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12/872,350	08/31/2010	Peter Kritzer	8470G-000088/US/COA	3401
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HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			EGGERDING, ALIX ECHELMMEYER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PETER KRITZER

Appeal 2013-007728
Application 12/872,350
Technology Center 1700

Before PETER F. KRATZ, MARK NAGUMO, and GEORGE C. BEST,
Administrative Patent Judges.

BEST, *Administrative Patent Judge.*

DECISION ON APPEAL

The Examiner finally rejected claims 1–4 and 6–26 of Application 12/872,350 under 35 U.S.C. § 103(a) as obvious. Final Act. (October 4, 2012). Appellant¹ seeks reversal of these rejections pursuant to 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

For the reasons set forth below, we REVERSE. We, however, newly reject claim 4 as indefinite. *See* 37 C.F.R. § 41.50(b) (2012).

¹ Carl Freudenberg KG is identified as the real party in interest. App. Br. 2.

BACKGROUND

The '350 Application describes a sealing frame for use in a battery or battery stack. Spec. ¶ 2. Claim 1 is the '350 Application's only independent claim and is reproduced below:

1. A sealing frame (1) for utilization in a battery having a plurality of cells, comprising:

a base body (2) having an opening (3), whereby the base body (2) includes a first sealing surface (4) and a facing second sealing surface (5) and wherein at least one of the first sealing surface (4) and the second sealing surface (5) are elastically compressible,

wherein cooling means (22) are integrated in the base body (2) and which penetrate the base body (2) at least partially along the lengthwise expansion of the sealing surfaces (4, 5); and

a porous and compressible element disposed in the opening in said base body and external to the plurality of cells and between adjacent ones of the plurality of cells.

App. Br. 11 (Claims App. 11).

REJECTIONS

On appeal, the Examiner maintains the following rejections:

1. Claims 1–4, 6–15, and 21–25² are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Weber,³ Watanabe,⁴ and Gehring.⁵ Final Act. 2.

² Although claim 26 is listed in the summary statement of this rejection, claim 26 is not discussed in the body of the rejection. Final Act. 2–6. We, therefore, assume that the inclusion of claim 26 in the summary statement is an inadvertent error, which we have corrected.

³ US 2009/0258288 A1, published October 15, 2009.

2. Claims 12 and 26 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Weber, Watanabe, Gehring, and Doring.⁶ Final Act. 6.
3. Claims 15–20 are rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Weber, Watanabe, Gehring, and Choi.⁷ Final Act. 7.

DISCUSSION

Rejection 1. The Examiner rejected claims 1–4, 6–15, and 21–25 as obvious over the combination of Weber, Watanabe, and Gehring. Final Act. 2; Ans. 5. For reasons that will become apparent, we will discuss the claims subject to this rejection in three groups: (1) claims 1, 6–15, and 21–25; (2) claims 2 and 3; and (3) claim 4.

Claims 1, 6–15, and 21–25. A determination that a claim is obvious requires a comparison of the properly construed claim with the prior art. *Oakley, Inc. v. Sunglass Hut Int’l*, 316 F.3d 1331, 1339 (Fed. Cir. 2003). Thus, we must begin by interpreting claim 1’s language.

We note that claim 1 states that the claimed sealing frame includes “cooling means” that are integrated into the frame’s base body. *See* claim 1. As the Federal Circuit has explained:

Use of the word “means” in claim language creates a presumption that § 112 ¶ 6 applies. *See Greenberg v. Ethicon*

⁴ US 2007/0269714 A1, published November 22, 2007.

⁵ US 2008/0118821 A1, published May 22, 2008.

⁶ US 2003/0031925 A1, published February 13, 2003.

⁷ US 2006/0063066 A1, published March 23, 2006.

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