

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM ROBERT MCCOSKEY JR., KENNETH A. HARTSOCK,
and THEODORE P. NYKREIM

Appeal 2007-2429
Application 10/226,922
Technology Center 3600

Decided: October 24, 2007

Before TERRY J. OWENS, HUBERT C. LORIN, and JENNIFER D. BAHR,
Administrative Patent Judges.

JENNIFER D. BAHR, *Administrative Patent Judge.*

ORDER REMANDING TO THE EXAMINER

This application is remanded to the Examiner, pursuant to 37 C.F.R.
§ 41.50(a)(1), for appropriate action with regard to the following issues.

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William Robert McCoskey Jr., Kenneth A. Hartsock, and Theodore P. Nykreim (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 8, 40-42, 56, and 58.¹ Claims 8, 40-42, 56, and 58 stand rejected under 35 U.S.C. §103(a) as unpatentable over Brenneis (US 6,684,593 B2, issued February 3, 2004) in view of Noda (US 6,502,788 B2, issued January 7, 2003), Weiler (US 2,952,341, issued September 13, 1960) or Fant (US 3,995,081, issued November 30, 1976) and Spriggs (US 5,262,220, issued November 16, 1993). We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

Appellants' invention relates to a structural panel (10) having a skin (12) with intersecting stringers (18) and chords (20) (fig. 1). The main features of the invention at issue in this appeal are the presence of a "ramped transition portion" (43) and/or a "fillet" portion at the intersection of the skin panel (12) and the stringers (18) or chords (20) (Figure 7).

The Appellants and the Examiner seem to disagree as to whether the curved fillets shown in Noda (Figure 7), Weiler (Figure 2), or Fant (Figures 2-21) constitute a "ramped transition portion." However, upon a careful review of the record in this appeal, it appears that neither the Appellants nor the Examiner have construed "ramped transition portion" or "fillet."² Accordingly, we have not been

¹ Claims 39 and 57 were canceled subsequent to the Final Rejection.

² *Merriam Webster's Collegiate Dictionary* (Tenth Ed. 1997) defines a "ramp" as a "sloping way...leading from one level to another" and a "fillet" as a "concave junction formed where two surfaces meet (as at an angle)."

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placed in a position to resolve the disagreement and, by extension, to provide a meaningful review of this appeal.

Because the Specification defines a “collar” as “fillets 50 together with the ‘ramp-up’ transitions 43” (Spec. 11, ¶ 48 and claim 40), it appears that Appellants are implying that a “fillet” is different from a “ramped transition portion.”

However, the scope of the claims in patent applications is determined “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) (en banc) (quoting *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004)).

Although claim terms must be given their broadest reasonable interpretation *consistent with the specification*, without more, a “ramped transition portion” is a sufficiently broad term that appears to encompass concave or curved transition regions of the type shown by Noda, Weiler, or Fant. The source of the dispute in this appeal is that neither the Examiner nor the Appellants have formally construed the claim terminology “ramped transition portion” and “fillet” on the record.

Before a determination can be made as to whether the subject matter of claims 8, 40-42, 56, and 58 is unpatentable over Brenneis in view of the other references relied upon by the Examiner, it is imperative that the terms “ramped transition portion” and “fillet” be construed on the record. This application is therefore being remanded to the Examiner to make a determination, on the record,

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as to the scope of these terms, while also giving the Appellants an opportunity to respond thereto. In so doing, the Examiner must determine: (1) whether the term “ramped transition portion” encompasses concave or curved transition regions of the type shown by Noda, Weiler, or Fant and (2) whether the “ramped transition portion” is a different structure than the “fillet” portion.

In response to this remand, the Examiner is also required to consider the patentability of Appellants' claims over Brenneis in view of the disclosure of Hendrix (US 3,890,062, issued June 17, 1975). Hendrix specifically discloses an axial-flow compressor blade with a transition region for reducing operational bending stresses, wherein said blade has a “tapered” portion (c) and a “concave” portion (d) (Hendrix, col. 2, ll. 42-58 and fig. 3). The Examiner is urged to compare the “tapered” and the “concave” portions of Hendrix with the “ramped transition portion” and the “fillet” portion of Appellants' invention, evaluate the combinability of the reference teachings with Brenneis in light of the guidance provided by *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007), and then to make a determination of patentability.

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This remand to the Examiner pursuant to 37 C.F.R. § 41.50(a)(1) is made for further consideration of a rejection. Accordingly, 37 C.F.R. § 41.50(a)(2) applies if a supplemental examiner's answer is written in response to this remand by the Board.

REMANDED

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