

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARCUS BITTER

Appeal 2008-0792
Application 11/077,596
Technology Center 3700

Decided: June 26, 2008

Before WILLIAM F. PATE, III, TERRY J. OWENS, and STEVEN D.A.
MCCARTHY, *Administrative Patent Judges*.

PATE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant appeals from a rejection of claims 1-3, 6, 8, 10 and 12. The rejection is withdrawn as to claims 3, 8 and 12 in the Examiner's Answer (Ans. 2). Claims 4, 5, 7, 9 and 11, which are all of the other pending claims, stand objected to as being dependent from a rejected claim but allowable if rewritten in independent form.

THE INVENTION

The Appellant claims a hydraulic arrangement which, the Appellant states (Spec. ¶ 0001), is “utilized in construction and/or loading vehicles, such as telescopic loading or front loading vehicles, on which a boom or lever can be raised or lowered by means of a lifting cylinder.” Claim 1 is illustrative:

1. A hydraulic arrangement comprising:
 - a hydraulic cylinder having a first chamber and a second chamber, a first supply pipe connected to the first chamber and a second supply pipe connected to the second chamber;
 - a volumetric control valve assembly located within a hydraulic pipe and arranged between the first and second chamber;
 - a hydraulic fluid feeder in fluid communication with a hydraulic reservoir; and
 - a controller having a raise position, a lower position, a neutral position, and a float position to control the hydraulic cylinder, the second supply pipe being fluidly connected to the hydraulic reservoir when the controller is in the float position, and the first and second supply pipes being substantially prevented from being fluidly connected to the hydraulic fluid feeder when the controller is in the float position.

THE REFERENCE

Bettin US 6,068,064 May 30, 2000

THE REJECTION

Claims 1, 2, 6 and 10 stand rejected under 35 U.S.C. § 102(b) over Bettin.

Appeal 2008-0792
Application 11/077,596

OPINION

Appellant does not dispute that Bettin discloses the structure required in independent claim 1 save for the volumetric control assembly required in the second subparagraph thereof. We are in agreement with the Appellant that the valve 250 disclosed in Bettin and relied upon by the Examiner as the called for volumetric control valve is actually a pressure relief valve. Such a valve opens in response to an over-pressure situation and when opened does not provide a control over the flow volume as a volumetric control valve would do. Both pressure relief valves and flow or volumetric control valves are standard in this art and are well known to those of ordinary skill. They are not the same or interchangeable, and the clear reference to a volumetric control assembly in claim 1 precludes a finding that the claimed subject matter rejected by the Examiner lacks novelty over the Bettin disclosure.

With regard to the dissent, we merely state that a pressure relief valve and a volumetric control assembly are different, the art recognizes this to be true, and no amount of sophistry can change this simple fact.

DECISION

The rejection of claims 1, 2, 6, and 10 under 35 U.S.C. § 102(b) over Bettin is reversed.

REVERSED

Appeal 2008-0792
Application 11/077,596

OWENS, *Administrative Patent Judge*, dissenting.

The Appellant separately argues only claims 1 and 10 (Br. 6-7). I therefore limit my discussion to those claims. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2007).

Claim 1

Bettin discloses an agricultural implement having a ground engaging tool and a fluid control circuit for controlling the engagement of the ground engaging tool with the ground (col. 1, ll. 6-13). The fluid control circuit includes a fluid cylinder (240) (which corresponds to the Appellant's hydraulic cylinder) having a first chamber (on the piston base side of the cylinder in fig. 6), a second chamber (on the rod side of the cylinder in fig. 6), a first supply pipe connected to the first chamber and a second supply pipe connected to the second chamber (fig. 6), a pump (262) (which corresponds to the Appellant's hydraulic fluid feeder) in communication with what appears as a hydraulic reservoir in figure 6, and a closed-center control valve (270') having a lower position (270A), a raise position (270B), a neutral position (270N), and a float position (270F) (col. 7, ll. 3-29; col. 10, ll. 33-37). In the float position, as shown in figure 6, the second supply pipe is fluidly connected to the hydraulic reservoir, and the first and second supply pipes are prevented from being fluidly connected to pump 262. The Examiner relies upon Bettin's pressure relief valve 250 (col. 9, ll. 12-15; fig. 6) as corresponding to the Appellant's volumetric control valve assembly located within a hydraulic pipe and arranged between the first and second chambers (Ans. 3).

Appeal 2008-0792
Application 11/077,596

The Appellant argues (Br. 6): “Bettin et al. does not disclose the claimed volumetric control valve assembly, which controls the rate of fluid flow. Contrary to the Examiner’s position, the pressure relief valve of Bettin et al. does not function as a volumetric control valve assembly.”

The Appellant’s Specification exemplifies the volumetric control valve assembly (52) (¶¶ 0041-0050), but does not define the term “volumetric control valve assembly.” Bettin’s pressure relief valve 250 preferably is adjustable to vary the preselected pressure at which it opens (col. 9, ll. 27-30). Hence, that pressure relief valve provides volumetric control by permitting flow at a low pressure setting that is prevented at a higher pressure setting.

I therefore am not convinced of reversible error in the rejection of claim 1 and its dependent claims 2 and 6.

Claim 10

Claim 10, which depends from claim 1, requires that “the valve assembly includes a flow regulator that changes a volumetric flow rate and limits the volumetric flow rate to a given maximum value.”

The Appellant argues that “no such flow regulator is present in Bettin et al.” (Br. 6).

Bettin’s pressure relief valve 250 changes the volumetric flow rate, at a particular setting, from zero flow when the valve is closed to greater than zero flow when the valve opens. When pressure relief valve 250 opens, the volumetric flow rate is limited to the maximum permitted by the size of the pressure relief valve’s flow passage.

Appeal 2008-0792
Application 11/077,596

Hence, I am not persuaded of reversible error in the rejection of claim 10.

The majority argues that volumetric control valve assemblies are well known in the art.

During patent prosecution, claims are to be given their broadest reasonable interpretation consistent with the Specification, as the claim language would have been read by one of ordinary skill in the art in view of the Specification. *See In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989); *In re Sneed*, 710 F.2d 1544, 1548 (Fed. Cir. 1983). The Appellant's Specification does not define "volumetric control valve assembly", and does not indicate that "volumetric control valve assembly" means anything less than an assembly having a valve capable of volumetric control. Because Bettin's pressure relief valve 250 is adjustable to vary the preselected pressure at which it opens (col. 9, ll. 28-30), it is capable of volumetric control. When pressure relief valve 250 is set to open at a low pressure it permits volumetric flow at that pressure. When pressure relief valve 250 is set to open at a higher pressure it does not permit volumetric flow at the low pressure but permits it at the higher pressure. That is volumetric control, and the Appellant's claims do not require any more volumetric control than that. To read the claims as requiring volumetric control in any particular manner would be improperly reading limitations from the Specification (or elsewhere) into the claims. *See In re Prater*, 415 F.2d 1393, 1405 (CCPA 1969).

Appeal 2008-0792
Application 11/077,596

I therefore dissent from the majority's decision to reverse the Examiner's rejection.

hh

DEERE & COMPANY
ONE JOHN DEERE PLACE
MOLINE, IL 61265