

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL J. GREENSIDE and SEAN A. CERNIGLIA

Appeal 2007-0470
Application 09/976,997
Technology Center 2800

Decided: April 19, 2007

Before JAMES D. THOMAS, ALLEN R. MACDONALD, and JOHN A. JEFFERY, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-4 and 6-8, the only claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE CASE

Appellants invented a keyed filler panel assembly used in conjunction with computer chassis structures. Filler panels are typically used to enclose or seal off unused slots of the computer chassis. According to the invention, the filler panel assembly includes a locating element coupled to the filler panel body. The locating element orients the filler panel body with respect to the chassis such that an interference generating movement of the filler panel body is reduced. As a result, gaps between respective filler panels are more uniform, thus ensuring that adequate space is available for other filler panels.¹ Claim 1 is illustrative:

1. A keyed filler panel assembly comprising:

a filler panel body; and

a locating element coupled to said filler panel body, said locating element orienting said filler panel body with respect to a computer chassis such that interference generating movement of said filler panel body is reduced.

The Examiner relies on the following prior art references to show unpatentability:

Jones	US 3,986,544	Oct. 19, 1976
Radloff	US 5,575,546	Nov. 19, 1996

The Examiner's rejections are as follows:

1. Claims 1-3 are rejected under 35 U.S.C. § 102(b) as being anticipated by Radloff.

¹ See generally Specification 1:10 - 4:20.

2. Claim 4 is rejected under 35 U.S.C. § 103(a) as unpatentable over Radloff.
3. Claims 6-8 are rejected under 35 U.S.C. § 103(a) as unpatentable over Radloff in view of Jones.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Briefs and the Answer for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Regarding claims 1-3, the Examiner has indicated how the claimed invention is deemed to be fully met by the disclosure of Radloff. Significantly, the Examiner indicates in the rejection that post 16f in Fig. 1 of Radloff corresponds to a “locating element” as claimed (Answer 3).

Regarding independent claim 1, Appellants argue that Radloff’s post 16f is not an integral part of the filler panel body assembly 14 as the Examiner indicates, but rather is an integral part of the chassis assembly 16 (Br. 8; Reply Br. 1). Appellants argue that a feature of the keyed filler panel assembly is that it is a complete assembly prior to the final coupling of the filler panel body with the chassis. Moreover, Appellants contend that the preamble recitation “keyed filler panel assembly” excludes the locating element being on the chassis and not on the filler panel (Br. 8).

The Examiner responds by essentially arguing that Appellants’ arguments are not commensurate with the scope of claim 1. In this regard, the Examiner argues that Radloff’s post 16f is “coupled to” the filler panel body as claimed. The Examiner further notes that the limitation “filler panel

assembly” does not exclude post 16f that is coupled to the filler panel. Also, the Examiner indicates that claim 1 does not recite that the locating element is an integral part of the filler panel body assembly (Answer 6).

It is our view, after consideration of the record before us, that the disclosure of Radloff fully meets the invention set forth in claims 1-3. We also conclude that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the invention set forth in claims 4 and 6-8. Accordingly, we affirm.

ISSUES

(1) Have Appellants established that the Examiner erred in interpreting post 16f in Radloff as reasonably corresponding to a locating element coupled to a filler panel body as recited in independent claim 1?

(2) Have Appellants established that the disclosure of Radloff does not anticipate the limitations of independent claim 1?

(3) Have Appellants rebutted the Examiner’s prima facie case of obviousness for claims 4 and 6-8?

FINDINGS OF FACT

At the outset, we note that the Examiner’s findings regarding the specific teachings of the cited references (Answer 3-5) are not in dispute except with respect to the limitation of claim 1 calling for a keyed filler panel assembly comprising a locating element coupled to the filler panel body. *See* Br. 7-12. Accordingly, we will adopt the Examiner’s factual findings regarding the cited references to Radloff and Jones as they pertain to the undisputed claim limitations.

Radloff discloses an assembly for retaining an expansion card 12 and a filler panel 14 in a personal computer chassis 16 (Radloff, col. 3, ll. 20-22; Fig. 1). The chassis includes an elevated post 16f and tab 16g that are defined in horizontal shelf 16d. The post and the tab locate and retain the filler panel relative to the access point B (Radloff, col. 3, ll. 41-47). Post 16f prevents the filler panel mount 14b from moving in a perpendicular direction as indicated by arrow 20 in Fig. 1. Similarly, tab 16g locates and retains the filler panel mount 14b in a lateral direction as indicated by arrow 22 in Fig. 1. The filler panel mount is then secured by a screw to the shelf 16d through the post 16f (Radloff, col. 4, ll. 50-60). As best seen in Fig. 1, the filler panel 14 is curved at its lower end and is inserted into a slot 16k² in the chassis (Radloff, Fig. 1).

PRINCIPLES OF LAW

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984); *W.L. Gore and Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983).

² Although numeral 16k is shown in Fig. 1 of Radloff, it is not described in the text of the patent. Radloff, however, identifies a commensurate structure 16j as a slot that receives the bottom end of bracket support 18a (Radloff, col. 4, ll. 19-22). Based on the similarity between the structure identified by numerals 16j and 16k respectively in Fig. 1, we presume numeral 16k represents a slot in the chassis.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). If that burden is met, the burden then shifts to the Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

ANALYSIS

We agree with the Examiner that the scope and breadth of the claim language does not preclude the post 16f from reasonably corresponding to the locating element as claimed. First, we disagree with Appellants that a “keyed filler panel assembly” requires an integral structure that excludes any part of the chassis. The term “assembly” is defined, in pertinent part, as “the fitting together of manufactured parts into a complete machine, structure, or unit of a machine” or “a collection of parts so assembled.”³ In our view, components of the chassis that are fitted together with the filler panel body collectively constitute a filler panel assembly as claimed giving the term its broadest reasonable interpretation.

³ Merriam-Webster Online Dictionary, *available at* <http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=assembly> (last visited Apr. 13, 2007).

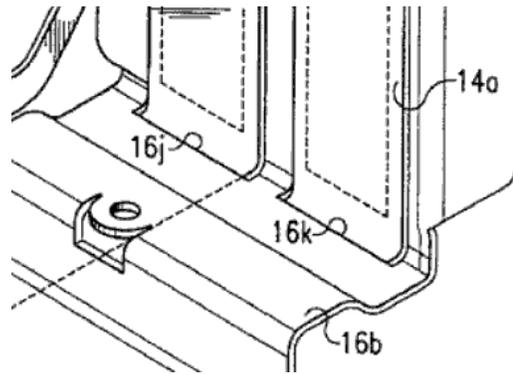
With this interpretation, we turn to Radloff. Although Radloff's post 16f is part of the chassis as Appellants indicate, the scope and breadth of the claim language simply does not preclude this "locating element" that prevents the filler panel body from moving in a perpendicular direction. Significantly, all that the claim requires is that the locating element be "coupled to" the filler panel body. In our view, the direct mechanical engagement between the post 16f and the filler panel body as shown in Fig. 1 fully meets this limitation.

Although Appellants argue that there is theoretically no limit to Radloff's anticipation under the Examiner's rationale, we note that Radloff's direct mechanical engagement between the post and the filler panel body fully comports with the plain meaning of "coupled." This direct mechanical engagement is hardly commensurate with the extreme example noted by Appellants on Page 2 of the Reply Brief.⁴

In addition, the scope and breadth of the locating element limitation in claim 1 does not preclude the screw that secures mount 14b to the shelf through the post 16f. *See* Radloff, col. 4, ll. 50-60. Simply put, nothing in the claim precludes the screw itself as constituting a "locating element" that is "coupled to" the filler panel body through post 16f.

We further note that the scope and breadth of claim 1 also does not preclude the engagement between the filler panel 14 at its lower end to the chassis in Fig. 1. Specifically, the filler panel 14 is curved at its lower end and is inserted into a slot 16k in the chassis as shown in the enlarged detail portion of Fig. 1 below:

⁴ *See* Reply Br. 2 (arguing that under the Examiner's interpretation, "Radloff would anticipate a filler panel with an air conditioner coupled thereto").



Enlarged Detail of Fig. 1 of Radloff Showing Curved Portion of Filler Panel Engaging Chassis

In our view, this curved portion reasonably corresponds to a “locating element” coupled to the filler panel body as claimed. Moreover, the curved portion’s engagement with the chassis would, at least in part, orient the filler panel body with respect to the chassis and reduce interference generating movement as claimed.

For at least these reasons, Radloff anticipates independent claim 1. Since Appellants have not separately argued the patentability of dependent claims 2 and 3, these claims fall with independent claim 1. *See In re Nielson*, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987); *see also* 37 C.F.R. § 41.37(c)(1)(vii).

Likewise, we will sustain the Examiner's rejection of claims 4 and 6-8 under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Radloff (claim 4) and Radloff and Jones (claims 6-8). We find that (1) the Examiner has established at least a prima facie case of obviousness for these claims on Pages 4 and 5 of the Answer, and (2) Appellants have not persuasively rebutted the Examiner's prima facie case. Although Appellants grouped claims 4 and 6-8 as separately patentable (Br. 4-5), Appellants

nonetheless merely noted that the claims depend from an allowable base claim (Br. 11-12). Such an argument, however, does not rebut the Examiner's prima facie case of obviousness. The Examiner's obviousness rejection of claims 4 and 6-8 is therefore sustained.

CONCLUSIONS OF LAW

On the record before us, Appellants have not established that the Examiner erred in interpreting post 16f in Radloff as reasonably corresponding to a locating element coupled to a filler panel body as recited in independent claim 1. Appellants have also not established that the disclosure of Radloff does not anticipate the limitations of independent claim 1. Moreover, Appellants have not rebutted the Examiner's prima facie case of obviousness for claims 4 and 6-8.

Appeal 2007-0470
Application 09/976,997

DECISION

We have sustained the Examiner's rejections with respect to all claims on appeal. Therefore, the Examiner's decision rejecting claims 1-4 and 6-8 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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