

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM T. BALL

Appeal 2008-1835
Application 10/408,603
Technology Center 3600

Decided: September 17, 2008

Before WILLIAM F. PATE III, MURRIEL E. CRAWFORD, and
JOHN C. KERINS, *Administrative Patent Judges*.

WILLIAM F. PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

This is an appeal from the final rejection of claims 6 through 9.
These are the only claims in the application.

We have jurisdiction over the appeal pursuant to 35 U.S.C. §§ 6 and 134.

The claimed invention is directed to an enclosure for a wall hydrant. The enclosure is composed of a housing, a cover which is hinged to the housing, and a pin and slot connection which allows the cover to either close the top of the housing or be propped open for access to the hydrant.

Claim 6 reproduced below, is further illustrative of the claimed subject matter.

6. An enclosure for a wall hydrant comprising:

a housing having a round configuration and having means for containing the wall hydrant;

a cover having a hinge portion surrounding a slot;

a pin passing through the housing and the slot to rotatably and slidably connect the cover to the housing; and

said housing having an interior in spaced apart relation to the pin such that when the cover is retracted the cover will pivot about the pin and when the cover is in an open position the hinge portion of the cover cantilevers about the pin and engages the interior of the housing.

REFERENCE

The reference of record relied upon by the examiner as evidence of lack of novelty is:

Dumortier

4,508,469

April 2, 1985

REJECTION

Claims 6 through 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dumortier.

CLAIM CONSTRUCTION AND FINDINGS OF FACT

Appellant argues that 35 U.S.C. § 112, sixth paragraph, is invoked by the independent claim on appeal which recites “means for containing the wall hydrant.” We are in agreement that this limitation invokes 35 U.S.C. § 112, sixth paragraph.

Turning to the relevant portion of Appellant’s specification, we find on page 4, line 21, a housing interior 23 which includes interior side surface 24 and interior top surface 26 and interior rear surface 28. We consider the interior or volume defined by these surfaces, as Appellant’s disclosed means for containing the wall hydrant. Appellant concurs on lines 17 through 19 of page 5 of the Brief.

Dumortier discloses a manhole with an articulated cover. The manhole is comprised of a housing or frame 2 having a round configuration and a cover 3a, 3b hinged to fully cover the housing when in closed position. The hinge or peg 4 is comprised of a pin and a slot. The pin and slot of Dumortier are disposed so that the manhole cover can retract to hold the manhole cover open or can close and cover the housing. Dumortier, col. 2, ll. 46-64.

Dumortier discloses a volume to the interior of the circular housing 2. It is our finding that the depth of the housing 2 creates an interior volume that is capable of containing a wall hydrant. The size of the wall hydrant is

not specified in the claim. Nor is the size of the wall hydrant specified in Appellant's specification. Thus Appellant predicates the patentability of his claims based on the size of a member that is undisclosed and unclaimed. In our view, Dumortier is at least capable of surrounding a volume that can contain a small wall hydrant.

Since Appellant's limitation "having means for containing a wall hydrant" does not point out any specific size in the specification, we must conclude that the limitation is broad and runs the gamut from the smallest spigot or hose bib to the largest Siamese wall hydrant fittings. Nor does Appellant's drawing contain any disclosure of the size of a relevant hydrant. Accordingly, we must construe Appellant's claims as broad in scope, even as we apply 35 U.S.C. § 112, sixth paragraph, to the claims.

CONCLUSION

The Appellant fails to convince us of any error in the Examiner's rejection that claims 6 through 9 lack novelty over Dumortier. Accordingly, the rejection of claims 6 through 9 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). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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