

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AARON ENGLE

Appeal 2008-2632
Application 10/951,533
Technology Center 2800

Decided: September 15, 2008

Before KENNETH W. HAIRSTON, MAHSHID D. SAADAT,
and CARLA M. KRIVAK, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from a final rejection of claims 1-14. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

STATEMENT OF CASE

Appellant's claimed invention is a method and apparatus for diagnosing faults in a system having multiple motor drives (Spec. ¶[0001]). The method and apparatus include a current protective device connected in parallel between a power source and a plurality of motor drives, a sensor for sensing when the current protective device is tripped and determining which of the motor drives was operating at the time, and indicating means providing and indicating which motor drive tripped the current protective device so that diagnostics and repair can be performed (Spec. ¶[0010]-[0012]; cls. 1, 6, and 10)

Independent claim 1, reproduced below, is representative of the subject matter on appeal.

1. A diagnostic apparatus for determining the location of a fault in a comfort system having power selectively delivered to individual devices among a plurality of devices, comprising:

a current protective device connected in parallel between a power source and the plurality of devices, said protective device being adapted to trip when a current level therethrough exceeds a predetermined level;

a control device connected to both said protective device and to the plurality of devices for selectively directing power from said protective device to operate at least one of said plurality of devices at a time;

means for sensing, when said protective device is tripped, which of said at least one device was operating at that time; and

means for providing an indication thereof for purposes of diagnostics and repair.

When the current protective circuit is tripped, it disconnects power to the motor or motors that were operating at the time. This is determined by the control device that also provides an indication, to a user interface 37, of which motor malfunctioned (Fig. 1; Spec. ¶[0012]).

2. Alexander teaches an energy information system used with a circuit breaker (Abstract). Particularly, Alexander teaches an apparatus for monitoring and obtaining energy information in an electric power distribution system. A multiprocessor unit provides circuit protection and extended monitoring. A graphical display 142 displays power (Fig. 1B; col. 1, ll. 6-16). Sensing means (transformers 204; Fig. 2A) provide an indication of either a voltage or current flowing between a power source and a load through the circuit breakers 114, 116, 118 (Fig. 1B; col. 3, ll. 6-22). A host computer 140, attached to the plurality of circuit breakers (Fig. 1B), periodically polls each of the circuit breakers and monitors power distribution (col. 16, ll. 9-13). Each circuit breaker includes an Energy Information Device (EID) 200 (Fig. 2A) that includes a protective microprocessor 214 and a communication microprocessor 222. The host computer and PCs 115, 117, 119 (Fig. 1B) can also be used to control, respectively, the operation of the circuit breakers (col. 15, ll. 32-34).

PRINCIPLES OF LAW

Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir.), *cert. denied*, 484 U.S. 827 (1987). The inquiry as

to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984), it is only necessary for the claims to “‘read on’ something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or ‘fully met’ by it.”

Obviousness

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 (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 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If the Examiner’s 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. *Id.*

ANALYSIS

Anticipation of claims 1, 4-6, 9, 10, 13, and 14

The Examiner rejected claims 1, 4-6, 9, 10, 13, and 14 under 35 U.S.C. § 102(b) as anticipated by Alexander. We address this rejection with respect to representative claim 1, as independent claims 1, 6, and 10 are similar in scope and are argued together (App. Br. 6).

The Examiner contends Alexander teaches all the features set forth in claim 1. Particularly, the Examiner contends Alexander teaches a control device connected to both the protective device and a plurality of devices (motors/load) and means for sensing as recited in Appellant's claimed invention (Ans. 4)¹. The Examiner further states Appellant's claimed invention does not actually indicate a particular device at fault. The claims merely recite "an indication thereof for the purposes of diagnostic and repair" (Ans. 8).

Appellant, however, asserts that Alexander does not teach a control device connected to both the protective device and a plurality of motors as claimed. Rather, Alexander provides power to each of the circuit breakers, which then provide power to a single load (Figs. 1A and 2A; Reply Br. 1-2). Thus, Alexander monitors individual circuit breakers. The single attached load causes a fault within each circuit breaker rather than a single circuit breaker attached to a plurality of loads as claimed (Reply Br. 2).

In addition, Appellant asserts Alexander also does not teach "means for sensing, when the protective device is tripped, which one of the device(s) was operating at the time" (App. Br. 6; Reply Br. 2) "since each of the circuit breakers is connected to a single load, (as compared with the appellants protective device 26 being connected to a plurality of loads 19-23), there is no sensing to be done since the single load is obviously the device that has tripped the circuit breaker." (Reply Br. 2).

With respect to the Examiner's contention regarding the indication means, Appellant asserts this means provides an indication of which one of

¹ Throughout this opinion we refer to the Examiner's Answer mailed October 18, 2007.

the plurality of devices was operating “when the protective device was tripped” (Reply Br. 2). Since Alexander provides only a single load per circuit breaker, the sensing function is not required nor meaningful (Reply Br. 2).

We agree with Appellant that Alexander does not teach each and every feature of Appellant’s claimed invention as set forth in independent claims 1, 6, and 10. Thus, Alexander does not anticipate claims 1, 6, and 10 and dependent claims 4, 5, 9, 13, and 14. We therefore reverse the Examiner’s rejection of claims 1, 4-6, 9, 10, 13, and 14.

Obviousness of claims 2, 3, 7, 8, 11, and 12

The Examiner rejected claims 2, 3, 7, 8, 11, and 12 under 35 U.S.C. § 103(a) as obvious over Alexander. These claims recite that the current protective circuit can be a self-healing fuse or poly thermal crystal and that the sensing means is integral with the control device.

Since none of the modifications proposed in the rejection of these claims cures the deficiencies of Alexander with respect to the independent claims, we agree with Appellant that the Examiner has not provided a prima facie case of obviousness (App. Br. 8). We therefore reverse the Examiner’s rejection of claims 2, 3, 7, 8, 11, and 12.

CONCLUSION

We therefore conclude the Examiner erred in rejecting claims 1, 4-6, 9, 10, 13, and 14 under 35 U.S.C. § 102(b) and in rejecting claims 2, 3, 7, 8, 11, and 12 under 35 U.S.C. § 103(a).

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DECISION

The decision of the Examiner rejecting claims 1-14 is reversed.

REVERSED

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