

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GENERAL COMPONENTS, INC.¹,
Appellant

Appeal 2009-007210
Reexamination Control 90/006,707
Patent 5,505,464
Technology Center 3600

Decided: March 10, 2010

Before ROMULO H. DELMENDO, RICHARD M. LEBOVITZ,
and SCOTT R. BOALICK, *Administrative Patent Judges*.

LEBOVITZ, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The applicant Raymond C. McGarvey is listed in the Appeal Brief as the Real Party in Interest, but an assignment was recorded on Aug. 31, 1992 in App. No. 07/937,560 (upon which Patent 5,505,464 is based) in which Raymond McGarvey assigned his interest to General Components, Inc. (Reel/Frame: 006216/0402).

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This is a decision on the appeal by the patent holder of U.S. Patent No. 5,505,464 of the Patent Examiner's rejections of claims 18 and 25 under § 102(b) and § 103(a), respectively. The Board's jurisdiction for this appeal is under 35 U.S.C. §§ 6(b), 134, and 306. We reverse.

STATEMENT OF THE CASE

A Request for *Ex Parte* Reexamination of U.S. Patent No. 5,505,464 ("the '464 patent"), issued April 9, 1996, was filed by a third-party requestor ("Requestor") on July 11, 2003, pursuant to 35 U.S.C. §§ 302-307 and 37 C.F.R. § 1.510. The Requestor contended that several printed publications raised substantial new questions as to the patentability of claim 18 of the '464 patent. (Req. 2.) The request for Reexamination was granted. (Order Granting *Ex Parte* Reexamination, dated Oct. 9, 2003.) A detailed Office Action was subsequently issued by the Patent Examiner, rejecting claims 1, 5, 17, and 18 and confirming the patentability of claims 2-4, 6-16, and 19-23 of the '464 patent. (Office Action 1, dated Feb. 15, 2005.)

In response to the Office Action, Appellant added new claims 24 and 25. (Amendment, dated July 13, 2005.) Reexamination culminated in the Final Office Action ("Final Rejection"), in which claims 18 and 25 were rejected and the patentability of claims 1-17 and 19-24 was confirmed. (Final Office Action 1, dated July 26, 2005.) This is an appeal from the Final Rejection by the patent holder of the '464 patent.

The rejected claims of the '464 patent are drawn to face seal fittings. Face seal fittings are utilized to connect and seal tubular conduits together

(Spec.,² col. 1, ll. 46-64). As described in the patent Specification, a gasket is positioned in prior art fittings between the opposing faces of the conduits to be joined (*id.* at col. 1, ll. 16-42). A problem with prior art gaskets, according to the Specification’s “Background” section, is that “crevices” or “dead volumes” form when the gasket is positioned between the conduit faces (*id.* at col. 1, ll. 20-23 & ll. 39-42). Such dead volumes are said to be undesirable because they entrap and accumulate materials, which can “later break off and flow with a fluid conveyed by the fitting,” contaminating semiconductor and other applications requiring “special cleanliness.” (*Id.* at col. 1, ll. 22-27; *see also id.* at col. 1, ll. 39-42.)

The invention is characterized in the Specification as a fitting “in which the small area of the fitting which might entrap material from the fluid flowing through the fitting is minimized to produce a minimum dead volume condition” and which seals “substantially along two annular lines” of the gasket (*id.* at col. 1, ll. 45-53). The Specification teaches:

These advantages are achieved by the provision, on the glands or other tubular members which comprise the fitting, of annular noses which engage opposite sides of the sealing gasket along the inner surfaces of the tubular members which define the flowpath for the fluid. Furthermore, each nose has, in axial cross section, a rounded outer profile shaped and positioned to seal against the gasket principally along two circumferential lines

(*Id.* at col. 1, ll. 53-60.)

² The “Specification” or “Spec.” refers to the written description of the granted ‘464 patent, which is the subject of this appeal.

Claims 18 and 25 are the only appealed claims. They stand rejected by the Examiner as follows:

- Claim 18 under 35 U.S.C. § 102(b) as anticipated by Wilson (U.S. Pat. No. 1,821,865, Sept. 1, 1931) (Ans.³ 3) and
- Claim 25 under 35 U.S.C. § 103(a) as obvious in view of Wilson and Davlin (U.S. Pat. No. 4,403,795, Sept. 13, 1983) (Ans. 3).

Appellant appeals both rejections and separately argues that the rejections are improper.

Claims 18 and 25 read as follows:

18. A face seal fitting comprising a first conduit having an inner surface defining the outer boundary of a flowpath and having a radial end face having an annular nose projecting from said end face,
a second conduit having an inner surface defining the outer boundary of a flowpath and a radial end face having an annular nose projecting from said end face,
a metal gasket sandwiched between said end faces and making a sealing engagement with said noses,
said gasket having an inner cylindrical surface having substantially the same diameter as the inner surfaces of said first and second conduits where said conduits engage said gasket,
means to hold said end faces together sandwiching said gasket therebetween with axial pressure applied to said gasket,
said end faces with said noses and said gasket being shaped when fully engaged under axial pressure applied by said means to fit together so that no more than minimal dead spaces are defined between said gasket and said conduits at said inner surfaces and said inner surfaces define the outer boundary of a continuous flow path.
25. A face seal fitting comprising a first conduit having an inner surface defining the outer boundary of a flowpath and having a radial end face

³ “Ans.” refers to the Examiner’s Answer with a mail date of Jan. 31, 2007.

having an annular nose projecting from said end face, a second conduit having an inner surface defining the outer boundary of a flowpath and a radial end face having- an annular nose projecting from said end face. a metal gasket sandwiched between said end faces and making a sealing engagement with said noses, said gasket having an inner cylindrical surface having substantially the same diameter as the inner surfaces of said first and second conduits where said conduits engaged said gasket, means to hold said end faces together sandwiching said gasket therebetween with axial pressure applied to said gaskets, and end faces with said noses and said gasket being shaped when fully engaged under axial pressure applied by said means to fit together so that no more than minimal dead spaces are defined between said gasket and said conduits at said inner surfaces and said inner surfaces define the outer boundary of a continuous flow path, wherein said nose has a rounded sealing surface.

CLAIM INTERPRETATION

Statement of the Issue

Because the proper interpretation of claim 18 is at issue in this appeal, we begin our analysis with claim interpretation.

Appellant contends that the “nose” of the claimed face seal fitting is properly interpreted in light of the patent Specification to have a rounded outer profile. The Examiner interprets the term more broadly to include any structure which projects forward from an end face. The Examiner does not interpret “nose” to be limited to a rounded structure. The issue is therefore whether the Examiner’s interpretation of “nose” is erroneous.

Principles of Law

A determination that a claim is anticipated under 35 U.S.C. § 102(b) involves two analytical steps. First, the Board must interpret the claim language Secondly, the Board must compare the construed claim to a prior art reference and make

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factual findings that “each and every limitation is found either expressly or inherently in [that] single prior art reference.” *Celeritas Techs. Ltd. v. Rockwell Int’l Corp.*, 150 F.3d 1354, 1360 (Fed. Cir. 1998).

In re Crish, 393 F.3d 1253, 1256 (Fed. Cir. 2004).

The “Board gives claim language its broadest reasonable interpretation consistent with the specification.” *In re Buszard*, 504 F.3d 1364, 1368 (Fed. Cir. 2007). During patent examination proceedings, claim terms are given “the broadest reasonable meaning . . . in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). This mode of claim construction applies even in reexaminations. *See, e.g., In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Translogic Tech., Inc.*, 504 F.3d 1249 (Fed. Cir. 2007).

Analysis

Claim 18 is drawn to a “face seal fitting” comprising first and second conduits, each having “a radial end face having an annular nose projecting from said end face.” A “metal gasket” is “sandwiched between said end faces and making a sealing engagement with said noses.” When the end faces with the noses and gasket are “fully engaged under axial pressure applied by” a means to hold the end faces together, “no more than minimal dead spaces are defined between said gasket and said conduits.” At issue in this Appeal is the proper interpretation of the term “nose.”

“nose”

The “nose” of the claimed face seal fitting is recited in claim 18, and described in the Specification, to be located on the conduit’s “radial end face.” The term “nose” is not explicitly defined in the patent Specification. However, the Specification states that providing an “annular nose” which has a “rounded outer profile” (Spec., col. 1, ll. 55-59) achieved the disclosed advantage of sealing the conduit members together with a “minimum dead volume space.” On the other hand, Claim 18 recites that the “nose” is “annular” in shape, but does not expressly recite that the nose has a “rounded outer profile.” Despite the absence of the “rounded” phrase from the claim, Appellant asks us to read that limitation into the claim and to interpret the claimed “annular nose” to have a “rounded” outer profile. (*See* App. Br.⁴ 6-7 & 9; Reply Br.⁵ 5.)

During patent examination proceedings, claim terms are given their broadest reasonable interpretation as they would be understood in light of the Specification. According to our reviewing court, the purpose of this rule is to “fashion claims that are precise, clear, correct, and unambiguous,” removing “uncertainties of claim scope . . . as much as possible, during the administrative process.” *In re Zletz*, 893 F.2d 319, 322 (Fed. Cir. 1989).

In this case, the Specification describes the “nose” as having a “rounded outer profile” and shows all embodiments of a “nose” with this

⁴ “App. Br.” refers to the Corrected Version of the Appeal Brief dated Feb. 23, 2009.

⁵ “Reply Br.” refers to the Reply Brief with a date stamp of Mar. 30, 2007.

shape (Spec. Figs. 1 & 3). The Specification characterizes the face-seal fitting as follows:

By the present invention, a fitting is provided in which the small area of the fitting which might entrap material from the fluid flowing through the fitting is minimized to produce a minimum dead volume condition and, in some embodiments, a zero dead volume condition. At the same time, the shape of the gasket still causes the elements of the fitting to align with the gasket and provides sealing substantially along two annular lines. These advantages are achieved by the provision, on the glands or other tubular members which comprise the fitting, of annular noses which engage opposite sides of the sealing gasket along the inner surfaces of the tubular members which define the flowpath for the fluid. Furthermore, *each nose has, in axial cross section, a rounded outer profile* shaped and positioned to seal against the gasket principally along two circumferential lines, a first high-pressure line where the rounded outer profile engages a conical face on the sealing gasket and a second line where the rounded outer profile engages a central circular section of the sealing gasket.

(*Id.* at col. 1, ll. 1, ll. 45-64; emphasis added.)

Thus, the Specification states that “each nose” has “a rounded profile” to achieve the advantage of a fitting with “minimum dead volume” space. Because a rounded nose is the shape characterized in the “Summary of the Invention” as cooperating to produce a seal with minimum dead volume and constitutes the only embodiment described in the Specification, persons of ordinary skill in the art would have interpreted term “nose” as recited in claim 18 to mean a forwardly protruding structure⁶ with a rounded

⁶ According to the *Webster's II New College Dictionary* at page 160, a “nose” is defined as: “Something resembling a nose in shape or position, as

outer profile. Reading “nose” more broadly, as the Examiner did, would be ignoring specific requirements of the claimed nose structure and interpreting the term in a way which is inconsistent with the Specification’s written description of the invention.

Claims are not read apart from the Specification. When claim 18 is properly read in the context of the Specification, persons of ordinary skill in the art would have read the nose of the claimed face seal fitting to require a structure with a rounded outer profile.

In reaching this construction of claim 18, we did not adopt Appellant’s standard for claim interpretation. Appellant had argued “reexamination” is not the same as “conventional prosecution” and therefore the broadest reasonable interpretation rule does not strictly apply in a reexamination proceeding (App. Br. 5).

This argument is not supported by legal precedent. During reexamination, the same standard of claim interpretation is applied as during prosecution of a patent application before the PTO. For example, *In re Translogic Tech., Inc.*, 504 F.3d 1249 (Fed. Cir. 2007) involved an appeal by a patent holder from a decision by the Board of Appeals and Interferences to uphold an examiner’s rejection of claims as obvious in a reexamination proceeding. In reviewing the Board decision, the court explicitly acknowledged that claims are given their broadest reasonable interpretation consistent with the Specification during “examination proceedings.” *Translogic*, 504 F.3d at 1256. Therefore, we are not persuaded that the

the forward end of an aircraft, rocket, or submarine.” (Reply Brief, Exhibit C.)

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standard for claim interpretation during “conventional prosecution” is any different for reexamination proceedings.

ANTICIPATION BY WILSON

Claim 18 stands rejected under 35 U.S.C. § 102(b) as anticipated by Wilson.

Statement of the Issue

The Examiner contends that Wilson describes all the elements of the claimed face seal fitting, therefore anticipating it.

Appellant contends that the Examiner erred in finding that Wilson describes the claimed annular nose projecting from a radial end face, as persons of ordinary skill in the art would have interpreted the phrase. (App. Br. 4.)

The issue in this rejection is whether the Examiner’s findings are supported by the disclosure in the Wilson patent.

Principles of Law

Because the hallmark of anticipation is prior invention, the prior art reference – in order to anticipate under 35 U.S.C. § 102 – must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements “arranged as in the claim.” *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983).
Net MoneyIN, Inc. v. VeriSign, Inc., 545 F.3d 1359, 1369 (Fed. Cir. 2008).

Findings of Fact (FF)

The Wilson Patent

1. Wilson describes a “fluid tight joint” for “connecting together sections of metal pipe or conduits used to transmit fluids under pressure” (Wilson, p. 1, ll. 1-5).
2. The pipe ends are provided with “annular corners which are adapted to exert pressure on the sealing surfaces” of a sealing ring with annular sealing surfaces as the ends of the pipe are drawn together. (*Id.* at 1, ll. 57-62.)
3. Wilson’s Figure 2, reproduced below, shows “each pipe end with an annular corner which is more or less square and is located at the very end of the pipe.” (*Id.* at 2, ll. 73-75.)

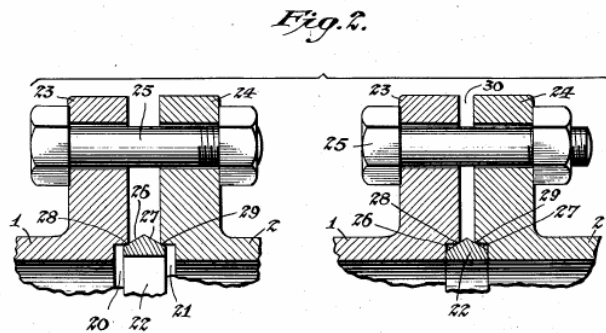


Figure 2 shows a fragmentary cross-section of Wilson’s pipe joint, where each pipe end is recessed with a single counter-bore (*id.* at 2, ll. 69-72). The joint has the following elements (*id.* at 2, ll. 75-106):

- 1, 2 : pipes
- 20, 21: recesses
- 22 : sealing ring
- 23, 24: flanges
- 26, 27: sealing surfaces
- 28, 29: annular corners

4. When the pipe ends are brought together to create a seal, “the tapered sealing surfaces 26 and 27 of the sealing ring [22] are lapped into sealing contact with annular corners 28 and 29 on the pipe ends” (*id.* at 2, ll. 84-87).
5. “In the completed joint,” shown in the drawing on the right of Figure 2 (FF 3), “the ring 22 is preferentially so contracted that its internal diameter is flush with the interior of the pipe, so that there is no change in the size of the conduit (and no crevices) at the joint.” (*Id.* at 2, ll. 94-98.)
6. “The construction of Fig. 2 allows for manufacturing variations in that it permits the bottoms of the recesses 20 and 21 to be always drawn against the ends of the sealing ring 22 regardless of manufacturing variations in dimensions.” (*Id.* at 2, ll. 99-104.)
7. “A certain degree of seal is produced by this contact between the bottoms of recesses 20 and 21 and the ends of ring 22.” (*Id.* at 2, ll. 104-106.)
8. Wilson describes the action of drawing the pipe ends together as “*lapping action*” and describes it as follows (the discussion at column 2, lines 8-45 is with respect to Figure 1, but the same action occurs when the Figure 2 joint is closed): As annular corners 28, 29 slide over the ring surfaces 26, 27, they exert “considerable pressure” which “causes local action on the metal of the sliding surfaces which is in effect a local cold working that somewhat densifies the surface metal; it also so removes manufacturing irregularities as to produce sealing fit capable of withstanding high pressure.” (*Id.* at 2, ll. 16-24.)
9. Wilson states: “The contacting surfaces are so effectively lapped into a sealing fit In fact, in actual practice a fluid tight seal is obtained by the

time a fraction of the lapping movement has been completed.” (*Id.* at 3, ll. 29-37.)

Comparison between claim 18 and Wilson

10. Claim 18 is drawn to a face seal fitting. We focus on the following elements of the claim as their presence in the joint described in the Wilson patent is in dispute:

- a first conduit “having a radial end face having an annular nose projecting from said end face”;
- a second conduit having “a radial end face having an annular nose projecting from said end”;
- “said end faces with said noses and said gasket being shaped when fully engaged under axial pressure applied by said means to fit together so that no more than minimal dead spaces are defined between said gasket and said conduits.”

11. Wilson describes pipes 1, 2 which serve as the first and second conduits of claim 18 (FF 3).

12. The pipe conduits have recesses 20, 21 (FF 3) that are at each end face of the conduit and arranged around the conduit’s circumference, meeting the limitation of claim 18 of a “radial end face” (Ans. 3).

13. Each radial end face (recesses 20, 21) has a flange (23, 24) (FF 3). The flange protrudes forwardly from the recess end face (as defined by annular corners 28, 29 and the surface facing the sealing ring 22) and therefore is a forwardly projecting structure.

14. When the pipe ends described by Wilson are drawn together to create a seal by lapping action, there are “no crevices” at the joint (FF 5, FF 8) and a “fluid tight seal” is produced (FF 9). Because the seal is “fluid tight” and there are “no crevices” where the gasket meets the end faces, there is sound basis to believe that there are “minimal dead spaces” between the gaskets and conduits, as required by claim 18.

Analysis

There is one main issue to be resolved in the rejection: whether the Examiner erred in finding that Wilson describes a “nose” projecting from a radial end face as that term would be understood by persons of ordinary skill in the art in light of the Specification.

Anticipation is a question of fact. In this case, the Examiner found that Wilson described a recess in the pipe end of its joint which was radially positioned and constituted a face, meeting the claimed limitation of a “radial end face.” (FF 12; Ans. 3 & 5.) The Examiner found the claimed “annular nose” limitation was met by the forwardly projecting flange described in Wilson (FF 13; Ans. 3 & 5).

Appellant contends that the Examiner erred in finding that Wilson’s flange is a “nose” as recited in claim 18. Appellant contends that the claimed nose is “rounded,” while Wilson describes a square-shaped corner (App. Br. 6-9.)

During reexamination, claims are given their broadest reasonable interpretation consistent with the Specification. As discussed above in the “Claim interpretation” section, the term “nose” would have been interpreted

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by persons of ordinary skill in the art, when read in the light of the Specification, to mean a forwardly projecting structure with a rounded outer profile. Wilson's nose defined by the annular corners 28, 29, and which projects forward from recesses 20, 21, is square (FF 3). As a nose with a rounded outer profile is not shown in Wilson, we are compelled to the reverse the rejection.

OBVIOUSNESS IN VIEW OF WILSON AND DAVLIN

Claim 25 stands rejected under 35 U.S.C. § 103(a) as obvious in view of Wilson and Davlin (Ans. 3).

Statement of the Issue

The issue in this rejection is whether the Examiner erred in combining the Wilson and Davlin patents to reach the subject matter of claim 25.

Principles of Law

"[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007).

"The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416. "Express suggestion to substitute one equivalent for another need not be present to render such substitution obvious." *In re Fout*, 675 F.2d 297, 301 (CCPA 1982); *see also In re Mayne*, 104 F.3d 1339, 1340 (Fed. Cir. 1997) ("Because the applicants merely substituted one element known

in the art for a known equivalent, this court affirms [the rejection for obviousness].”). *Accord KSR*, 550 U.S. 398 at 416 (“[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.”).

Findings of Fact (FF)

15. Davlin describes a flange union for attaching two conduits for fluid (Davlin, col. 1, ll. 7-9).

16. Davlin’s Figure 1 shows a perspective view of a flange union for joining two conduits (*id.* at col. 2, ll. 45-47).

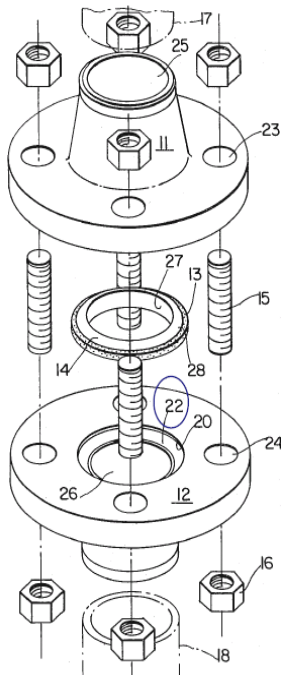


Figure 1 shows that “inner ends of flange members **11** and **12** are provided with annular recessed seats **19** and **20** which have convex sealing surfaces **21** and **22**, respectively.” (*Id.* at col. 3, ll. 29-31.)

17. Davlin discloses that “[w]hen the sealing ring **14** is properly positioned in the recessed seats **19** and **20**, the convex surface **28** is in contact with the convex surfaces **21** and **22**, . . . a primary fluid tight annular metal-to-metal seal is formed” (*id.* at col. 3, ll. 43-51).

18. Davlin teaches:

The configuration of the sealing surfaces **21**, **22** and **28** . . . is such that an annular metal-to-metal line seal of minimum surface area is formed closely adjacent the internal diameter of the bore Additionally, inasmuch as the configuration of the sealing surfaces is such that a fine line seal is achieved, the present invention simultaneously provides a minimum seal area. The maximization of the mechanical advantage of the flange bolts and minimization of the seal area permits a markedly lower total pressure to be applied to the recessed female seats **19** and **20**

(*Id.* at col. 5, ll. 35-51.)

Analysis

The difference between claim 25 and the pipe joint disclosed in the Wilson patent is that Wilson does not describe an annular nose which has a “rounded sealing surface.” The Examiner found that Davlin taught rounded sealing surfaces **21** and **22** and that “the rounded sealing surfaces require less total pressure to achieve a ‘metal-to[-]metal line seal of minimum surface area’ as well as other benefits (see col. 5, lines 36-60).” (Ans. 4.) Based on these findings, the Examiner determined “it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the noses 28 and 29 of Wilson by making them rounded as taught

by Davlin to provide an improved seal requiring less pressure to create.”

(Id.)

Appellant contends that the Examiner erred in combining Wilson with Davlin because the seal made by Wilson’s “lapping action” is a different type of seal from that disclosed by Davlin and therefore persons of ordinary would not have had reason to combine them (App. Br. 13-14).

[T]he Wilson invention discloses the use of lapping action to make a seal. If one were to substitute the edge of Wilson with a rounded structure, the methods of forming a seal would be fundamentally different. The methods of achieving a seal as taught by Davlin are not be interchanged with the Wilson device because the lapping action would not necessarily occur in the proposed combination.

(Reply Br. 13.)

The Examiner did not provide sufficient evidence to support the determination that it would have been obvious to have modified Wilson’s annular square corner by making it a convex surface as taught by Davlin. As argued by Appellant, Wilson’s seal is achieved by a different mechanism from Davlin’s. Wilson describes creating a fluid tight seal by sliding an annular square corner over a tapered sealing surface with “considerable pressure,” an action Wilson characterizes as “lapping” (FF 4, FF 8, & FF 9). Wilson teaches that this “construction . . . allows for manufacturing variations in that it permits the bottoms of the recesses 20 and 21 to be always drawn up against the ends of the sealing ring 22 regardless of manufacturing variations in dimensions.” (FF 6.) Davlin, however, describes producing a seal by positioning the ring in recessed seats in a configuration that “permits a markedly lower total pressure to be applied to the recessed female seats **19** and **20**” (FF 17 & FF 18). Thus, Wilson uses

“lapping action” to produce the “considerable pressure” necessary to make a tight seal, while Davlin’s aim was to reduce the amount of pressure applied by using a convex surface. There is no evidence that rounding the annular corner in Wilson’s fitting would produce the tight seal between a square corner and tapered surface or that it would continue to allow for manufacturing variations as described by Wilson.

The substitution of one element for another is generally considered obvious when there is a reason to make the substitution and when the resulting combination yields a predictable result. *See KSR*, 550 U.S. 398 at 416, 418. In this case, the Examiner determined it would have been obvious to have substituted Davlin’s rounded surface for Wilson’s annular corner for the advantages taught by Davlin (Ans. 4), but did not explain how a rounded annular surface corner would have been advantageous in Wilson’s joint seal produced by lapping action between a square corner and tapered surface. Furthermore, the Examiner did not provide sufficient evidence that Davlin’s rounded convex surface, when substituted for Wilson’s annular corner, would produce a fluid tight seal as required by the Wilson patent. The rejection is therefore reversed.

REJECTIONS ARE IMPROPER AS A MATTER OF LAW

Appellant contends that the rejections are improper as a matter of law because in the Request for *Ex Parte* Reexamination “the requester interpreted the Wilson reference in a different manner than the Examiner presently applies the Wilson reference.” (App. Br. 14.) Appellant concludes that “[t]hus . . . no substantial issue of patentability was originally raised in

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the request.” (*Id.*) Appellant also complained that “the Examiner is expected and required to specifically explain the new basis in the Order for Reexamination including how the old art is allegedly being present in a new way,” but did not meet this obligation (*id.*).

“The patent owner involved in a reexamination proceeding . . . may appeal under the provisions of section 134 of this title . . . with respect to any decision adverse to the patentability of any original . . . or new claim of the patent.” 35 U.S.C. § 306. The only decision adverse to patentability in this appeal is the Examiner’s final rejection of claims 18 and 25 under 35 U.S.C. § 102(b) and § 103(a), respectively. Therefore, we do not have jurisdiction in this appeal to determine the propriety of the Order Granting *Ex Parte* Reexamination.

CONCLUSIONS OF LAW & SUMMARY

The Examiner improperly interpreted claim 18. Persons of ordinary skill in the art would have construed “nose” to mean a forwardly projecting structure with a rounded outer profile. As such element is not described by Wilson, we are compelled to reverse the rejection. under 35 U.S.C. § 102(b).

The Examiner erred in combining the Wilson and Davlin patents. The rejection of claim 25 under 35 U.S.C. § 103(a) is reversed.

REVERSED

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