



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,600	10/09/2003	Michael Choi	81044302	1017

36865 7590 11/28/2011
ALLEMAN HALL MCCOY RUSSELL & TUTTLE, LLP
806 S.W. BROADWAY, SUITE 600
PORTLAND, OR 97205

EXAMINER

JIANG, CHEN WEN

ART UNIT	PAPER NUMBER
----------	--------------

3784

MAIL DATE	DELIVERY MODE
-----------	---------------

11/28/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL CHOI

Appeal 2010-000764
Application 10/683,600
Technology Center 3700

Before KEN B. BARRETT, GAY ANN SPAHN, and
MICHAEL C. ASTORINO, *Administrative Patent Judges*.

SPAHN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Michael Choi (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's rejection of claims 14, 15, 19, and 20. Appellant cancelled claims 1-13 and 16-18. Appellant's representative presented oral argument on November 10, 2011. We have jurisdiction under 35 U.S.C. § 6(b).

The Claimed Subject Matter

Claim 14, reproduced below, is representative of the subject matter on appeal.

14. A method of operating a climate control system in a passenger vehicle traveling on the road, the method comprising:
directing a flow of air to a passenger compartment of the vehicle via a duct, where the duct has a bend and where a blower fan is coupled to said duct upstream of said bend and where a set of radial vanes is located in said duct; and
operating the blower fan to generate said flow of air in said duct, where said radial vanes protrude inwardly into said flow of air in said duct, and said vanes are located downstream of said fan and upstream of said bend, said vanes reducing noise otherwise caused by air flowing around said bend.

The Rejections

The following Examiner's rejections are before us for review.

Claims 14 and 15 are rejected under 35 U.S.C. § 103(a) as unpatentable over Zarnick (US 5,728,980, issued Mar. 17, 1998) and Kawanishi (US 6,078,671, issued Jun. 20, 2000).¹

¹ Although the Examiner set forth the grounds of rejection as being unpatentable over Zarnick in view of Kawanishi or vice versa, i.e., Kawanishi in view of Zarnick, we note that "where a rejection is predicated on two references each containing pertinent disclosure which has been pointed out to the applicant, we deem it to be of no significance, but merely a matter of exposition, that the rejection is stated to be on A in view of B instead of on B in view of A, or to term one reference primary and the other secondary." *In re Bush*, 296 F.2d 491, 496 (CCPA 1961).

Claims 14, 15, 19, and 20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Zarnick and Choi (US 5,722,357, issued Mar. 3, 1998).

SUMMARY OF DECISION

We REVERSE.

OPINION

Obviousness based on Zarnick and Kawanishi

The Examiner finds that Zarnick discloses claim 14's method of operating a climate control system substantially as claimed since Zarnick's prior art device would necessarily or inherently perform the claimed method. Ans. 3-4. The Examiner acknowledges that Zarnick is directed to a duct silencer for a building, but the Examiner interprets "[b]uildings and vehicles [to be] intended use of noise reduction technique[s for] ventilation system[s]." Ans. 3. With respect to claim 14's step of "directing a flow of air to a passenger compartment of the vehicle via a duct" (App. Br. 27), the Examiner indicates that Zarnick discloses the noise reduction to be downstream of the blower of the air conditioning unit so that it would have been obvious to one of ordinary skill in the art to provide this noise reduction device in the air conditioning unit of a vehicle. Ans. 3-4.

Appellant contends that even if Zarnick and Kawanishi are combined, their combination fails to disclose claim 14's step of "directing a flow of air to a passenger compartment of the vehicle via a duct" (App. Br. 27). App. Br. 10, 13, and 18.

We agree with Appellant that the combination of Zarnick and Kawanishi does not teach or suggest directing air flow to the passenger

compartment of vehicle. Zarnick discloses a duct silencer of plastic panels 12 which is positioned after a bend and downstream from the furnace blower or fan in a building's heating and ventilating system 10. Fig. 1, col. 1, ll. 53-55, and col. 2, ll. 2 and 21-22. Zarnick fails to disclose that the duct 15, 16, 17, 18, and 20 and silencer 12 directs air to the passenger compartment of a vehicle. Although the Examiner alleges that it would be obvious to one of ordinary skill in the art to provide Zarnick's noise reduction device in a vehicle's air conditioning unit, there is no disclosure in Zarnick to support that this is the case. Kawanishi is equally as silent as Zarnick that the silencer 16 disclosed therein, which is stated to be adapted to be mounted on an air duct (Abstract), directs air flow to the passenger compartment of a vehicle. Kawanishi simply never discusses in what environment, such as building, vehicle, etc., the silencer is used. Thus, since neither Zarnick nor Kawanishi teach or suggest the use of their devices to direct air flow to the passenger compartment of a vehicle and since the Examiner has failed to adequately explain why it would have been obvious to a person of ordinary skill in the art to do so, we are persuaded by Appellant's contention.

Moreover, we do not agree with the Examiner's interpretation of the vehicle in claim 14 as being a recitation of intended use. Rather, the term "the vehicle" is a structural component of claim 14's method step, "directing a flow of air to a passenger compartment of the vehicle via a duct." In other words, the claim requires the step of "directing a flow of air" to be performed "to a passenger compartment of the vehicle via a duct." As such, evidence or technical analysis addressing "the vehicle" as a structural component of claim 14 is required in order to sustain a rejection under 35 U.S.C. § 103(a) and the Examiner has failed to provide this.

In view of the foregoing, we do not sustain the Examiner's rejection of claim 14 under 35 U.S.C. § 103(a) as unpatentable over Zarnick and Kawanishi. Claim 15 is dependent upon and falls with claim 14 and thus, we also do not sustain the Examiner's rejection of claim 15 under 35 U.S.C. § 103(a) as unpatentable over Zarnick and Kawanishi.

Obviousness based on Zarnick and Choi

The Examiner's rejection based on Zarnick and Choi relies on the same findings with respect to Zarnick as discussed *supra* in the section entitled "*Obviousness based on Zarnick and Kawanishi.*" Ans. 19-24. Appellant contends that even if Zarnick and Choi are combined, their combination fails to disclose claim 14's step of "directing a flow of air to a passenger compartment of the vehicle via a duct" (App. Br. 27). App. Br. 19 and 24.

We agree with Appellant that the combination of Zarnick and Choi does not teach or suggest directing air flow to the passenger compartment of a vehicle. As discussed *supra*, Zarnick's duct silencer is used in a building's heating and ventilating system and Zarnick does not teach or suggest that it would be obvious to a person of ordinary skill in the art to direct air flow to a passenger compartment of a vehicle. Choi discloses noise suppression in the intake system of an internal combustion engine. Title. Choi does not teach or suggest directing air flow to the passenger compartment of a vehicle. Thus, since neither Zarnick nor Choi provide support for the Examiner's conclusion that it would have been obvious to one of ordinary skill in the art to use the resulting device from the combination of Zarnick and Choi to direct air flow to the passenger compartment of a vehicle, we are persuaded by Appellant's contention.

Moreover, for the reasons discussed *supra* in the section entitled “*Obviousness based on Zarnick and Kawanishi*,” we do not agree with the Examiner’s interpretation of the vehicle in claim 14 as being a recitation of intended use and the Examiner has failed to provide evidence or technical analysis addressing “the vehicle” as a structural component of claim 14 in order to sustain a rejection under 35 U.S.C. § 103(a).

In view of the foregoing, we do not sustain the Examiner’s rejection of claim 14 under 35 U.S.C. § 103(a) as unpatentable over Zarnick and Choi. Claims 15, 19, and 20 are dependent upon and fall with claim 14 and thus, we also do not sustain the Examiner’s rejection of claims 15, 19, and 20 under 35 U.S.C. § 103(a) as unpatentable over Zarnick and Choi.

DECISION

We reverse the Examiner’s decision to reject claims 14, 15, 19, and 20.

REVERSED

Klh