

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 BYUNG-JO LEE

Appeal 2006-2946
Application 10/197,455
Technology Center 1700

Decided: September 14, 2006

Before KIMLIN, WALTZ, and FRANKLIN, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 and 2. Claim 1 is illustrative:

1. A discharging duct of an upright type vacuum cleaner, comprising:

a pair of side walls and a pair of ribs formed adjacent to the side walls, wherein said pair of ribs are adjacent and continuous with a passage portion;

adjacent the passage portion. It is Appellant's contention that since the ribs 218 of Palobeis "are spaced and interrupted from a passage portion or channel 210 . . . the ribs 218 are neither adjacent to nor continuous with the passage portion 210, as recited in independent claim 1" (Br. 4, second paragraph).

We do not subscribe to Appellant's position. Unlike Appellant, we concur with the Examiner that side walls 212 of Palobeis are part of the passage portion 170. Also, although ribs 218 are spaced from the passage portion, we agree with the Examiner that the ribs are "adjacent" to the passage, as the term is ordinarily defined as "near" or "close." Also, as for ribs 218 being continuous with the passage portion, we agree with the Examiner that Figure 8 of the reference depicts ribs 218 as being integral with, or at least connected to, elements 212 and 210 and, thereby, being continuous with the passage portion.

In response to Appellant's argument that ribs 218 of Palobeis are spaced from the passage portion and, therefore, cannot be adjacent thereto, we note that the claimed ribs 61a are defined as adjacent to side walls 60a even though they are spaced therefrom by cover 62.

Appellant also maintains that "[i]ndependent claim 1 recites both side walls and a passage portion, and therefore the side walls 212 of Palobeis cannot be both the side walls and the passage portion of the claimed invention" (principal Brief 4, third paragraph). However, claim 1 on appeal does not preclude the side walls as being part of the passage portion and,

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indeed, the claim recites "the sidewalls defining said passage portion." As a matter of fact, side wall 212 of Palobeis is closer to the passageway than side walls 60a of Appellant's Figure 5.

In conclusion, based on the foregoing and the reasons well-stated by the Examiner, the Examiner's decision rejecting the appealed claims is affirmed.

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

AFFIRMED

clj

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