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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/877,631	09/08/2010	Miguel A. Pizano	26.2.E66/USA	3528

61145 7590 09/12/2016

JAMES W. MILLER, ATTORNEY
527 MARQUETTE AVENUE
SUITE 1960, RAND TOWER
MINNEAPOLIS, MN 55402

EXAMINER	
MCGOWAN, JAMIE LOUISE	

ART UNIT	PAPER NUMBER
3671	

MAIL DATE	DELIVERY MODE
09/12/2016	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MIGUEL A. PIZANO, BENJAMIN A. STREET, CAL N. KOSIERACKI, and ANDREW J. KJOLHAUG

Appeal 2014-009238
Application 12/877,631
Technology Center 3600

Before LINDA E. HORNER, LYNNE H. BROWNE, and BRENT M. DOUGAL, *Administrative Patent Judges*.

DOUGAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

CLAIMED SUBJECT MATTER

The claims are directed to a turf groomer for natural and artificial turf surfaces. Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A groomer for use in grooming an artificial turf surface having a backing material that is laid atop the ground with the backing material having upstanding ribbons of artificial fibers that resemble blades of grass, the backing material having granular or particulate infill material placed atop the backing material to substantially fill in the spaces between the artificial fibers, which comprises:
>
> (a) a groomer frame which is movable over the artificial turf surface to traverse the artificial turf surface, the groomer frame having a front and a rear taken with respect to a forward direction of motion of the groomer frame over the artificial turf surface;
>
> (b) at least one grooming brush carried on the groomer frame in a substantially static manner and depending downwardly from the groomer frame with the grooming brush during a grooming operation extending down at least partially into and substantially continuously engaging with the infill material of the artificial turf surface as the groomer frame traverses the artificial turf surface during the grooming operation, wherein the grooming brush extends at least partially laterally relative to the forward direction of motion of the groomer frame, and wherein the grooming brush comprises:
>
> (i) a first brush wall comprising a substantially single row of brush bristles with top ends of the brush bristles being substantially closely packed together and with lower portions of the brush bristles fanning out as the brush bristles extend downwardly from their packed together top ends; and
>
> (ii) a second brush wall which is substantially identical to the first brush wall and which is parallel to but spaced away from the first brush wall by a gap, wherein the gap between the brush walls is large enough so that the

first and second brush walls act substantially independently of one another on the infill material.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Thompson	US 3,588,145	June 28, 1971
Ankenman	US 4,210,210	July 1, 1980
Pettigrew	US 5,218,732	June 15, 1993
Figura	US 5,477,927	Dec. 26, 1995
Davis	US 5,833,013	Nov. 10, 1998
Melroe	US 6,016,584	Jan. 25, 2000
Davis ’469	US 6,655,469 B1	Dec. 2, 2003
Davis ’809	US 8,209,809 B2	July 3, 2012

REJECTIONS

Claims 1–5, 16–18, and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis and Melroe.

Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis, Melroe, and Thompson.

Claims 7 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis, Melroe, and Pettigrew.

Claims 8 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis, Melroe, Pettigrew, and Davis ’469.

Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis, Melroe, Pettigrew, Davis ’809, and Ankenman.

Claims 12–15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis, Melroe, Davis ’809, and Ankenman.

Claim 19 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis, Melroe, and Figura.

OPINION

Claims 1 and 20 are independent. Claims 2–19 depend from claim 1. Appellants rely on their arguments over the rejection of claim 1 for reversal of claims 2–19 all of the rejections. Thus, claims 2–19 stand or fall with the rejection of claim 1. *See* 37 C.F.R. § 41.37(c)(iv).

Claim 1

The Examiner finds that Davis teaches a majority of the features of claim 1. Final Act. 2. Melroe is relied upon for “a brush head with two rows of bristles spaced by a gap sufficient for the brush walls to act independently.” *Id.* at 3. The Examiner explains:

> It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the brush heads of Melroe in place of the brush heads of Davis as a simple substitution of one known element for another to obtain predictable results since both brush heads work to groom turf surfaces.

Id. (citation omitted).

Appellants argue that Davis and Melroe are “two very different devices” (Appeal Br. 9)—Davis is a turf groomer (*id.*) while Melroe is a “sweeping/cleaning” device (*id.* at 10). Appellants argue that turf groomers “continuously engage and act on the infill material of an artificial turf surface to level such infill material” which “is fundamentally different from what Melroe was trying to accomplish, namely sweeping a path clean of any

particulate matter." *Id.* at 11. Appellants further argue: "Leaving the particulate matter in place but simply leveling it out as is desired in a turf groomer is diametrically opposite to sweeping all the particulate matter away as is desired in a path cleaning device." *Id.* at 12.

The Examiner counters that both Davis and Melroe disclose "apparatuses with brush members for engagement with the ground." Answer 9. The Examiner also argues that the function of Melroe "is irrelevant because the basic operation of Davis is not being altered in the combination." *Id.* at 10.

In reviewing the Examiner's position, that Davis's and Melroe's brush systems are interchangeable (i.e., a simple substitution), we must determine "whether the improvement is more than the predictable use of prior art elements according to their established functions." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). For this reason, the functions of both Davis and Melroe are relevant.

On the record before us, it has not been established that the brush implements of Davis and Melroe are equivalents. As outlined by Appellants, the "established functions" of Davis and Melroe are very different and thus, it has not been demonstrated that the substitution of the brush of Melroe, used to remove material, would yield predictable results for grooming artificial turf in the system of Davis. Thus, Appellants have convincingly argued that the Examiner has not shown that using the brush of Melroe with the Davis device is a simple substitution with predictable results.

For the above reasons, we do not sustain the rejection of claim 1. For these same reasons, we do not sustain the rejections of claims 2–19, which depend from claim 1.

Claim 20

The Examiner finds that Davis teaches a majority of the features of claim 20. Final Act. 4. Melroe is relied upon for disclosing "a turf groomer with brush heads connected to a channel member" and for teaching "that either a single brush member or a brush member with two spaced walls of bristles can be used to adjust the sweeping action of the brush members." *Id.* at 5. The Examiner explains: "It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize different brush heads in Davis as taught by Melroe to adjust the sweeping action of the brush heads depending on the needs of the user." *Id.*

Appellants note that the rejection of claim 20 "relies upon the powered rotary sweeper of Melroe that teaches a pair of spaced brush walls for sweeping and cleaning a path to purportedly support the obviousness of using such brush walls in place of the push boom brushes of Davis for grooming a turf surface." Appeal Br. 14. Appellants contend that "the reasons advanced above for reversing the rejection of claim 1 also mandate a reversal of the rejection of claim 20." *Id.* We agree.

For the reasons set forth above in our analysis of the rejection of claim 1, we disagree with the Examiner's finding that Melroe teaches a turf groomer, and thus, the Examiner has not shown that using the sweeper brush of Melroe with the turf groomer of Davis would have been obvious to a

person having ordinary skill in the art at the time of Appellants' invention.

For these reasons, we do not sustain the rejection of claim 20.

DECISION

The Examiner's rejection of claims 1–20 is reversed.

REVERSED