UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH P. IANNELLO

Appeal 2008-1697
Application 10/910,393
Technology Center 3600

Decided: October 27, 2008

Before JENNIFER D. BAHR, LINDA E. HORNER, and
STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Joseph P. Iannello (Appellant) has filed a request for rehearing under 37 C.F.R. § 41.52 requesting that we reconsider our decision of August 1, 2008 ("Decision"), wherein we affirmed the rejection of claims 8, 9, and 27 under 35 U.S.C. § 102(b); affirmed the rejection of claims 11-13 under 35

U.S.C. § 103(a); and reversed the rejection of claim 10 under § 103(a). The Appellant argues that the Board "misapprehended the extent of what [the] Stepper [reference] teaches" and, in particular, "has failed to appreciate the functional/operational differences between the disclosed upper portion of the tool back (10), as taught by the Stepper [reference], and the claimed attachment device" (Request for Rehearing 2).

THE INVENTION

The Appellants' claimed invention is directed to a mechanical cleaning device for mounting on a cutting blade. The device includes an expandable metal clamp, at least one bolt to constrict the metal clamp, and a replaceable brush head (Spec. 5:7-9).

ANALYSIS

The Appellant asserts that if we consider the upper portion of the tool back (10) to be the claimed attachment device, then the upper portion of the tool back (10) of Stepper must cause the claimed removable brush head (lower portion of the tool back (10)) to be linked to or make contact with the expandable metal clamp (the body section (S)), as claimed (Request for Rehearing 3). The Appellant contends that "Stepper fails to teach that the upper portion of the tool back (10) causes the clamp (S) and the brush head (the lower portion of tool (10)) to be joined" (Request for Rehearing 4).

The claim language at issue in our Decision was the recited attachment device. In particular, claim 8 recites "said attachment device engaging said attachment site to attach said removable brush head to said expandable metal clamp." We construed "attachment device" to mean "any contrivance used to join the removable brush head to the expandable metal clamp" (Decision 11). Then, we found that Stepper's holder including elongated saddle S is an expandable metal clamp (Decision 8, Facts 1-3), the lower portion of the tool back 10 forms the removable brush head (Decision 9, Facts 4-5), the ridge 24 on the saddle is the attachment site (Decision 9, Fact 8), and the upper portion of the tool back 10 is an attachment device which engages ridge 24 to attach the lower portion of the tool back 10 to the saddle S, as claimed (Decision 11, Facts 8 & 9).

The Appellant appears to contest only Finding of Fact 9, which concludes that the upper portion of the tool back 10 is an attachment device, because it engages an attachment site 24 on the expandable metal clamp S to join the removable brush head (the lower portion of the tool back 10) and the expandable metal clamp S. The Appellant argues Stepper teaches that compression from the bolt 26 and nut 30 being tightened causes the flanges 16 and 18 to be joined to the lower portion of tool back 10 and thus the upper portion of the tool back 10 is not involved in joining the lower portion of the tool back to the clamp S (Request for Rehearing 4, citing Stepper, col. 2, ll. 16-50).

While we agree that the tightening of the bolt 26 and nut 30 compresses flanges 16 and 18 about the sides of the lower portion of the tool back 10 (Decision 4-5, Facts 6 & 7), the Appellant's argument overlooks the further disclosure in Stepper that "the saddle has a ridge 24 which serves to bite into and grip the tool back when the saddle is secured in place" (Stepper, col. 2, ll. 26-28 and 44-49, Fig. 2; see also Decision 5, Fact 8). Thus, there are two forces at work in Stepper that cause the tool back to be attached to the saddle, *viz.*, the compression of the flanges 16 and 18 against the lower portion of the tool back 10 and the biting of the ridge 24 into the upper portion of the tool back 10. Our Decision was based on the finding that the ridge 24 is the claimed attachment site. The claims do not state that there can be only one attachment site to attach the removable brush head to the expandable metal clamp. Rather, the claims require only that the attachment device engage "said attachment site." The upper portion of Stepper's tool back 10 engages the ridge 24 when the bolt 26 and nut 30 are tightened. Thus, the tool back 10 (including the lower portion) is joined to the expandable metal clamp, in part, at ridge 24, and thus ridge 24, rather than flanges 16 and 18, is the claimed attachment site. As such, we find the Appellant's argument that "<u>Stepper</u> fails to teach that the engagement of the upper portion of the sweeping tool back (10) with the saddle back (14) causes the flanges (16 and 18) to be joined or secured to the sweeping tool back (10)" (Request for Rehearing 5) to be unpersuasive.

We also find the Appellant's argument as to the embodiment of Figure 3 unpersuasive, because we relied on the embodiment of Figure 2 of Stepper to show all the elements of claim 8. Contrary to the Appellant's assertion that "Stepper discloses and illustrates that the flanges (16 and 18) are joined with or attached to the lower portion of the sweeping tool back (10) *without the engagement of the upper portion of the sweeping tool back (10) to the saddle back (14)* …" (Request for Rehearing 6 (emphasis added)), the embodiment of Figure 2 of Stepper shows that ridge 24 of the saddle back 14 has direct engagement with the upper portion of the sweeping tool back 10.

To be clear, we did not hold, as asserted by the Appellant, that "the engagement of the upper portion of the sweeping tool back (10) with the saddle back (14) causes the flanges (16 and 18) to be joined or secured to the sweeping tool back (10)" (Request for Rehearing 6). Rather, we held that the engagement of the upper portion of the tool back 10 (attachment device) with the ridge 24 (attachment site) on the saddle S causes the lower portion of the tool back 10 (removable brush head) to be joined with the saddle S (expandable metal clamp).

Further, the fact that the lower portion of tool back 10 of Stepper is also attached to saddle S via the flanges 16 and 18 is of no moment, because, as explained *supra*, claim 8 does not require that the claimed attachment device is the only means of attaching the removable brush head to the expandable metal clamp.

DECISION

Accordingly, while we have granted Appellant's request for rehearing to the extent that we have reconsidered our decision, the request is denied with respect to making any changes in the decision. 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) (2006).

DENIED

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BASCH & NICKERSON LLP
1777 PENFIELD ROAD
PENFIELD, NY 14526