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6 UNITED STATES PATENT AND TRADEMARK OFFICE
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8
9 BEFORE THE BOARD OF PATENT APPEALS
10 AND INTERFERENCES
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13 *Ex parte* ALFRED A. TAYLOR and GEORGE TSOUKALAS
14

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16 Appeal 2008-3726
17 Application 10/371,164
18 Technology Center 3600
19

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21 Decided: November 4, 2008
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24 *Before:* WILLIAM F. PATE, III, JENNIFER D. BAHR, and
25 FRED A. SILVERBERG, *Administrative Patent Judges.*

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27 SILVERBERG, *Administrative Patent Judge.*

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30 DECISION ON APPEAL
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32 STATEMENT OF THE CASE

33 Appellants appeal under 35 U.S.C. § 134 (2002) from a Final Office
34 Action of claims 1 and 2. We have jurisdiction under 35 U.S.C. § 6(b)
35 (2002).

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SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

4 The Appellants' claimed invention is directed to a bag conveying
5 device that aids a person to place bags in a box. Claim 1, reproduced below,
6 is representative of the subject matter on appeal.

1. In combination, a bag conveying device and a plurality of bags being conveyed thereby, the bags containing a product, said device including:

a base;

a clip assembly including a hub rotatably mounted on the base for angular movement relative thereto about an axis, a plurality of clips mounted on the hub so as to be moved thereby along a generally circular path having a lower most segment and an upper segment, the clips being adapted to each receive a bag, each clip having an open configuration enabling a bag to be engaged therein and a closed configuration holding a bag located therein;

a clip actuating mechanism to operate the clips so that the clips move between the open configuration and the closed configuration at predetermined angular positions with respect to said axis so that said clips are in said closed configuration at said lower most segment and in said open configuration at said upper segment;

drive means to cause angular movement of said hub about said axis so that said bags are delivered to said lower most segment at which a person can be positioned so that the person can engage the bags and remove the bags from the clips; and

and [sic] wherein said conveyor device is configured so that clips locating said bags at said lower most segment expose the bags enabling an operator to grip and remove the bags from the device.

THE REJECTIONS

2 The Examiner relies upon the following as evidence of
3 unpatentability:

4 Harris US 3,685,631 Aug. 22, 1972

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6 The following rejection is before us for review:

7 Claims 1 and 2 are rejected under 35 U.S.C. § 102(b) (2002) as being
8 as being anticipated by Harris.

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ISSUES

11 The issue before us is whether the Appellants have shown that the
12 Examiner erred in rejecting claims 1 and 2 over Harris. This issue turns on
13 whether Harris discloses clips in a closed position at a lower most segment
14 and in an open position at an upper segment as called for in claim 1.

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FINDINGS OF FACT

17 We find that the following enumerated findings are supported by at
18 least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d
19 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for
20 proceedings before the Office).

21 1. The Appellants' Specification discloses a conveyor device 10
22 comprising a hub 17, a plurality of clips 20 mounted on the hub so
23 as to be moved along a generally circular path, the path having a
24 lower most segment and an upper segment, the clips 20 having an
25 open and a closed configuration, a clip actuating mechanism 26, 27
26 that moves the clips 20 between the closed configuration and the

open configuration so that the clips are in a closed configuration at the lower most segment and in the open configuration at the upper segment (p. 1, ll. 23-26 and p. 3, ll. 6, and 14-16).

2. Harris discloses a apparatus 2 comprising a hub, a plurality of clips (bellcranks 8,10) mounted on the hub so as to be moved along a generally circular path, the clips 8,10 having an open and a closed configuration (col. 2 l. 54-col. 3 l. 14).

3. Harris further discloses that the path comprises a lower most segment and an upper segment.

10 4. Harris' lower most segment is the portion of the path from arrow
11 "y" to a point beyond B1.

12 5. Harris' upper segment is the portion of the path at point A.

13 6. Harris still further discloses a clip actuating mechanism 12, 13 that
14 moves the clips 8, 10 to the open configuration so that the clips 8,
15 10 are in a closed configuration at the lower most segment (in
16 actuality, the clips are in a closed configuration for a large portion
17 of the lower most segment, that is, from arrow "y" to a point prior
18 to B1) and in the open configuration at the upper segment (point
19 A) (col. 2, l. 54-col. 3, l. 14) .

20 7. Merriam-Webster's Collegiate Dictionary (10th ed. 1996) defines
21 the term "at" as "in, on, or near."

PRINCIPLES OF LAW

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention.

1 *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444
2 (Fed. Cir. 1984). In other words, there must be no difference between the
3 claimed invention and the reference disclosure, as viewed by a person of
4 ordinary skill in the field of the invention. *Scripps Clinic & Research*
5 *Found. v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991). It is not
6 necessary that the reference teach what the subject application teaches, but
7 only that the claim read on something disclosed in the reference, i.e., that all
8 of the limitations in the claim be found in or fully met by the reference.
9 *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983), cert.
10 denied, 465 U.S. 1026 (1984).

When construing claim terminology in the Patent and Trademark Office, this Board is required to give the claim language its broadest reasonable interpretation. *See In re Crish* 393 F.3d, 1253, 1256 (Fed. Cir. 2004); *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) and *In re Hyatt*, 211 F.3d 1367, 1372-73 (Fed. Cir. 2003).

16 It is well established that limitations not appearing in the claims
17 cannot be relied upon for patentability. *In re Self*, 671 F.2d 1344, 1348
18 (CCPA 1982).

ANALYSIS

21 Appellants argue claims 1 and 2 as a group. As such, we select
22 claim 1 as representative of the group, and claim 2 will stand or fall with
23 claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

Appellants argue that Harris fails to show a clip actuating mechanism that moves clips between an open and a closed configuration so that the clips are in the closed configuration at a lower most segment and in the closed

1 configuration at an upper segment as called for in claim 1, as Harris'
2 bellcrank 10 is automatically caused to open at the lower most segment B1,
3 B2 (Br. 4 and 5). The claims and the Specification are silent as to the exact
4 part of the circular path that the lower most segment and the upper segment
5 encompass. As such, we give the claim limitations their broadest reasonable
6 interpretation. *See Crish* at 1256. We find that Harris' lower most segment
7 is the portion of the path from arrow "y" to a point beyond B1 (Fact 4), and
8 Harris' upper segment is at point A (Fact 5). Claim 1 only calls for the clips
9 to be closed "at" the lower most segment. Merriam-Webster's Collegiate
10 Dictionary (10th ed. 1996) defines the term "at" as "in, on, or near" (Fact 7).
11 Therefore, use of the word "at" before the term "lower most" only means
12 that the clips must be in a closed configuration in the lower most segment
13 not throughout the entire lower most segment. Harris' clips 8,10 are in a
14 closed configuration for a large portion of the lower most segment, that is,
15 from arrow "y" to a point prior to B1 (Fact 6). We agree with the
16 Examiner's analysis that Harris' clips disclose all of the structure as required
17 by claim 1 (Ans. 4) (Fact 6).

18 Appellants further argue that the lower most segment of the path
19 necessarily includes the lower most point in the path where the jaws of the
20 present invention are closed, while the jaws (clips) of Harris are open (Reply
21 Br. 3). Appellants' argument is directed to a limitation that is not called for
22 in claim 1, as claim 1 only calls for the clips to be in a closed configuration
23 at the lower most segment and not at the lower most point in the path. It is
24 well established that limitations not appearing in the claims cannot be relied
25 upon for patentability. *See Self* at 1348.

CONCLUSION OF LAW

2 We conclude that the Appellants have not shown that the Examiner
3 erred in rejecting claims 1 and 2 under 35 U.S.C. § 102(b) as being
4 anticipated by Harris.

DECISION

The decision of the Examiner to reject claims 1 and 2 over Harris is affirmed.

9 No time period for taking any subsequent action in connection with
10 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

Appeal 2008-3726
Application 10/371,164

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11 TOWNSEND AND TOWNSEND AND CREW, LLP
12 TWO EMBARCADERO CENTER
13 EIGHTH FLOOR
14 SAN FRANCISCO, CA 94111-3834