

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY B. ELY and FREDERICK P. FINCK JR.

Appeal 2007-3010
Application 10/778,430¹
Technology Center 3600

Decided: December 28, 2007

Before MAHSHID D. SAADAT, SCOTT R. BOALICK, and JOHN A. JEFFERY, *Administrative Patent Judges*.

BOALICK, *Administrative Patent Judge*.

¹ Application filed February 16, 2004. The real party in interest is The Highfield Manufacturing Company.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the final rejection of claims 3, 11, and 16.² We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

STATEMENT OF THE CASE

Appellants' invention relates to a meter box locking assembly for use with utility meter boxes. (Spec. 1, paragraph 0003.)

Claim 3, which depends from claim 1, is exemplary. For convenience, both claims 1 and 3 are reproduced below:

1. A locking assembly for locking a cover over an opening of an enclosure, said assembly comprising:

a mounting bracket including a first wall having opposing first and second ends, a second wall joined to said first wall first end and extending in a first direction away from said first wall, and a stud joined to said first wall and extending in a second direction away from said first wall for engagement with a lock mechanism;

hooking structure extending from said second wall of said mounting bracket, said hooking structure engaging an inner wall of the enclosure to secure the mounting bracket relative to the enclosure;

² Claims 1-21 are pending in the application and have been finally rejected, however this appeal only involves dependent claims 3, 11, and 16. (Br. 1.)

a locking bracket including a first wall having opposing first and second ends and a first surface facing said first wall of said mounting bracket, a second wall joined to said first end of said locking bracket and extending in a first direction away from said first wall of said locking bracket; and

a lock housing fixed to said first wall of said locking bracket, and defining a cavity for receiving a lock mechanism and an opening intersecting said cavity, said opening receiving said stud for engaging a barrel lock received in the cavity.

3. The locking assembly as in claim 1, in which said second wall of said mounting bracket includes a first end joined to said first end of said first wall of said mounting bracket and an opposing second end, and said hooking structure includes a resilient clip extending toward said first wall of said mounting bracket, said resilient clip engaging a wall of the enclosure to secure the mounting bracket relative to the enclosure.

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

Sullivan US 6,742,365 B1 Jun. 1, 2004

Claims 3, 11, and 16 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Sullivan.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R.

§ 41.37(c)(1)(vii).³

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting claims 3, 11, and 16 under 35 U.S.C. § 102(e). The issue turns on whether Sullivan teaches a hooking structure with a resilient clip that engages the wall of an enclosure.

PRINCIPLES OF LAW

Anticipation is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

³ Except as will be noted in this opinion, Appellants have not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ANALYSIS

Appellants contend that the Examiner erred in rejecting dependent claims 3, 11, and 16. We agree.

Regarding claim 3, Appellants argue that Sullivan does not disclose a resilient clip engaging a wall of the enclosure, as claimed. (Br. 5-6.) In particular, Appellants contend that Sullivan does not teach that the locking member 10 (which engages the wall of the enclosure) is resilient and also contend that the spring 14 of Sullivan (which Appellants admit is resilient) does not engage the wall of the enclosure. (Br. 5-6.) The Examiner found that “the locking member 10 of Sullivan et al. is resiliently biased, by the spring member 14, in relation to the wall, thus qualifying as a resilient clip according to the current claims” (Ans. 5) and that “the locking member, or resilient clip, engages a wall structure of the enclosure to secure the mounting bracket relative to the enclosure” (Ans. 5).

We agree with Appellants. Although Sullivan teaches that the locking member 10 engages the wall of the enclosure (col. 4, ll. 46-50; Fig. 1A) and is made of metal (col. 6, ll. 57-59), Sullivan does not teach that the locking member 10 is resilient. In addition, the spring 14 taught by Sullivan maintains the locking member 10 and the actuating lever 12 in a desired position during installation (col. 7, l. 66 to col. 8, l. 1), but does not engage a wall of the enclosure. Thus, Sullivan does not teach a “resilient clip engaging a wall of the enclosure,” as claimed.

Therefore, we will not sustain the rejection of claim 3. Claims 11 and 16 were not argued separately, and stand with claim 3.

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CONCLUSION OF LAW

We conclude that the Examiner erred in rejecting claims 3, 11, and 16 as anticipated under 35 U.S.C. § 102(e).

DECISION

The rejection of claims 3, 11, and 16 under 35 U.S.C. § 102 is reversed.

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REVERSED

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