

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EDWARD A. PERRY

Appeal 2007-1265
Application 10/385,207
Technology Center 3700

Decided: November 29, 2007

Before LINDA E. HORNER, DAVID B. WALKER and BIBHU R.
MOHANTY, *Administrative Patent Judges*.

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DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant seeks our review under 35 U.S.C. § 134 of the Final Rejection of claims 1-7, 10-11, 14-18, 20-24. Claims 1-24 are pending in the application and have been finally rejected. The Appellant chose not to contest the final rejections of claims 8, 9, 12, 13, and 19 (Appeal Br. 2). 37 C.F.R. § 41.43(c) (2007) states, in pertinent part, “An appeal, when taken, must be taken from the rejection of all claims under rejection which the

applicant or owner proposes to contest.” Because the Appellant has chosen not to contest the final rejections of claims 8, 9, 12, 13, and 19, the Appellant is deemed to have withdrawn the appeal as to these claims and has thereby authorized cancellation of these claims from the application. As such, we hereby dismiss the appeal as to the rejections of claims 8, 9, 12, 13, and 19 and suggest that the Examiner cancel these claims once the application is returned to the jurisdiction of the Examiner. See MPEP § 1215.03. The appeal continues as to the remaining claims 1-7, 10, 11, 14-18, and 20-24. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We REVERSE.

THE INVENTION

The Appellant’s claimed invention is directed to a sliding door assembly for an enclosed tub or shower. The assembly includes three frameless panels gripped by roller assemblies (Specification: 1:22-32). Claim 1, reproduced below is representative of the subject matter of appeal.

1. A sliding door assembly for an enclosed tub or shower, said assembly comprising:

at least three frameless panels;

a plurality of roller assemblies, wherein each frameless panel is gripped at a top by at least two roller assemblies;

a header supporting the frameless panels via the roller assemblies, wherein the roller assemblies are slidably suspended from the header; and

a guide assembly having at least three tracks, wherein each frameless panel is guided by a corresponding one of the tracks.

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THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Casebolt	US 3,359,573	Dec. 26, 1967
Etesam	US 4,785,485	Nov. 22, 1988
Baczuk	US 6,371,188 B1	Apr. 16, 2002

The following rejections are before us for review:

1. Claims 1-2, 4, 6-7, 10-11, 14-18, and 20-24 are rejected under 35 U.S.C. § 103(a) as unpatentable over Etesam in view of Casebolt.
2. Claims 3 and 5 are rejected under 35 U.S.C. § 103(a) as unpatentable over Etesam in view of Casebolt, and further in view of Baczuk.

THE ISSUE

The issue is whether the Appellant has shown that the Examiner erred in rejecting independent claims 1, 18, and 22 under 35 U.S.C. § 103(a) as unpatentable over Etesam in view of Casebolt. This issue turns on whether Etesam discloses a “frameless panel.”

FINDINGS OF FACT

We find the following enumerated findings of fact are supported at least by a preponderance of the evidence¹:

1. Etesam discloses three panels 62, 64, 66 suspended from wheels 56 in a bath enclosure (Figure 1; col. 4, ll. 30-33 and 41-43).
2. Etesam discloses that “[e]ach of the door panels [62, 64, 66] is made substantially from a glass panel 72 and closed in a framing of channel members 74 ...” (Figure 3; col. 6, ll. 8-13).
3. As such, Etesam does not disclose panels that remain frameless after assembly.

PRINCIPLES OF LAW

Principles of Law Relating to Obviousness

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called

¹ See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

ANALYSIS

The appealed claims are all rejected under 35 U.S.C. § 103(a) as unpatentable over Etesam as the base reference.

The rejected independent claims, i.e., claims 1, 18, and 22, all require “frameless panels” or “panels without a metal frame around their respective peripheral edges.” The Appellant argues that “the panels disclosed by Etesam are not frameless because Etesam states that each panel is ‘closed in a framing of channel members 74’” (App. Br. 3, citing Etesam, col. 6, ll. 8-10).

The Examiner agrees that the glass panel 72 once assembled has framing channel members 74, but argues that the glass panels are frameless before the framing channel members 74 are assembled in the door assembly (Ans. 3). The Examiner also indicates that the glass panel is “frameless by itself at some point before being assembled to the sliding door assembly” and that the claims do not require assembly of the sliding door (Ans. 4).

We disagree. The rejected claims all clearly require “frameless panels” or “panels without a metal frame around their respective peripheral edges,” which are not shown in the assembled product of Etesam (FF 3). Etesam explicitly states, “Each of the door panels is . . . closed in a framing

of channel members 74” (FF 2). In response to the Examiner’s finding that the glass panel is frameless at some point before assembly, while we agree with this basic finding of fact in the abstract, we disagree with the Examiner’s overly broad interpretation of the claim language. For example, claims 1 and 18 recite that “each frameless panel is gripped at a top by at least two roller assemblies” and “a header supporting the frameless panels via the roller assemblies.” These limitations require that the panels remain frameless even after assembly has taken place. Independent claim 22 contains similar language which also requires that the panels remain frameless even after assembly has taken place.² Etesam’s panels do not remain frameless after assembly. Neither Casebolt nor Baczuk cures the deficiency of Etesam by disclosing “frameless panels” or “panels without a metal frame around their respective peripheral edges.”

CONCLUSIONS OF LAW

We conclude that Appellant has shown that the Examiner erred in rejecting claims 1-2, 4, 6-7, 10-11, 14-18, and 20-24 under 35 U.S.C. § 103(a) as unpatentable over Etesam in view of Casebolt.

We also conclude that the Appellant has shown that the Examiner erred in rejecting claims 3 and 5 under 35 U.S.C. § 103(a) as unpatentable over Etesam and Casebolt, and further in view of Baczuk.

² For example, claim 22 requires “each of the panel is gripped at a top by the teeth of the hangers in at least two of the roller assemblies” and “a header supporting the panels via the roller assemblies.”

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DECISON

The decision of the Examiner to reject claims 1-7, 10-11, 14-18, and 20-24 is REVERSED. The appeal is dismissed as to claims 8, 9, 12, 13, and 19.

REVERSED

JRG

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