

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER CROWN, NIGEL SMITH, and JARED BOWMAR

Appeal 2008-1709
Application 10/168,413
Technology Center 3600

Decided: August 04, 2008

Before MURRIEL E. CRAWFORD, LINDA E. HORNER, and BIBHU R.
MOHANTY, *Administrative Patent Judges*.

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DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1, 4-10, and 14. Claims 2-3 and 11 have been objected to and indicated as being allowable if rewritten to include all the limitations of the base and any intervening claims. Claims 12-13 and 15-16 have been

cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We
AFFIRM.

THE INVENTION

The Appellants' claimed invention is directed to a merchandise display matrix with a support assembly, spacer bars, and a hoarding provided with a display aperture. A holding tray for merchandise may be visible through the display aperture. (Specification, 1:22-26). Claim 1, reproduced below, is representative of the subject matter of appeal.

1. A merchandise display matrix which comprises a support assembly adapted to be fitted with one or more spacer bars, the distal end of the spacer bar being capable of supporting a hoarding wherein the hoarding is provided with at least one display aperture wherein one or more merchandise display trays may be arranged to alternatively allow merchandise carried by the one or more trays to be visible through the display aperture or be extended to protrude through the display aperture to facilitate filling of the tray.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Michaelsen

US 4,817,538

Apr. 4, 1989

The following rejections are before us for review:

1. Claims 1, 4-7, and 10 are rejected under 35 U.S.C. § 102(b) as anticipated by Michaelsen.

2. Claims 8-9, and 14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Michaelсен.

FINDING OF FACT

We find the following enumerated finding of fact is supported at least by a preponderance of the evidence¹:

1. Michaelсен has disclosed a construction system for shelves having uprights 2, hangers 66, paneling plates 60, 62, and a shelf 28. The shelf 28 extends through an opening between the paneling plates (Fig. 2).

PRINCIPLES OF LAW

Principles of Law Relating to Anticipation

“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. 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 Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

¹ See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

Principles of Law Relating to Obviousness

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

ANALYSIS

The Appellants argue that the Michaelson reference does not anticipate claims 1 and 14 because the claims require that “merchandise carried by the one or more trays ... be visible through a display aperture” (Br. 6, 7). The Appellants argue that Michaelson does not disclose that merchandise can be carried behind the panels and be viewed through the aperture therefore failing to anticipate the claims (Br. 5, 7). In contrast the Examiner has determined that the claims are recited using alternative language which only requires that the tray be arranged to “allow merchandise...to be visible through the aperture” *or* “extended to protrude

through the aperture” (Ans. 5-6). The Examiner has found Michaelson’s tray to extend through the aperture and has therefore determined the claims to be anticipated.

We begin by determining the scope of the claims. We hold that the phrase in claims 1 and 14 requiring that “one or more merchandise display trays may be arranged to alternatively allow merchandise carried by the one or more trays to be visible through the display aperture or be extended to protrude through the display aperture to facilitate filling of the tray” to be alternative language as noted by the Examiner. Thus, claims 1 and 14 do not require “merchandise carried by the one or more trays to be visible through the display aperture” if the displays trays are “extended to protrude through the display aperture.”

Here, we have found that Michaelson does disclose a shelf (a display tray) which when assembled is extended through the display aperture (FF 1). Accordingly, the rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Michaelson is sustained. The rejection of claim 14 as under 35 U.S.C. § 103(a) as unpatentable over Michaelson is therefore sustained as well.

For the above reasons the rejections of claims 1 and 14 are sustained. The Appellants have not separately argued the rejections of claims 4-10 and the rejections of these claims is accordingly sustained for the same reasons as above.

CONCLUSIONS OF LAW

We conclude that Appellants have failed to show that the Examiner erred in rejecting claims 1, 4-7, and 10 under 35 U.S.C. § 102(b) as being anticipated by Michaelson.

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We also conclude that Appellants have failed to show that the Examiner erred in rejecting claims 8-9 and 14 under 35 U.S.C. § 103(a) as unpatentable over Michaelson.

DECISION

The Examiner's rejections of claims 1, 4-10, and 14 are sustained.

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) (2007).

AFFIRMED

JRG

MYERS BIGEL SIBLEY & SAJOVEC
P.O. BOX 37428
RALEIGH, NC 27627