

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN A. LASHUA

Appeal 2007-3835
Application 10/956,539
Technology Center 2800

Decided: December 11, 2008

Before KENNETH W. HAIRSTON, ROBERT E. NAPPI
and KARL D. EASTHOM, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from a final rejection of claims 1 to 20. We have jurisdiction under 35 U.S.C. § 6(b).

We will sustain the anticipation rejection of claim 1, sustain the obviousness rejections of claims 7 to 9, 15 to 17, and 19, and reverse the obviousness rejections of claims 2 to 6, 10 to 14, 18, and 20.

Appellant has invented a plow control system housing that is mounted to a component in a cab of a vehicle via a strap mounting system (Figs. 1A, 2A, 5, and 8; Spec. 4, 5, 7, and 8).

Claim 1 is representative of the claims on appeal, and it reads as follows:

1. An ergonomic plow control system comprising a housing capable of being mounted to a component in a cab of a vehicle; a switch pad having control keys, said pad mounted in the housing such that said keys are readily accessible to an operator of the vehicle while shifting and/or steering during plowing; and a securing member having an attached strap mounting system, wherein the housing, switch pad, and securing member are assembled to be compact such that the same can be stored in a glove box of the vehicle.

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

Ciula	US 5,361,519	Nov. 8, 1994
Bulkeley	US 5,461,936	Oct. 31, 1995
Struck	US 5,524,368	Jun. 11, 1996
Bonn	US 6,491,319 B2	Dec. 10, 2002 (filed Feb. 28, 2000)
Bonn	PCT/DE00/00673	Feb. 28, 2000

The Examiner rejected claim 1 under 35 U.S.C. § 102(b) based upon the teachings of Ciula.

The Examiner rejected claims 2 to 8 under 35 U.S.C. § 103(a) based upon the teachings of Ciula and the PCT application by Bonn¹.

The Examiner rejected claims 9 to 16 under 35 U.S.C. § 103(a) based upon the teachings of Ciula, the PCT application by Bonn, and Struck.

The Examiner rejected claims 17 and 19 under 35 U.S.C. § 103(a) based upon the teachings of Ciula and Bulkeley.

The Examiner rejected claims 18 and 20 under 35 U.S.C. § 103(a) based upon the teachings of Ciula, Bulkeley, and the PCT application by Bonn.

ISSUES

Anticipation

Appellant argues that the applied reference to Ciula does not teach an ergonomic plow control system with a strap mounting system (App. Br. 3). Thus, the issue before us is has the Appellant rebutted the Examiner's findings (Ans. 3, 4, and 7 to 9) that Ciula describes an ergonomic plow control system with a strap mounting system?

Obviousness

Appellant argues *inter alia* that the applied references lack a teaching or a suggestion of a "flexible" housing for a plow control system (App. Br. 6). Accordingly, the issue is has the Appellant rebutted the Examiner's finding that the applied references teach or would have suggested to the skilled artisan a flexible housing for a plow control system?

¹ In view of the Declaration submitted by Appellant to swear behind the U.S Patent No. 6,491,319 B2 to Bonn, we will rely on the PCT application PCT/DE00/00673 by Bonn in the rejections on appeal (App. Br. 5).

FINDINGS OF FACT

1. As indicated *supra*, Appellant describes and claims a housing 10 for a plow control system 100 that is mounted to a component in the cab of a vehicle via a strap mounting system 31. The housing may be made of a flexible material (Spec. 7). A strap is used to secure the housing to a component in the cab of the vehicle.

2. According to Appellant, the strap can be: “flexible” with “fastening contrivance(s) to assist in mounting” (Spec. 8); “single or dual member arrangement with fastening contrivance(s) . . . and so forth and the like” (Spec. 10); or “any suitable fastening arrangement” (Spec. 11).

3. Ciula describes a plow control system 200 that comprises a housing 210 capable of being mounted to a component (e.g., a dashboard 232) in a cab of a vehicle (Figs. 1, 4, and 7 to 9; col. 6, ll. 4 to 16). The housing is described as being constructed from a suitable plastic or sheet metal (col. 5, ll. 27 to 31). As indicated in Figures 1 and 3 of Ciula, the front and side walls of the housing 210 serve as a switch pad for control keys that are readily accessible to an operator of the vehicle while shifting or steering the vehicle during a plowing operation (col. 5, ll. 31 to 61). A securing member/mounting bracket 240, 248 (Figs. 7 and 9) functions as an attached strap for strapping the housing to the component in the cab of the vehicle. The housing, switch pad, and the securing member assembly is compact enough to be stored in a glove box of the vehicle.

4. The PCT application by Bonn describes a steering wheel 1 that has elastic horn contacts 21 and 22 buried under the airbag unit 10 and airbag gas generator 12 assembly (Figs. 7 and 8). The horn in the vehicle is

activated when the contacts 21 and 22 are pushed together by pressing on the airbag assembly (p. 14). According to Bonn, the elasticity in the contacts 21 and 22 permits greater contact between the contacts (p. 5), and leads to reduce wear between the contacts (p. 14).

5. Struck describes wireless and remote control of a snowplow (Figs. 1 and 2; col. 3, ll. 50 to 67).

6. Bulkeley describes a tubular mounting bracket for mounting a device onto a tubular surface (e.g., a handlebar) (Abstract).

PRINCIPLES OF LAW

Anticipation

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).

Obviousness

The Examiner bears the initial burden of presenting a prima facie case of obviousness, and the Appellant has the burden of presenting a rebuttal to the prima facie case. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

The Supreme Court stated in *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (“[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’.”)

The test for obviousness is what the combined teachings of the references would have suggested to the artisan. Accordingly, one cannot show nonobviousness by attacking references individually where the rejection is based on a combination of references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

ANALYSIS

Anticipation

As indicated *supra*, Appellant argues that Ciula does not teach an ergonomic plow control system with a strap mounting system (App. Br. 3).

We disagree with Appellant's argument. Ciula describes a plow control system with control keys that are placed on the housing so that the operator of the vehicle can conveniently reach them during operation of the plow control system (Finding of Fact 3). Thus, Ciula ergonomically mounts the plow control system housing in the cab of the vehicle so that the operator can reach the control keys while shifting and/or steering the vehicle during a plowing operation (Finding of Fact 3). The Ciula housing assembly is compact enough to be stored in a glove box of the vehicle (Finding of Fact 3). Appellant's argument (App. Br. 3) that Ciula does not disclose a strap mounting system is without merit since Ciula, like the disclosed and claimed invention, describes "suitable fastening arrangements" that are "flexible" "fastening contrivance(s)" "and the like" "to assist in mounting" a plow control housing in a vehicle (Findings of Fact 2 and 3).

Appellant's declaration (App. Br. 3) is ineffective to overcome a prior art rejection under 35 U.S.C. § 102(b).

In summary, the anticipation rejection is sustained because all of the limitations of claim 1 are found in the teachings of Ciula. *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d at 1347; *In re Paulsen*, 30 F.3d at 1478-79.

Obviousness

Turning to the obviousness rejection of claim 2, we find that Ciula is silent as to whether the plastic or sheet metal creates a “flexible” “housing” (Findings of Fact 2 and 3). The PCT application by Bonn describes flexible contacts, but not a “flexible” housing (Finding of Fact 4). According to the Examiner (Ans. 4) “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to make resilient housing (i.e. elastic) in Ciula et al., as taught by Bonn, so that *it is comfortable for the operator*” (emphasis added). We find that this statement by the Examiner is nothing more than a conclusory statement without any rational underpinning in the record in light of the complete silence by the reference teachings concerning a “flexible” housing, and the lack of any mention in Ciula of the lack of comfort of the housing. *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. at 1741. Thus, the obviousness rejection of claim 2, and the claims that depend therefrom (i.e., 3 to 6 and 10 to 14), is reversed. In light of Appellant’s “resilient” housing arguments (App. Br. 10 and 11), the obviousness rejection of claims 18 and 20 is likewise reversed.

Turning next to claims 7 and 8, the obviousness rejection of these claims is sustained because the skilled artisan after reviewing the plow teachings of Ciula would have recognized the need for different switches in different layouts for the two well-known kinds of plows (i.e., straight plow and V-plow) that can be mounted on the front of the vehicle (App. Br. 6).

Appellant's arguments (App. Br. 7 and 8) concerning the individual shortcomings in the teachings of each of the applied references is not convincing of the nonobviousness of the claimed subject matter set forth in claims 9, 15, and 16. *In re Keller*, 642 F.2d at 426. The obviousness rejection of claims 9, 15, and 16 is sustained because Struck clearly teaches that the plow control system can be "wireless and remote" (Finding of Fact 5).

Turning lastly to claims 17 and 19, we find that the gearshift mounted housing in Figure 9 of Ciula, whether considered alone or with Bulkeley's teachings of a tubular mounting bracket for mounting a device on a tubular surface (Finding of Fact 6), teaches or would have suggested to the skilled artisan the "suitably shaped mounting channel" of claim 17 and the "cannulated" interior mounting channel of claim 19 for a gearshift lever. Appellant's argument (App. Br. 8 to 10) that Bulkeley is non-analogous art because it is directed to a motorcycle handlebar is without merit since the problem of mounting a control device on a rounded surface (e.g., a steering wheel, a gearshift lever, or handlebars) is not limited to motorcycles or snowplows.

In conclusion, the Appellant's Declaration evidence of nonobviousness of claims 7 to 9, 15 to 17, and 19 does not outweigh the evidence of obviousness. *In re Oetiker*, 977 F.2d at 1445.

CONCLUSIONS OF LAW

Anticipation of the claimed subject matter set forth in claim 1 has been established by the Examiner because Ciula discloses each and every limitation set forth in these claims.

Obviousness of the claimed subject matter set forth in claims 7 to 9, 15 to 17, and 19 has been established by the Examiner, but such a case has not been made by the Examiner for claims 2 to 6, 10 to 14, 18, and 20.

ORDER

The anticipation rejection of claim 1 is affirmed, and the obviousness rejections of claims 7 to 9, 15 to 17, and 19 are affirmed. The obviousness rejections of claims 2 to 6, 10 to 14, 18, and 20 are reversed.

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

AFFIRMED-IN-PART

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