

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHARLES HENSLEY

Appeal 2007-0674
Application 10/865,960
Technology Center 3700

Decided: February 27, 2008

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 19 to 34. Claims 1 to 18 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellant invented a surface drying apparatus and method (Specification 1).

Claim 19 under appeal reads as follows:

A ground surface drying apparatus, comprising:
a) means for blowing non-recirculating air;
b) heating means for heating said non-recirculating air;
c) means for directing said non-recirculating air to a section of said surface, and;
d) means of moving said apparatus along said surface;
e) wherein, said heating means comprises burning fuel directly in the flow of said non-recirculating air.

The Examiner rejected claims 19, 22, 24 to 26 and 28 under 35 U.S.C. § 102 (b) as being anticipated by Heth.

The Examiner rejected claims 31 to 33 under 35 U.S.C. § 103 as being unpatentable over Heth in view of Keusder.

The Examiner rejected claims 20, 21, 23, 27, 29, 30 and 34 under 35 U.S.C. § 103(a) as being unpatentable over Heth in view of Fravel.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Heth	US 2,513,480	July 4, 1950
Keusder	US 3,223,079	December 14, 1965
Fravel	US 5,251,281	October 5, 1993

Appellant contends Heth does not disclose means for directing said non-recirculating air to a section of said surface or a means for moving said apparatus along said surface as required by claim 19.

Appellant also contends that Heth does not disclose a structural frame fitting into or upon a self-propelled vehicle as required by claim 26.

Appellant contends that Fravel does not disclose an onboard generator which powers the heating means and that there would be no reason to combine the teachings of the hand held heater of Fravel with the crop drier of Heth.

Appellant further contends that there is no reason to combine the crop drier of Heth with the asphalt dryer of Kuesder.

ISSUES

The first issue is whether Appellant has shown that the Examiner erred in finding that Heth discloses means for directing said non-recirculating air to a section of said surface or a means for moving said apparatus along said surface as required by claim.

The second issue is whether the Appellant has shown that the Examiner erred in finding that Heth discloses a structural frame fitting into or upon a self-propelled vehicle as required by claim 26.

The third issue is whether the Appellant has shown that the Examiner erred in finding that Fravel discloses an onboard generator which powers the heating means and in determining that there would be a reason to combine the teachings of the hand held heater of Fravel with the crop drier of Heth.

The fourth issue is whether the Appellant has shown that the Examiner erred in determining that there was a reason to combine the crop drier of Heth with the asphalt dryer of Kuesder.

FINDINGS OF FACT

Heth discloses an apparatus for drying crops including a means for blowing air in the form of a fan 26. A heating means in the form of an oil

burner 27 is also included for heating air (col. 3, ll. 24 to 28; Figure 1). The air is moved by the fan, which turns on the shaft 35. The air is directed by the fan to housing 4 through holes 24 (col. 2, l. 52 to col. 3, l. 3). Heth specifically discloses at column 3 lines 3 to 6:

The heated air, after serving to dry the material passes outwardly through the open ends 10 and 11 of housing 4. The air that flows out of openings 10 and 11 will inherently dry the ground surface. The Heth apparatus has a structural frame that attaches to a tractor.

Flavel discloses an electric heating element 30 for heating air in a portable electric heater which is powered by conventional household electric current (col. 2, ll. 48 to 62).

ANALYSIS

Anticipation

We will sustain the Examiner's rejection of claim 19 because Heth does disclose a means for directing air to a section of a ground surface. This means comprises the shaft 35 around which the fan 26 turns, the passages inside the housing 4 and the openings 10 and 11. The flow of the heated air out of openings 10 and 11 is capable of drying the ground surface. Although, the Appellant is correct that heated air rises through holes 24 to dry the crop, the air thereafter flows through the housing 4 and out of the openings 10 and 11. As such, we will sustain this Examiner's rejection of claim 19. We will also sustain this rejection as it is directed to claims 22, 24, 25, 27 and 28 because the Appellant has not argued the separate patentability of these claims.

We will also sustain this rejection as it is directed to claim 26 because Heth discloses that the apparatus therein disclosed has a structural frame that fits upon a tractor which is a self-propelled vehicle.

Obviousness

We will not sustain the rejection of claims 20, 21, 23, 27, 29, 30 and 34 as being unpatentable under 35 U.S.C. § 103 as being unpatentable over Heth in view of Fravel because Fravel does not disclose a heating means powered by an onboard generator. While there is disclosure in Flavel that a small internal combustion or other suitable type of engine or motor could be employed, the engine or motor is disclosed as powering the fan not the heater. In addition, there is no disclosure in Heth or Flavel regarding the desirability of powering a heating means by an onboard generator.

We will also not sustain the rejection of claims 31 to 33 under 35 U.S.C. § 103 as being unpatentable over Heth in view of Keusder. We note that the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), *quoted with approval in KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). The Examiner’s articulated reasoning for combining the teachings of Heth, which is directed to a crop dryer, and Kuesder, which is an asphalt heater, is for the purpose of moving the apparatus. However, Heth discloses that the apparatus is connected to a tractor and thus is moved by the tractor. In addition, Heth is

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directed to a device to dry crop that is disclosed in the housing 4. We see no reason to combine a crop drying apparatus with an asphalt heating apparatus.

AFFIRMED-IN-PART

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