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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/263,028	10/31/2005	Dawn White	DWH-12202/29	2207

25006 7590 02/20/2013

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EXAMINER	
SELLS, JAMES D	

ART UNIT	PAPER NUMBER
1745	

NOTIFICATION DATE	DELIVERY MODE
02/20/2013	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE PATENT TRIAL AND APPEAL BOARD

Ex parte DAWN WHITE

Appeal 2011-000327
Application 11/263,028
Technology Center 1700

Before KAREN M. HASTINGS, MICHAEL P. COLAIANNI, and DONNA M. PRAISS, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-7 and 9. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

Claim 1 is illustrative of the claimed subject matter:

> 1. In an ultrasonic consolidation process wherein a sonotrode is used to bond a feedstock to form an object having a geometry, the improvement comprising the steps of:

> moving a sonotrode laterally across the surface of an object having one or more layers of material to be ultrasonically consolidated; and
>
> optimizing the lateral positioning of the sonotrode relative to the geometry.

The Examiner maintains, and Appellant appeals, the following rejections[1]:

1) claims 1-3 and 5-6 under 35 U.S.C. § 102(b) as being anticipated by White (US 6,519,500 B1, issued Feb. 11, 2003);
2) claims 4 and 7 under 35 U.S.C. § 103(a) as unpatentable over White in view of Grewell (US 5,772,814 issued June 30, 1998); and
3) claim 9 under 35 U.S.C. § 103(a) as unpatentable over the combined prior art of White, Grewell, and White '137 (US 2003/0178137 A1 published Sept. 25, 2003) .

Upon consideration of the evidence on this record and each of Appellant's contentions, we find that the preponderance of evidence supports the Examiner's finding that Appellant's claims 1-3, 5, and 6 are anticipated by White. We likewise find that the preponderance of evidence on this record supports the Examiner's conclusion that the subject matter of Appellant's claims 4, 7, and 9 is unpatentable over the combined prior art of White and Grewell. Accordingly, we sustain each of the Examiner's rejections of the claims on appeal for the reasons set forth in the Answer, which we incorporate herein by reference.

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[1] The Examiner withdrew the § 112, second paragraph rejection of claim 4 (Ans. 2).

We provide the following for emphasis only. The main issue on appeal for claims 1-3, 5, and 6 turns on the broadest reasonable interpretation of the claim language. It is well established that "the PTO must give claims their broadest reasonable construction consistent with the specification . . . Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation." *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) ("[A]s applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee.") While the Examiner has set forth a broad interpretation of the claim language (Ans. 4, 9-10), Appellant has not pointed to any definitions in the Specification or otherwise clearly explained why the Examiner's interpretation is unreasonable.

Notably, the plain meaning of the disputed term "optimizing" in claim 1 encompasses making a process as effective or functional as possible. Thus, the Examiner's finding that White's process optimizes the lateral positioning of its sonotrode relative to the geometry of the object being worked upon is reasonable, since it is reasonable that the process of White would have been as effective or functional as possible. Appellant has provided no evidence, or any persuasive line of technical reasoning, explaining why the Examiner's broadest reasonable interpretation is in error (*see generally* App. Br.; Reply Br.).

Likewise, with respect to claim 4, Appellant does not specifically dispute the Examiner's detailed findings that the process of White inherently treats features within the cross section of the object of Fig. 6 differently (e.g., Ans. 9, 10; Briefs *generally*). With respect to claims 5 and 6,

Appellant also does not dispute the Examiner's finding that "this partial consolidation [of the materials] by White is a form of tack welding" (Ans. 10; Briefs *generally*) and therefore does not persuasively point out any error in the Examiner's conclusion that White anticipates claims 5 and 6.

Similarly, Appellant does not sufficiently dispute or address the Examiner's findings in support of the obviousness determinations, and fails to consider the applied prior art as a whole (e.g., Ans. 10-12; Briefs *generally*). The Examiner's determinations that one of ordinary skill would predictably optimize the location or position of an ultrasonic welder (Ans. 7), and predictably desire to minimize bulk motion (*id.* at 9), are supported by a preponderance of the evidence and are unrefuted on this record. An improvement in the art is obvious if "it is likely the product not of innovation but of ordinary skill and common sense." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007). *See also*, *Perfect Web Techs., Inc. v. InfoUSA, Inc.*, 587 F.3d 1324, 1329 (Fed. Cir. 2009) ("hold[ing] that while an analysis of obviousness always depends on evidence that supports the required Graham factual findings, it also may include recourse to logic, judgment, and common sense available to the person of ordinary skill that do not necessarily require explication in any reference or expert opinion").

Thus, we sustain all of the § 103 rejections on appeal.

ORDER

The rejection of claims 1-3, 5, and 6 under 35 U.S.C. § 102(b) is affirmed.

The rejection of claims 4, 7, and 9 under 35 U.S.C. § 103(a) is affirmed.

TIME PERIOD FOR RESPONSE

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

AFFIRMED

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