UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RODNEY C. HARRIS, and KURT E. SPEARS

Appeal 2007-4303
Application 10/369,858
Technology Center 2800

Decided: May 8, 2008

Before MAHSHID D. SAADAT, ROBERT E. NAPPI,
and MARC S. HOFF *Administrative Patent Judges.*

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 6(b) of the final rejection of claims 1 through 10.

We affirm the Examiner's rejections of these claims.

INVENTION

The invention is directed to an optical image scanner which has a scanning head that includes a first lens array to focus a first image plane on a sensor array, and a second lens array to focus a second image plane on a second sensor array. See pages 2 and 3 of Appellants' Specification. Claim 1 is representative of the invention and reproduced below:

1. A system for optical image scanning, the system comprising:

a platen; and

an optical head for scanning, the optical head comprising:

a first lens array positioned to focus a first object plane at a first optical sensor array;

a second lens array positioned to focus a second object plane at a second optical sensor array.

REFERENCE

Hube	US 5,694,528	Dec. 2, 1997
Rees	US 6,188,465 B1	Feb. 13, 2001

REJECTION AT ISSUE

Claims 1 through 6 and 8 through 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Rees. The Examiner's rejection is on pages 3 and 4 of the Answer.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Rees and Hube. The Examiner's rejection is on page 5 of the Answer

Throughout the opinion, we make reference to the Brief (received September 12, 2005) and the Answer (mailed December 8, 2006) for the respective details thereof.

ISSUES

Claims 1 through 6 and 8.

Appellants argue on pages 4 and 5 of the Brief that the Examiner's rejection of claim 1 is in error. Appellants state that Rees teaches two lens arrays each having a different depth of focus. Appellants argue that "a different depth of focus is not equivalent to focusing at two different object planes" and that "the Examiner has not expressly identified any disclosure in *Rees* indicating that the lens array 100 of *Rees* is focused at an object plane different that the lens array 101 of *Rees*" (emphasis original). Br. 5.

Thus, Appellants' contentions with respect to the rejection of claim 1 (and claims 2 through 6 and 8 which are grouped with claim 1 in accordance with 37 C.F.R. § 41.37 (c)(1)(vii)) present us with the issue of whether the Examiner erred in finding that Rees teaches two lenses focused at two object planes as claimed.

Claims 9 and 10.

Appellants argue that the Examiner's rejection of independent claim 9 is in error. Appellants state on page 6 of the Brief that claim 9 recites "focusing a first object plane located a first distance from the platen on a first optical sensor array" and "focusing a second object plane located a second distance from the platen on a second optical sensor array" (emphasis original). Appellants argue that Rees does not disclose focusing at two different object planes as recited in claim 9.

Thus, Appellants' contentions with respect to claim 9 (and claim 10 grouped with claim 9) present us with the issue of whether the Examiner

erred in finding that Rees teaches two lenses focused at two distances as claimed.

Claim 7.

Appellants argue on page 6 of the Brief, that the Examiner's rejection of claim 7 is in error for the reasons discussed with respect to claim 1.

Thus, Appellants' arguments with respect to claim 7 present us with the same issue as claim 1.

PRINCIPLES OF LAW

Office personnel must rely on Appellant's disclosure to properly determine the meaning of the "terms used in the claims." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995). "[I]nterpreting what is *meant* by a word *in* a claim 'is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.'" (emphasis original) *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1348 (Fed. Cir. 2002) (citing *Intervet Am., Inc. v. Kee-Vet Labs., Inc.*, 887 F.2d 1050, 1053 (Fed. Cir. 1989).

ANALYSIS

Claims 1 through 6 and 8.

Appellants' arguments have not persuaded us that the Examiner erred in finding that Rees teaches two lenses focused at two object planes, as recited in claim 1. Initially, we note that there is no disagreement on the facts. Both the Examiner and Appellants state that Rees teaches two lenses each having a different depth of focus, and each is associated with a sensor. Br. 5, Ans. 3.

The Examiner states on page 6 of the Answer that claim 1 does not recite that the "first object plane" and the "second object plane" are different and that given the broadest reasonable interpretation, "the first and the second object plane can be the same." We concur with the Examiner's claim interpretation and note no recitation in claim 1 that establishes any relationship between the two object planes. While Appellants' Specification describes the two image planes as being different, we decline to import such limitations from the Specification into the claim. Thus, Appellants' arguments are not commensurate with the scope of the claim and as such have not persuaded us of error in the Examiner's rejection.

Further, even if we were to import from the Appellants' Specification into claim 1 the limitation that the image planes are different, we find that Rees teaches such a feature. The Examiner states on pages 5 and 6 of the Answer that:

> As understood (see page 2, paragraph [0003] of Appellant's specification), depth of focus (sometimes referred to as depth of field in photography) is a measurement of how much distance exists behind a lens wherein the object will remain sharply in focus. That is, the depth of focus shifts or increases the range in which an object is in focus, thereby creating multiple possible object planes. Furthermore, as understood, an object plane refers to the plane where an object being imaged is located. For instance, in Rees et al. a lens array with a larger depth of focus is used for copying books because the binders of books are raised from the platen of the copier. The lens array with the larger depth of focus sharply images the raised portion of the book binder. Since that portion of book binder is located a distance above the platen, as understood, that portion of the book binder (the object) is located at a first object plane. Similarly, the second lens array of Rees et al. having a smaller depth of focus cannot sharply image book binders, but is used to image pages that 'are flat. A flat page (the object) closer to the platen of the copier is located at a second object plane. To summarize, because the apparatus and method of Rees et

> al. images both raised portions of objects that are a certain distance above the platen and flat portions of objects that contact the platen, as understood, Rees discloses "a first lens array positioned to focus a first object plane" and "a second lens array positioned to focus a second object plane."

Appellants' arguments have not persuaded us that Rees' teaching of using a second lens with a greater depth of focus, to allow for focused imaging of objects at a greater distance and not in focus with first lens, is different from having two lenses with different object planes (i.e., the second lens (item 101) of Rees is focused on more object planes (some of which are different) than the first lens (item 100)).

For the aforementioned reasons, Appellants have not persuaded us of error in the Examiner's rejection of claims 1 through 6 and 8 under 35 U.S.C. § 102(b) as being anticipated by Rees.

Claims 9 and 10.

Appellants' arguments have not persuaded us that the Examiner erred in finding that Rees teaches two lenses focused at two distances, as recited in independent claim 9. As with claim 1 discussed above, the Examiner identifies that claim 9 does not include a limitation directed to the lenses being focused at a different distance; as such, claim 9 is broad enough to include the distances being the same. We concur with the Examiner's claim interpretation and note no recitation in claim 9 that establishes any relationship between the two focus distances. While Appellants' Specification describes the two focus distances being different, we decline to import such limitations from the Specification into the claim. Thus, Appellants' arguments are not commensurate with the scope of the claim and as such have not persuaded us of error in the Examiner's rejection.

Further, as discussed above with respect to claim 1, even if such a limitation from the Specification were to be imported into claim 9, we find that Rees teaches this feature.

For the aforementioned reasons, Appellants have not persuaded us of error in the Examiner's rejection of claims 9 and 10 under 35 U.S.C. § 102(b) as being anticipated by Rees.

Claim 7

Appellants' arguments have not persuaded us that the Examiner erred in rejecting claim 7 under 35 U.S.C. § 103(a). Appellants argue that the rejection of claim 7 is in error for the reasons asserted with respect to claim 1. As discussed *supra*, we are not persuaded of error in claim 1. As Appellants have not persuaded of error in claim 1, we are similarly not persuaded of error in claim 7.

CONCLUSION

For the forgoing reasons, we sustain the Examiner's rejection of claims 1 through 6 and 8 through 10 under 35 U.S.C. § 102(b) and sustain the Examiner's rejection of claim 7 under 35 U.S.C. § 103(a).

ORDER

The decision of the Examiner 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).

AFFIRMED

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