

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL T. VICKERS and STEVE A. JUNGE

Appeal 2007-2970
Application 10/284,002
Technology Center 3700

Decided: August 15, 2008

Before MURRIEL E. CRAWFORD, LINDA E. HORNER, and DAVID B.
WALKER, *Administrative Patent Judges*.

WALKER, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 6, 10, and 11.¹ We have jurisdiction under 35 U.S.C. § 6(b) (2002). We affirm.

¹ In the Answer, the Examiner withdrew rejections of 7-9 and 16-19, which are no longer before us.

Appellants claim a spraying system that utilizes a sprayer for spraying materials from a sprayer tank onto a target area, such as a crop in a field, and a nurse tank for refilling the sprayer tank (Specification 1:10-16). Claim 6, reproduced below, is representative of the subject matter on appeal.

6. A method of monitoring spraying of a material by a sprayer onto crops in a field, comprising the steps of:

inputting field, crop and material data into a computer;

spraying the field;

refilling the sprayer with material, the step of refilling including automatically coupling a nurse tank to the sprayer; and

during the step of refilling, automatically recording data regarding material flow to and from the sprayer into the computer.

THE REJECTION²

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

McQuinn

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Mar. 23, 2004

Claims 6, 10, and 11 stand rejected under 35 U.S.C. § 102(e) as anticipated by McQuinn.

² In response to Appellants' arguments in the Brief, the Examiner withdrew the rejections of claim 16-19 (which are now allowable) and of claims 7-9 (which are now objected to as depending from rejected claim 6). We address only the remaining rejection.

ISSUE

The issue before us is whether the Examiner erred in rejecting claims 6, 10, and 11 as anticipated by Quinn. The issue turns on the construction of the claim term “automatically.”

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

FINDINGS OF FACT

We find the following enumerated findings to be supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. McQuinn teaches a variable payload towing vehicle with several storage containers for carrying bulk crop inputs. A delivery system in combination with a control system coordinates the movement of the crop inputs from the vehicle to places located off the vehicle (McQuinn, abstract).
2. Quinn teaches that the delivery system is actuated by sending a signal from a controller to an actuator, which may be a valve, motor, or hydraulic or pneumatic control (Quinn, col. 8, ll. 23-38).

3. The Specification states that automatic coupling devices other than a probe and drogue arrangement also may be used (Specification 4:39 – 5:1).

PRINCIPLES OF LAW

We determine the scope of the claims in patent applications “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 (Fed. Cir. 2005) (en banc) (quoting *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)). We must be careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *See Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004)

Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.

The challenge is to interpret claims in view of the specification without unnecessarily importing limitations from the specification into the claims. *See E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

We remind appellants that it is their burden to precisely define the invention, not that of the Examiner. *In re Morris*, 127 F.3d 1048, 1056 (Fed.

Cir. 1997). Appellants always have the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 827 (1987).

ANALYSIS

The Appellants argue claims 6, 10, and 11 as a group. We treat claim 6 as representative. All of the rejected claims require the step of refilling the sprayer include automatically coupling a nurse tank to the sprayer.

The Appellants argue that the ordinary and accustomed meaning of “automatically” is “having the power of self motion; self moving; or self acting: an automatic device . . . a machine that operates automatically” (Br. 6-7; citing *The Random House College Dictionary*, 1st Ed., 1984). The Appellants argue that the step of automatically coupling therefore requires movement between the sprayer and the nurse tank, which McQuinn does not teach (Br. 7).

The Examiner found that under a broadest reasonable interpretation, the step of “opening a valve” between a nurse tank and the sprayer in McQuinn is an act of automatically coupling a nurse tank to the sprayer (Answer 5). Quinn does teach that the delivery system is actuated by sending a signal from a controller to an actuator, which may be a valve, motor, or hydraulic or pneumatic control (Finding of Fact 2).

We find that the term “automatically” is not so limited as argued by the Appellants. Although embodiments disclosed in the Specification include a probe and drogue arrangement, wherein the nurse tank is on a separate vehicle from the sprayer tank and the vehicles are moved together to connect the probe and drogue and start fluid transfer, claim 6 is not so limited. Claim six only requires that the coupling of the two tanks be done automatically. We agree with the Examiner that the broadest reasonable interpretation would include an arrangement, as in Quinn, wherein the tanks are coupled by automatically opening a valve between them and starting a pump to initiate flow. This is consistent with the Specification, which states that automatic coupling devices other than the probe and drogue arrangement also may be used (Finding of Fact 3). We therefore decline Appellants’ invitation to read limitations, specifically requiring movement between the sprayer and the nurse tank, from the Specification into the claims.

The Appellants therefore have not shown error in the Examiner’s rejection of claim 6. Claims 10 and 11 are not argued separately and thus fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007). *See also In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991).

CONCLUSIONS

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 6, 10, and 11 under 35 U.S.C. § 102(e) as anticipated by McQuinn.

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DECISION

The decision of the Examiner to reject claims 6, 10, and 11 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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