

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GINO PAVLOVIC

Appeal 2007-3335
Application 10/150,753
Technology Center 2600

Decided: February 27, 2008

Before KENNETH W. HAIRSTON, MAHSHID D. SAADAT and MARC S. HOFF, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

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STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1 and 3-5. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellant's claimed invention is to an electrostatic microphone capsule having a diaphragm connected to the front side of the capsule housing wherein the housing is provided with an annular shoulder onto which the diaphragm is mounted (Spec. 6:1-16).

Claims 1 and 4 reproduced below, are representative of the subject matter on appeal.

1. An electrostatic microphone comprising:

a capsule housing having a front side with a ring shoulder;

a diaphragm arranged in the capsule housing;

a rigid electrode arranged in the capsule housing;

an electrical circuit on a printed circuit board arranged in the capsule housing;

wherein the diaphragm is connected to the ring shoulder of the front side of the capsule housing.

4. The microphone according to claim 1, wherein the capsule housing is comprised of a housing bottom and a capsule lid, wherein the capsule lid has the ring shoulder and wherein the diaphragm is connected to the ring shoulder.

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THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

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The following rejections are before us for review.

1. Claims 1 and 4 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ito.
 2. Claims 3 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ito.

ANTICIPATION UNDER § 102(e)

There are two issues before us. The first issue before us is whether the Examiner erred in rejecting claims 1 and 4 under 35 U.S.C. § 102(e) as anticipated by Ito by construing the claimed limitation “connected” as “indirectly connected” rather than “directly connected.” The first issue turns on whether “connected” should be narrowly construed as “directly connected.”

The second issue before us is whether the Examiner erred in rejecting claims 1 and 4 under 35 U.S.C. § 102(e) as anticipated by Ito by construing support frame 28 as disclosed by Ito's Figure 2 as the "ring shoulder" which becomes part of the capsule lid, having a two part construction (i.e., 12b and 28), wherein both parts together form the front capsule housing. Thus, the second issue turns on whether support frame 28, to which diaphragm 26 is directly connected, is part of the housing.

FINDINGS OF FACT

The relevant facts include the following:

1. The definition of “connected” is: “[t]o join, or fasten together, as by something intervening” (*Webster’s 1828 Dictionary*, <http://1828.mshaffer.com/> (last visited Feb. 15, 2007)).
2. Ito teaches in Figure 2 the microphone having a ring shoulder 28 which becomes a part of the capsule lid along with element 12b (Figure 2).
3. Appellant’s Figure 3 shows the capsule lid 28 with shoulder 22 (i.e., shoulder ring), to which diaphragm 3 is directly attached, and also shows the housing bottom 21 (Figure 3 and Spec. 9:3-10:1).
4. Appellant characterizes the capsule lid with shoulder 22 as part of the two-part housing configuration (Figure 3 and Spec. 9:3-10:1).

PRINCIPLES OF LAW

“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. Inc., v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. 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. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

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The claim terms should be given their broadest reasonable meaning in their ordinary usage as such claim terms would be understood by one skilled in the art by way of definitions and the written description. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

The claims, of course, do not stand alone. Rather, they are part of a ‘fully integrated written instrument’ . . . consisting principally of a specification that concludes with the claims. For that reason, claims ‘must be read in view of the specification, of which they are a part.’ . . . [T]he specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’

Phillips v. AWH Corp., 415 F.3d 1303, 1315 (Fed. Cir. 2005).

Claim terms are presumed to have their customary and ordinary meaning unless there is an express intention to impart the novel meaning of the claim terms. *Sunrace Roots Enterprise Co., Ltd. v. SRAM Corp.*, 336 F.3d 1298, 1302 (Fed. Cir. 2003).

The word “connected” is restricted to neither a direct nor an indirect connection, and the term is therefore applicable to an indirect connection. *Ullstrand v. Coons*, 147 F.2d 698, 700 (C.C.P.A. 1945). “To be joined or connected does not necessitate a *direct* joining or connection.” *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501 (Fed. Cir. 1997).

Although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

ANALYSIS

A. Does the disputed term “connected” as recited in claim 1 mean “directly connected?”

Claims 1 and 4 were argued as a group (Br. 4-6).

Appellant argues that Figures 5 and 6 of Ito do not show diaphragm 26 being directly connected to the housing 12 (Br. 5). Appellant argues that the diaphragm 26 of Ito is attached to the support frame 28, which, in turn, is attached to the housing 12 (Br. 5). Thus, Appellant argues that diaphragm 26 is indirectly connected to the housing through its intervening connection to support frame 28.

The Examiner responded that claim 1 recites “connected” not “directly connected,” and while claims are interpreted in light of the specification, limitations from the specification are not read into the claim (Ans. 4).

The plain meaning of the word “connected” is “[t]o join, or fasten together, as by something intervening” (Finding of Fact 1). As stated *supra*, the term “connected” is not a term of art and thus should receive its ordinary and accustomed meaning: to join, or fasten together, as by something intervening.

Sunrace Roots Enterprise Co., Ltd. v. SRAM Corp., 336 F.3d at 1302. Moreover, Appellant’s specification does not suggest any special definition for the term. *Id.* at 1302. Furthermore, as previously stated, the word “connected” is restricted to neither a direct nor an indirect connection, and the term is therefore applicable to an indirect connection. *Ullstrand v. Coons*, 147 F.2d 698 at 700. “To be joined or connected does not necessitate a direct joining or connection.” *Genentech, Inc. v.*

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Chiron Corp., 112 F.3d at 501.

Thus, we are not persuaded by Appellant's argument that because diaphragm 26 of Ito is indirectly connected to the housing 12 through its intervening connection to support frame 28, it is not connected to the housing. The term "connected" does not preclude an "indirect connection." Furthermore, Appellant did not claim "wherein the diaphragm is directly connected to the ring shoulder," and limitations from the specification are not read into the claims. *In re Van Geuns*, 988 F.2d at 1184.

Thus, we are not persuaded by Appellant's argument that Ito does not teach the diaphragm being "connected" to the ring shoulder of the front side of the capsule housing as absent any special definition, the customary meaning of the term "connected" does not require direct connection. Furthermore, Appellant did not claim "directly connected." Therefore, the Examiner did not err in rejecting claims 1 and 4 as anticipated by Ito.

B. Is support frame 28 part of the housing?

Appellant further argues that the support frame 28 of Ito is arranged between the front side of the capsule housing and the diaphragm 26 as shown in Figures 5 and 6, and, thus, the diaphragm is not connected to the ring shoulder of the front side of the capsule housing (Br. 6).

The Examiner rejected claim 4 by stating that Ito's capsule housing comprises a housing bottom (Figure 2, element 12c) and a capsule lid (Figure 2, elements 12b and 28) (Ans. 3).

As shown in Figure 2 of Ito, which shows the final product, the ring shoulder 28 becomes a part of the capsule lid along with element 12b (Finding of

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Fact 2). Thus, ring shoulder 28 is a part of the capsule housing to which the diaphragm 26 is directly connected as shown in Figure 2 of Ito.

Thus, we are not persuaded by Appellant's argument that the diaphragm is not connected to the ring shoulder of the front side of the capsule housing because the ring shoulder 28 becomes a part of the front capsule lid housing 12 which is directly connected to the diaphragm 26 (Finding of Fact 2).

Furthermore, as stated *supra*, the specification "is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Phillips v. AWH Corp.*, 415 F.3d at 1315. As such, Appellant's Figure 3 shows the capsule lid 28 with shoulder 22 (i.e., shoulder ring), to which diaphragm 3 is directly attached, and also shows the housing bottom 21 (Finding of Fact 3).

Appellant characterizes the capsule lid with shoulder 22 as part of the two-part housing configuration (Finding of Fact 4). Similarly, the support frame 28 (i.e., shoulder ring) as shown in Figure 2 of Ito is part of the housing and the diaphragm 26 is directly connected to it as shown in the final product of the microphone as shown in Figure 2 (Finding of Fact 3).

Thus, we are not persuaded by Appellant's argument because Ito's Figure 2 shows a housing having a ring shoulder 28 to which diaphragm 26 is directly attached.

OBVIOUSNESS

FINDINGS OF FACT

1. The Examiner rejected claim 3 using Ito and determined that while Ito does not teach that the diaphragm is glued to the front side as claimed, nonetheless, it is well known to provide a suitable adhesive agent such as silicon glue for assembly of the microphone in order to obtain certain desirable features, such as making the microphone more durable and reducing noise (Final Rejection 3).
2. The Examiner further rejected claim 5 using Ito and determined that while Ito does not teach an acoustic friction as claimed, providing suitable acoustic friction means for the microphone is very well known in the art such as a damper for the microphone in order to reduce noise (Final Rejection 3). While the Appellant acknowledges these claims as rejected (Br. 6), Appellant did not further address these rejections in the Appeal Brief.

ANALYSIS

Appellant has presented no further arguments as to rejected claims 3 and 5, but instead relies on the arguments provided for claims 1 and 4 (Br. 6 and Findings of Fact 1 and 2).¹ Thus, for the reasons as articulated *supra*, we find that the Examiner did not err in rejecting claims 3 and 5 under 35 U.S.C. § 103(a) as unpatentable over Ito.

¹ Only arguments made by Appellant have been considered in this decision. Arguments, which Appellant could have made but chose not to make in the Brief, have not been considered and are deemed waived. See 37 C.F.R. § 41.37(c)(1)(vii) (2004). In the Brief, the only arguments presented were with respect to claims 1 and 4.

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CONCLUSIONS OF LAW

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1 and 4 under 35 U.S.C. § 102(e), and in rejecting claims 3 and 5 under 35 U.S.C. § 103(a).

ORDER

The decision of the Examiner to reject claims 1 and 3-5 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)(1)(iv).

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AFFIRMED

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