

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID R. JETER

Appeal 2008-1491
Application 11/343,016
Technology Center 3700

Decided: October 30, 2008

Before MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

David R. Jeter (Appellant) filed a Request for Rehearing under 37 C.F.R. § 41.52 (hereinafter “Request”) on August 27, 2008, of our decision mailed June 30, 2008 (hereinafter “Decision”). The Decision affirmed the Examiner’s rejection of claims 1-4 and 6-18 under 35 U.S.C. § 103(a) as

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unpatentable over Reighard (US 3,815,788) and Rosen (US 3,585,361).

Appellant's Request is directed to the affirmance of the rejection as to claims 1-4 and 6-9 only.

Appellant's Request contends that this panel misapprehended or overlooked the Examiner's finding that Reighard's dispensing gun 11 is a "manifold" and modified the Examiner's rejection so as to state a different ground of rejection (Request 2-3). Consequently, according to Appellant, the Decision "effectively contains a new ground of rejection for claims 1-4 and 6-9" (Request 2). On this basis, Appellant contends that Appellant is entitled to either a rehearing on the alleged new ground of rejection or, in the alternative, to have prosecution reopened before the Examiner. *Id.* We understand this to be a request that we reconsider our Decision affirming the rejection of claims 1-4 and 6-9 in light of the arguments made in Appellant's Request or, in the alternative, that we denominate the Decision to be a new ground of rejection of claims 1-4 and 6-9 pursuant to 37 C.F.R. § 41.50(b), and we treat it as such.

We first address Appellant's contention that the Decision effectively included a new ground of rejection. We do not agree. While the Examiner made a finding that the dispensing gun 11 of Reighard is a "manifold" (Answer 3 and 5), presumably even without modification in view of Rosen, the Examiner's rejection very clearly proposed modification of Reighard's apparatus by providing a manifold with multiple ports in fluid communication with multiple dispensing guns to increase efficiency and throughput as taught by Rosen (Answer 4). It is this modified structure based on the combination of Reighard and Rosen on which the Examiner relied for the pump manifold adapted to distribute hot melt adhesive among

a plurality of outlet ports, as called for in claim 1. Thus, our characterization of the Examiner’s rejection as being based upon the combination of Reighard and Rosen (Decision 7) was entirely consistent with the Examiner’s rejection. Accordingly, Appellant’s Request does not persuade us to modify our Decision to denominate the rejection of claims 1-4 and 6-9 affirmed therein as a new ground of rejection pursuant to 37 C.F.R. § 41.50(b).

We next address Appellant’s argument on pages 3-5 of the Request that we overlooked or misapprehended that in order for the combination of Reighard and Rosen proposed by the Examiner to satisfy the limitation in claim 1 that the pump manifold be “coupled in fluid communication with said outlet of said pump housing,” the manifold must be in fluid communication with exit port 100 of Rosen’s manifold block 17, which we found can reasonably be considered part of the pump housing recited in claim 1 (Decision 10). We have not misapprehended or overlooked that this is the case. The hot melt distribution system (dispensing gun 11) of Reighard, modified as taught by Rosen to include a manifold with multiple ports in fluid communication with multiple dispensing guns as proposed by the Examiner, is coupled in fluid communication with the exit port 100 of Rosen’s manifold block 17. Appellant’s Request thus also fails to persuade us that the rejection of claims 1-4 and 6-9 should be reversed.

CONCLUSION

Appellant’s Request has been granted to the extent that we have reconsidered our Decision in light of the arguments in Appellant’s Request but is denied with respect to our making any modification to the Decision.

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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).

DENIED

LV:

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