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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN THOMAS AYLWARD

Appeal 2010-000369
Application 11/421,624
Technology Center 3700

Before: JENNIFER D. BAHR, STEVEN D.A. McCARTHY, and
STEFAN STAICOVICI, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

John Thomas Aylward (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-19 under 35 U.S.C. § 103(a) as unpatentable over Aylward (US 6,505,460 B2, iss. Jan. 14, 2003) and Pearson (6,561,377 B1, iss. May 13, 2003). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

THE INVENTION

The claims are directed to “an apparatus and associated methods for handling pills with a vacuum assembly.” Spec. para. [0001]. Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. A pill handling apparatus comprising:

a plurality of rotary slats, each rotary slat being cylindrically-configured and the rotary slats being axially aligned such that each slat is rotatable about a first axis, each of said rotary slats having an outer circumferential surface extending parallel to the first axis, the outer circumferential surface defining a plurality of receptacles for receiving pills; and

a vacuum assembly disposed in fluid communication with each of said rotary slats and configured to draw air into at least a portion of said receptacles to urge pills to be received by said portion of said receptacles.

OPINION

The Examiner found that Aylward discloses all features of independent claims 1 and 11, with the exception of a vacuum assembly or a step of drawing air into at least a portion of the receptacles to urge pills to be received by the portion of receptacles. Ans. 3, 5. Appellant does not appear to contest this finding.

The Examiner found that Pearson discloses a pill handling apparatus comprising a vacuum assembly in communication with a plurality of receptacles for receiving pills, and reasoned that it would have been obvious to modify the Aylward apparatus and method “by adding the vacuum system from Pearson, in order to more securely retain the pills against the receptacles.” Ans. 3. Appellant argues that the modification proposed by the Examiner would not have been obvious for the following reasons:

- (1) Aylward and Pearson, whether separately or in combination, “**do not teach, suggest, provide motivation for, or otherwise render predictable**” what Appellant purports to be “a relatively complex process of drawing air through pill receptacles, **defined by the outer circumferential surface of cylindrically-configured rotary slats.**” App. Br. 5, 10.
- (2) The Examiner disregards the difficulty presented by attempting to combine the relatively simple vacuum system of Pearson with the complex apparatus of Aylward. App. Br. 5-6, 11.
- (3) Aylward provides a relatively simple solution (cover 80) to appropriately retain the pills in the respective receptacles, and thus does not “teach, suggest, provide motivation for, or otherwise render predictable the substitution of a relatively complex vacuum system for the relatively simple guard plate solution already in place.” App. Br. 6, 11.
- (4) Aylward and Pearson teach away from the proposed combination, because Aylward already describes a mechanism for retaining the pills (the cover), and a redundant means for doing so would be unnecessary. App. Br. 15, 16.

- (5) Aylward's provision of a positive air pressure system to eject the pills suggests that the pills are appropriately retained without the presence of a vacuum system. App. Br. 6, 11.

Appellant additionally argues, with respect to claims 2 and 12, that "the increased complexity of having a plurality of independently rotatable slats incorporating a vacuum assembly is not rendered predictable or obvious" from the combination of Aylward and Pearson. App. Br. 7, 13.

Appellant reiterates, with respect to claims 8 and 19, that it would not have been obvious to add a complex vacuum system to Aylward's apparatus, given the presence of Aylward's ejection system. App. Br. 8, 13-14.

For the reasons articulated by the Examiner (Ans. 7:14 to 9:7), Appellant's arguments are not persuasive of error in the Examiner's rejection.

Appellant's arguments that Aylward and Pearson provide no teaching, suggestion, or motivation for the proposed modification are not persuasive. As Appellant acknowledges, while the demonstration of a teaching, suggestion, or motivation (the test established by the Court of Customs and Patent Appeals) to combine known elements in order to show that the combination is obvious may be "a helpful insight," it cannot be used as a rigid and mandatory formula. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418-19 (2007). Rejections on obviousness grounds must be supported by "some articulated reasoning with some rational underpinning" to combine the known elements in the manner required in the claim at issue. *Id.* at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). However, "the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences

and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418. The Examiner articulated a reason for adding the vacuum system from Pearson to the apparatus of Aylward, (i.e., to more securely retain the pills against the receptacles). As more fully discussed below, this articulated reasoning has rational underpinnings.

We appreciate that Pearson applies suction to adhere pills to apertures in a front wall of a rotary vacuum drum, rather than to receptacles formed in the circumferential perimeter surface of rotary slats. However, it is not apparent, and Appellant has not adequately explained, why the application of suction to a different wall of a rotating drum (or slat) would be uniquely challenging or unpredictable to a person having ordinary skill in the art. As noted by the Examiner (Ans. 8), the issue of the alleged complexity of selectively providing fluid communication between a fluid pressure source and respective receptacles on the outer circumferential surface of a rotary slat, depending on the position of the receptacle relative to the capture position and the release position, has been addressed by Aylward. Merely to apply those same principles to selectively providing fluid communication to a vacuum source, as distinguished from a positive pressure source, involves only routine skill. “A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 421.

We do not agree with Appellant that Aylward’s disclosure of a cover 80 that assists in maintaining the pills in place during travel to the release position (col. 7, ll. 50-52) would have discouraged a person of ordinary skill in the art from employing suction to more securely retain the pills against the receptacles, as proposed by the Examiner. Prior art does not teach away from claimed subject matter merely by disclosing a different solution to a

similar problem unless the prior art also criticizes, discredits or otherwise discourages the solution claimed. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004). As the Examiner pointed out (Ans. 8-9), Aylward does not criticize, discredit, or otherwise discourage the use of suction to more securely retain the pills against the receptacles. Further, the Examiner explains why a person of ordinary skill in the art would be prompted to employ suction to help retain the pills against the receptacles, either in addition to or in place of Aylward's cover. Ans. 8. These explanations, which we adopt, convince us that the Examiner's articulated reason for the proposed modification has rational underpinnings.

We also do not agree with Appellant that Aylward's disclosure of a positive pressure eject mechanism suggests that Aylward's apparatus would not benefit from a vacuum system to more securely retain the pills in the receptacles. As pointed out by the Examiner (Ans. 8), Aylward's disclosure of such an eject mechanism indicates only a desire on the part of Aylward to ensure that pills are released from the receptacles. We find no inconsistency in the provision of both a vacuum system to help securely retain the pills in their receptacles during their travel from the capture position to the release position and a positive pressure eject mechanism to ensure that the pills are released from the receptacles at the release position.

Thus, Appellant has not persuaded us that the Examiner erred in concluding that Aylward and Pearson render obvious the subject matter of independent claims 1 and 11. We sustain the rejection of claims 1 and 11. Appellant does not present any separate arguments for the patentability of dependent claims 3-7, 9, 10, and 13-18 apart from independent claims 1 and

11. Thus, claims 3-7, 9, and 10 fall with claim 1, and claims 13-18 fall with claim 11. *See* 37 C.F.R. § 41.37(c)(1)(vii).

We also sustain the rejection of claims 2 and 12. As discussed above, Aylward addresses the issue of the alleged complexity of selectively providing fluid communication between a fluid pressure source and respective receptacles on the outer circumferential surface of a rotary slat, depending on the position of the receptacle relative to the capture position and the release position. Moreover, Aylward addresses this issue with independently driven rotary slats. *Abst.*; col. 2, ll. 42-43; col. 5, ll. 20-22. Accordingly, Appellant's argument directed to the allegedly increased complexity of having a plurality of independently rotatable slats incorporating a vacuum assembly is not convincing.

We also sustain the rejection of claims 8 and 19. As discussed above, we find no inconsistency in the provision of both a vacuum system to help securely retain the pills in their receptacles during their travel from the capture position to the release position and a positive pressure eject mechanism to ensure that the pills are released from the receptacles at the release position.

DECISION

For the above reasons, the Examiner's decision to reject claims 1-19 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).

AFFIRMED

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