

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEITH E. FECTEAU, JON TAYLOR, and DAVE HONAN

Appeal 2008-3314
Application 10/200,412
Technology Center 3700

Decided: September 26, 2008

Before MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and
MICHAEL W. O'NEILL, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Keith E. Fecteau et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-24. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

Appellants' claimed invention is directed to an adjustable mask for a respirator and a method of doffing such a mask. Claims 1 and 24, reproduced below, are representative of the claimed invention.

1. An adjustable mask, comprising:

a mask portion;

a harness portion;

a cord connected to the harness portion;

a reel portion connected to the cord; and

a handle portion engageable with the reel portion, the handle portion rotatable in only a single direction to effect adjustment of said mask when engaged with the reel portion.

24. A method of doffing a mask, comprising:

pulling a handle assembly away from a mask portion such that the handle assembly disengages from a reel portion; and

rotating the reel portion to unwind a cord from the reel portion such that the mask may be pulled away from the face of the wearer and removed from the head of the wearer.

The Rejections

The Examiner relies upon the following as evidence of unpatentability:

Pate	US 3,079,917	Mar. 5, 1963
Dodd	US 5,595,173	Jan. 21, 1997
Sword	US 5,704,073	Jan. 6, 1998

The following rejections are before us for review.

Claims 1, 5-8, 10-19, and 22-24 stand rejected under 35 U.S.C. § 102(b) as anticipated by Pate.

Claims 2-4 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Pate and Sword.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Pate and Dodd.

Claims 20 and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Pate.

THE ISSUE

Appellants contend that the Examiner erred in determining that Pate teaches a handle “rotatable in only a single direction to effect adjustment of said mask” (Appeal Br.¹ 4) and that Sword and Dodd do not make up for this deficiency (Appeal Br. 5). Appellants emphasize that the issue is clearly directed to the claim limitation “rotatable in *ONLY* one direction to effect adjustment” (Reply Br. 3; emphasis original). We understand this argument as being directed to the claim limitation “rotatable in only a single direction to effect adjustment.” Accordingly, the dispositive issue in this appeal is whether Appellants’ argument that Pate does not teach a handle “rotatable in only a single direction to effect adjustment of said mask” demonstrates error in the Examiner’s rejections of any of the claims on appeal.

¹ We refer herein to the Amended Appeal Brief (“Appeal Br.”), filed April 10, 2007, the Reply Brief (“Reply Br.”), filed September 25, 2007, and the Examiner’s Answer (“Answer”), mailed July 25, 2007.

FINDINGS OF FACT

In accordance with Appellants' Specification, the limitation alluded to by Appellants is directed to a handle 114 which can rotate in only one direction (a tightening direction to pull/shorten the cords 130, 132 to pull the mask 11 close to the face). The handle has teeth that engage teeth on a reel 112 that winds/unwinds to tighten or loosen cords 130, 132. When the user desires to loosen the mask, the user pulls the handle 114 out, such that the teeth of the handle and the reel are disengaged from one another, and pulls on cords 130, 132 so that reel 112 unwinds. (Specification 6, ¶ 21.)

Pate teaches an oxygen mask with an adjustment means 17 including knobs 62, 63 connected to a worm 57, which engages a worm gear 35 (fig. 4; col. 3, l. 22; col. 4, ll. 22-24). Worm gear 35 is selectively engageable with spool 31 via head 43 of rod 42 (col. 3, ll. 44-52). When worm gear 35 is engaged with spool 31, knobs 62, 63 can be rotated in either direction to tighten or loosen the mask for fine adjustment (col. 5, ll. 11-19). However, the user can disengage spool 31 from worm gear 35 by pressing on push button 55, which pushes cap 45, and hence rod 42 (col. 3, l. 74 to col. 4, l. 2; col. 4, ll. 51-53). When this is done, spool 31, biased by spring 46, is wound up and the mask is raised to the wearer's face with the exact positioning being guided by the operator's hand (col. 4, l. 70 to col. 5, l. 3). On the other hand, when button 55 is pressed, the operator can pull against the bias of spring 46 to draw the mask away from the face (col. 4, ll. 51-56). When the push button 55 is released, a spring 44 biases the rod 42 into position so the head 43 engages the spool 31 with the worm gear 35, such that the spool is kept in position from winding or unwinding by worm gears 35 and 57, such position being adjustable by rotation of knob 62 or 63 in either direction

(col. 5, ll. 11-19). Thus, Pate teaches an adjustment mechanism in which the handle (knobs 62, 63) is rotatable in two directions to effect adjustment.

DISCUSSION

Appellants' argument that Pate does not teach a handle "rotatable in only a single direction to effect adjustment of said mask" is directed to a feature that is not recited in claim 24. It is well established that limitations not appearing in the claims cannot be relied upon for patentability. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). Consequently, Appellants' argument does not demonstrate error in the Examiner's rejection of claim 24. Appellant does not assert any other argument in favor of patentability of claim 24 over Pate. We therefore sustain the rejection of claim 24.

Each of independent claims 1, 22, and 23 requires a handle, handle portion, or handle means "rotatable in only a single direction to effect adjustment of said mask." The Examiner contends that Pate's knobs 62, 63 satisfy this limitation. The Examiner concedes that knobs 62, 63 are capable of moving in two directions, but characterizes them as moving in only one direction to provide a tightening effect and as moving in only the opposite direction to provide a loosening effect. In other words, the Examiner characterizes tightening as one type of adjustment effect and loosening as another type of adjustment effect, with either adjustment effect being achieved by rotation in only one direction by knobs 62, 63. (Answer 6.)

While the Examiner's findings with respect to Pate are consistent with our findings, *supra*, the Examiner's characterization of Pate's knobs 62, 63 as rotatable in only a single direction to effect adjustment of said mask requires an unreasonable construction of Appellants' claim language. The

claim limitation at issue requires a handle (or handle means or portion) rotatable in only a single direction to “effect adjustment,” not to provide an “adjustment effect,” as the Examiner’s stated position implies. Moreover, the claim language is more limited than a handle (or handle means or portion) rotatable in a single direction to effect adjustment; it is limited to a handle (or handle means or portion) rotatable *only* in a single direction.

When construing claim terminology in the United States Patent and Trademark Office, claims are to be given their broadest reasonable interpretation consistent with the specification, reading claim language 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). Moreover, claims are interpreted with an eye toward giving effect to all terms in the claim. *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006).

As noted in our findings, *supra*, Appellants’ Specification describes a handle that is capable of effecting adjustment of the mask only by rotation in a single direction. In other words, rotation of Appellants’ handle in the opposite direction will not effect any adjustment of the mask. It is in this light that the claim limitation “rotatable in only a single direction to effect adjustment” must be construed. Specifically, a handle that is rotatable in one direction to effect adjustment of the mask and is rotatable in a second direction to effect adjustment of the mask is not covered by that limitation.

As discussed in our findings, *supra*, and as conceded by the Examiner, Pate’s knobs 62, 63 are rotatable in one direction to effect adjustment (tightening) of the mask and are rotatable in a second direction to effect adjustment (loosening) of the mask. In other words, Pate’s knobs 62, 63 are

rotatable in two directions to effect adjustment of the mask and, thus, do not satisfy the limitation in each of independent claims 1, 22, and 23 of a handle (or handle means or portion) “rotatable in only a single direction to effect adjustment” of the mask.

In light of the above, we cannot sustain the Examiner’s rejection of claims 1, 22, and 23, and claims 5-8 and 10-19 depending from claim 1, as anticipated by Pate.

The Examiner’s rejection of claims 20 and 21 as unpatentable over Pate is grounded in part on the Examiner’s determination that Pate’s knobs 62, 63 satisfy the limitation of a handle (or handle means or portion) “rotatable in only a single direction to effect adjustment” of the mask. Accordingly, for the reasons discussed above, we also cannot sustain the rejection of claims 20 and 21.

The Examiner does not rely on any teaching in either Sword or Dodd that makes up for the deficiency of Pate discussed above. Accordingly, we cannot sustain the rejection of claims 2-4 as unpatentable over Pate and Sword or the rejection of claim 9 as unpatentable over Pate and Dodd.

CONCLUSION

The decision of the Examiner to reject claims 1-24 is affirmed as to claim 24 and reversed as to claims 1-23.

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-IN-PART

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