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OFFICE OF PETITIONS

In re Application of :
Hicks et al. :
Application No. 12/164,746 : ON PETITION
Filed: June 30, 2008 :
Attorney Docket No.: HOL001 P373A :

This is a decision on the petition filed February 28, 2011 under 37 CFR 1.181(a)(3) requesting that the Director exercise his supervisory authority and overturn the decision of the Director, Technology Center 3600 (Technology Center Director), dated February 2, 2011, which refused to withdraw the drawing objections made in the final Office action dated June 10, 2010 and withdraw the holding of new matter in the proposed drawing change filed on August 10, 2010.

The petition to overturn the decision of the Technology Center Director dated February 2, 2011, is **DENIED**.

BACKGROUND

In the non-final Office action mailed December 8, 2009 the examiner objected to the drawings under 37 CFR 1.83(a) for not having the claimed rigid connection between the depicted carriage and rail plates. The examiner stated among other objections that: "the carriage 780 rigidly connected to the rail plate 728 must be shown. Figures 20, 21, and 23 appear to show an alternative embodiment to that being claimed, where the carriage 780 is bolted directly to the C-shaped rails of the tractor frame and the carriage is separately mounted to the rails. Figure 20 shows the carriage to be separate from the rail plates. Figure 21 clearly shows a gap between the carriage and the top flange 736 of the rail plate." The examiner required correction of the drawings.

Applicants requested clarification of this objection in the response filed March 8, 2010.

The objection was reiterated and further clarified by the examiner in the Final Office action mailed June 10, 2010.

On August 10, 2010, an amendment after final rejection was filed with the proposed changes to the drawings.

In an advisory action mailed August 30, 2010, the examiner stated: "Applicant's proposed drawing changes raise new matter issues in that the embodiment of Figures 20-24 is modified to show structure that is different than that originally presented."

On October 29, 2010, applicants petitioned to overturn the examiner's refusal to enter the drawings and for acceptance of these changes.

This petition was denied by the Technology Center Director on February 2, 2011.

The instant petition was filed February 28, 2011 requesting review of the Technology Center Director's decision.

STATUTE, REGULATION, AND EXAMINING PROCEDURE

35 USC 132(a) states:

Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application; and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, the application shall be reexamined. No amendment shall introduce new matter into the disclosure of the invention.

37 CFR 1.83 states:

(a) The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box). In addition, tables and sequence listings that are included in the specification are, except for applications filed under 35 U.S.C. 371, not permitted to be included in the drawings.

(b) When the invention consists of an improvement on an old machine the drawing must when possible exhibit, in one or more views, the improved portion itself, disconnected from the old structure, and also in another view, so much

only of the old structure as will suffice to show the connection of the invention therewith.

(c) Where the drawings in a nonprovisional application do not comply with the requirements of paragraphs (a) and (b) of this section, the examiner shall require such additional illustration within a time period of not less than two months from the date of the sending of a notice thereof. Such corrections are subject to the requirements of § 1.81(d).

The Manual of Patent Examining Procedure (MPEP) §608.02 II states in pertinent part:

If the examiner discovers new matter in a substitute or additional drawing, the drawing should not be entered. The drawing should be objected to as containing new matter.

OPINION

Petitioners seek reversal of the Technology Center Director's decision of February 2, 2011 on the ground that the changes in the drawing amendment are supported in the detailed description of the specification. In particular, petitioners cite paragraph [0063] of the specification for support, which states that "[t]he carriage 780 and the rail plates 728 are rigidly joined together by welding or other suitable fasteners."

As the Technology Center Director indicates, the original drawings show the carriage 780 to be separate from the rail plates 728, wherein there is a gap between the connector portion on either side of the carriage and the top flange 736 of the rail plate. The Technology Center Director also indicates that the proposed drawing changes add an expanded connector portion on both sides of the carriage to overlap the top flange of the rail plates.

However, paragraph [0063] of the specification merely offers a general explanation of the rigidly joined carriage and rail plates. The desired drawing amendment requires structural changes having a specificity that is not supported by this general explanation in the specification. Moreover, the original specification suggests that the carriage and rail plates depicted in the original drawings could be joined through a weld or suitable fastener such that structural modification is not necessary.

Therefore, the Technology Center Director was correct to affirm the examiner's objection to the drawings pursuant to 37 CFR 1.83. The Technology Center Director was also correct in determining that the examiner's holding of new matter was proper in accordance with MPEP 608.02 II.

Furthermore, petitioners, citing case law, contend that errors or defects in drawings should be allowed to be corrected when the specification is clear. However, in this situation the drawing amendment presents corrections that are not supported by the specification.

For the reasons set forth above, the Technology Center Director's decision to maintain the drawing objection and maintain the finding of new matter will not be disturbed.

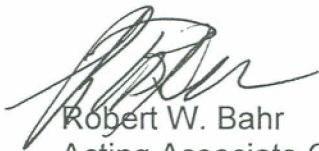
DECISION

A review of the record indicates that the Technology Center Director did not abuse her discretion or act in an arbitrary and capricious manner in the petition decision of February 2, 2011. The record establishes that the Technology Center Director had a reasonable basis to support her findings and conclusion.

The petition is granted to the extent that the decision of the Technology Center Director of February 2, 2011 has been reviewed, but is denied with respect to making any change therein. As such, the decision of February 2, 2011 will not be disturbed. The petition is denied.

This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. See MPEP 1002.02.

Telephone inquiries concerning this decision should be directed to Christopher Bottorff at (571) 272-6692.



Robert W. Bahr
Acting Associate Commissioner for
Patent Examination Policy

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