that the Appellants' inventive method requires 1) a bristle head having bristles extending therefrom, and 2) a strand frame having strands extending across it (Spec. ¶¶ 0025, 0028). In accordance with the Specification, claim 1 recites that the brushing element "includes a bristle head and a multiplicity of bristles extending from said bristle head" and that the cleaning element "includes a frame and strands extending across said frame". Claim 17, however, recites a bristle head and a strand frame, but does not recite that the bristle head has bristles extending therefrom or that the strand frame has strands extending across it. Claim 17 recites "said bristles" but does not provide antecedent basis therefor. That claim recites lifting up debris "that has collected on said strand frame", but what the Specification discloses is that the debris collects on strands (Spec. ¶ 0030). The Specification does not state that debris collects on the strand frame.

Claim 17 therefore, as well as its dependent claims 18 and 19 that do not remedy the above-discussed defect in claim 17, are rejected under

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35 U.S.C. § 112, second paragraph, as failing to claim the subject matter which the Appellants regard as the invention.

Accordingly, we procedurally reverse the rejection of claims 17-19 under 35 U.S.C. § 102(b) over Dick. This is not a reversal on the merits but, rather, is a procedural reversal based upon the undue speculation as to the scope of the claims that would be required to address the merits of a rejection over prior art.

Rejection of claims 1-4, 6 and 8-14
under 35 U.S.C. § 102(b)

Dick discloses a dog hair combing device comprising a block base (10) having longitudinally thereon four parallel spaced apart comb members (12-15) of progressively decreasing coarseness (col. 1, ll. 15-16, 55-64). A shield stripper (17) having four slit openings (18) through which the comb teeth protrude is hindgedly attached to the block base (col. 2, ll. 12-15). The end of the stripper opposite the hinge is lifted from the block base by a handle flange (19) to strip hair from the comb members, and then is lowered onto the block base for reuse of the combing device (col. 2, ll. 18-23).

The Appellants argue that Dick's comb teeth are not bristles and that the portions of Dick's stripper between the slit openings are illustrated as being wider than the slit openings and are not strands (Br. 4, 6).

The Examiner relies upon Dick's comb teeth as being bristles and Dick's stripper portions between the slit openings as being strands (Ans. 3, 7). A bristle is “[a] short, coarse, stiff hair or hair-like part”, and a strand is

“[f]ibers or filaments twisted together so as to form a cable, rope, thread, or yarn” or “[a] single filament, as a fiber or thread < a *strand* of hair>”.¹ The Examiner does not explain why Dick’s comb teeth and stripper portions between the slit openings fall within those definitions, or why the Appellants’ claim terms “bristle” and “strand” should be given a broader meaning than the dictionary definition in view of the Appellants’ Specification. The Appellants’ exemplification of bristles as densely packed wires (Spec. ¶ 0025) is consistent with the dictionary definition. The Appellants’ disclosures that the strands can be metal wires or plastic filaments (original claims 6 and 7) and can be stretched across the frame (Spec. ¶ 0028) also are consistent with the dictionary definition. The Examiner argues that “the combination of elements 12-15 serve as a brushing unit which has the same function as applicant’s brushing unit (30)” (Ans. 6). Even if the Appellants’ brush and Dick’s combing device both remove pet hair, that does not mean that Dick’s combing teeth are bristles. The Examiner argues that “applicant’s brushing unit (30) can be interpreted as a set of a plurality of parallel combs seated into a common carrier”, *see id.*, but the Examiner does not provide evidence that one of ordinary skill in the art would have viewed the Appellants’ brush in that manner.

The Examiner, therefore, has not established a *prima facie* case of anticipation of the inventions claimed in the Appellants’ claim 1 or its dependent claims 2-4, 6 and 8-14.

¹ *Webster’s II New Riverside University Dictionary* 202, 1145 (Riverside

Rejections under 35 U.S.C. § 103

The Examiner does not set forth any reason why the combination of 1) a brushing element including a bristle head and a multiplicity of bristles extending therefrom, and 2) a cleaning element including a frame and strands extending across the frame, recited in claim 1 from which claims 5, 7, 15 and 16 directly or indirectly depend, would have been obvious to one of ordinary skill in the art. The Examiner's obviousness rejection is based upon Dick's comb teeth being bristles and the portions of Dick's stripper between the slit openings being strands (Ans. 3). As pointed out above regarding the rejection under 35 U.S.C. § 102(b), the Examiner is incorrect in that respect.²

The Dick reference relied upon by the Examiner and the Appellants' acknowledged prior art (Spec. ¶ 0004; Br. 5) pertain to hair removal using a plate having holes or slits therein. The Examiner has not explained why the prior art would have rendered obvious, to one of ordinary skill in the art, replacing such a plate with a strand frame having strands extending across the frame.

Hence, the Examiner has not established a *prima facie* case of obviousness of the inventions claimed in the Appellants' claims 5, 7, 15 and 16.³

1984).

² The Examiner does not rely upon Hartmann or Tsuruzawa for any disclosure that remedies that deficiency in Dick.

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This decision contains a new ground of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004)). 37 CFR § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 CFR § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

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

³ The Appellants should correct the “390 degrees” (which should be “360 degrees”) typographical error in claim 16.

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DECISION

The rejection of claims 1-4, 6, 8-14 and 17-19 under 35 U.S.C. § 102(b) over Dick and the rejections under 35 U.S.C. § 103 of claim 7 over Dick, claim 5 over Dick in view of Hartmann, and claims 15 and 16 over Dick in view of Tsuruzawa are reversed. A new ground of rejection of claims 17-19 has been entered.

REVERSED, 37 C.F.R. § 41.50(b)

vsh

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