

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM M. CRESSE

Appeal 2008-4746
Application 10/911,291¹
Technology Center 2600

Decided: December 16, 2008

Before KENNETH W. HAIRSTON, ROBERT E. NAPPI,
and MARC S. HOFF, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Application filed August 3, 2004. The real party in interest is PRECO Electronics, Inc.

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1 to 3 and 6 to 9.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The Invention

Appellant's claimed invention is directed to a movable sensor (Figs. 1 and 4, any of sensors 11-14 and/or 25) in a housing (plastic case 1 and/or front panel 2) on a vehicle (claim 1; Spec. 7 and 12). More particularly, Appellant's claimed invention relates to a vehicle collision detection and warning system (Spec. 1; Figs. 2 and 3) having a sensor (any of sensors 11-14 and/or 25) movable relative to the vehicle, an adjustable output (Fig. 1, light emitter 3 and/or audio emitter 5; Fig. 4, light emitting modules 26 and 27 and/or sound emitting modules 28 and 29) on the vehicle which is directed to an object other than the vehicle and is moving relative to the sensor (*see* claim 1).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A movable sensor in a housing on a vehicle, the sensor being moveable relative to the vehicle, the sensor also being adapted to identify and track an object different than the vehicle which is moving relative to the sensor;

said sensor having an adjustable output also on the vehicle which is directed at said relatively moving object.

² Claims 4 and 5 have been cancelled.

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The Rejection

The Examiner relies upon the following as evidence of unpatentability:

Bloomfield	US 6,411,204 B1	Jun. 25, 2002
Okamoto	US 6,911,997 B1	Jun. 28, 2005 (effectively filed April 11, 2001)

The following rejection is before us for review:

Claims 1 to 3 and 6 to 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bloomfield and Okamoto.

We note that Appellant has not separately argued the merits of dependent claims 2, 3, and 6 to 9, and instead Appellant relies on the arguments presented with respect to the patentability of independent claim 1 (*see* App. Br. 2-3). We consider claim 1 as representative of the group consisting of claims 1 to 3 and 6 to 9. Thus, claims 2, 3, and 6 to 9 stand or fall with representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Rather than repeat the arguments of Appellant or the Examiner, we refer to the Briefs³ and the Answer⁴ for their respective details. In this decision, we have considered only those arguments actually made by Appellant. Arguments which Appellant could have made but did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

³ We refer to the Appeal Brief filed November 19, 2007, and the Reply Brief filed March 3, 2008, throughout this opinion.

⁴ We refer to the Examiner's Answer mailed December 28, 2007, throughout this opinion.

FINDINGS OF FACT

Findings of fact throughout this Decision are supported by a preponderance of the evidence of record. The relevant facts include the following:

Appellant's Disclosure

1. As indicated *supra*, Appellant describes and claims a movable sensor in a housing on a vehicle, wherein the sensor is movable relative to the vehicle (claim 1; Figs. 1 and 4; Spec. 7 and 12). The sensor has an adjustable output (outputs 2 and/or 3 in Fig. 1; outputs 26-29 in Fig. 4) which is directed at an object other than the vehicle, and the object moves relative to the sensor (*see* claim 1).
2. Appellant's disclosure states that light and sound emitters "can be adjusted in direction" or aimed (Spec. 4), and that aiming or directing can be performed "in one or more axes" (Spec. 6). Thus, Appellant's Specification provides for the possibility that the outputs (*i.e.*, light and sound emitters or modules) may be adjustable in one direction, but not adjustable in another (*e.g.*, an orthogonal) direction.
3. The originally filed Specification only uses the term *directed* twice. The first occurrence is in the last sentence on page 5 of the Specification, the second occurrence is in originally filed claim 1. Original claim 1 describes an adjustable output as being "directed" at a relatively moving object. The last sentence of page 5 describes Appellant's invention as "providing *directed*, high-impact alerts to drivers of offending vehicles and possibly to other drivers in the vicinity of the danger" (Spec. 5) (emphasis added). The Specification does not explicitly define the term *directed*.

Bloomfield

4. Bloomfield teaches one or more proximity sensors 32 “which may be a rear facing camera or sensor” (col. 5, l. 19) in a housing 21 (indicator 14 is in a module or housing of stop lamp 14a; *see* col. 4, ll. 22-24), on a vehicle 12 (Figs. 1 and 2). Bloomfield teaches an adjustable output (stop lamp 14a or indicator 14) on the vehicle 12 which is “directed” at other vehicles that may be approaching the vehicle (*i.e.*, a relatively moving object) (col. 3, ll. 45-57 and 65-67; col. 4, l. 65 to col. 5, l. 59; col. 6, ll. 42-44; col. 9, ll. 11-13) (*see also* Ans. 3-4).
5. Bloomfield specifically teaches that stop lamp 14a is an “exteriorly *directed* light” (col. 3, ll. 54-55) (emphasis added), and that the “rear proximity sensor [32] may be *directed* rearwardly of the vehicle” (col. 5, ll. 26-27) (emphasis added). Bloomfield also teaches that the sensors can include a “forwardly *directed* sensor” and “sidewardly *directed* sensors” (col. 5, ll. 28-29) (emphasis added), as well as additional indicators 14d which are “preferably *directed* exteriorly of the vehicle to warn or otherwise communicate information to other drivers of other vehicles which are approaching or are otherwise near the subject vehicle.” (Col. 9, ll. 10-13) (emphasis added).

Okamoto

6. Okamoto teaches a vehicle proximity monitoring system including multiple cameras or sensors C1 to Cn (Fig. 1A and 1B) and 23R and 23L (Fig. 4), the cameras being characterized in that the tilt, pan and twist around the optical axis of each of the pair of cameras are adjustable (Abstract; col. 2, ll. 1-20)

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(see Ans. 4). Okamoto is concerned with safety improvement and discloses that the multiple camera system is “an aide of making sure of the safety, or the like when driving a vehicle.” (Col. 1, ll. 9-10).

ISSUE

Appellant argues that Bloomfield does not disclose a “movable” sensor (App. Br. 2), and that Okamoto does not disclose a sensor having a “directed” output (App. Br. 3).

The Examiner contends that Okamoto teaches a movable sensor, and that Bloomfield teaches an adjustable output “directed” at an object moving relative to a vehicle (Ans. 6).

Appellant replies that the Examiner’s construction of the term “directed” as relates to the adjustable output is inconsistent with Appellant’s use of the term in the Specification as meaning “aim” (Reply Br. 2-3).

Thus, the sole issue before us is: Did the Examiner err in determining that the combination of Bloomfield and Okamoto teaches or suggests the subject matter claimed in representative claim 1?

PRINCIPLES OF LAW

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

“During examination, ‘claims ... are to be given their broadest reasonable interpretation consistent with the specification, and ... claim language should be

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read in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech. Cir.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Morris*, 127 F.3d 1048, 1053-54 (Fed. Cir. 1997). “[T]he specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (citations omitted).

Additionally, “[t]hough understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.” *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004).

In interpreting the meaning of claim terms, “[d]ifferences among claims can also be a useful guide in understanding the meaning of particular claim terms. *Phillips*, 415 F.3d at 1314 (citations omitted). “[T]he presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim.” *Id.* at 1315 (citations omitted).

ANALYSIS

We agree with the Examiner’s findings of fact and conclusions of obviousness (Ans. 3-4), and adopt them as our own, along with some amplification of the Examiner’s explanation of the teachings of Bloomfield and Okamoto (*see*

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Findings of Fact 4-6). We will now address each of Appellant's three arguments in turn.

First Contention

Appellant first contends that Bloomfield does not disclose a sensor which is “**movable relative to the vehicle,**” and that Bloomfield fails to disclose movement of *any* of the input sensors (App. Br. 2) (emphasis added). However, the Examiner relies upon Okamoto, and not Bloomfield, as teaching multiple cameras or sensors that are movable relative to the vehicle (*i.e.*, the cameras or sensors tilt, pan and twist) (Ans. 4 and 6). Appellant cannot show non-obviousness by attacking references individually where rejections are based on a combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)). In the instant case, we are not persuaded by Appellant's argument that Bloomfield does not disclose a sensor which is *movable* relative to the vehicle, since Okamoto was relied upon as teaching this limitation.

Second Contention

Claim 1 recites a “sensor having an adjustable output” that is “directed at” a “relatively moving object.”

Appellant's second contention is that Okamoto does not disclose a sensor having an output directed at a relatively moving object (App. Br. 3). However, the Examiner relies upon Bloomfield, and not Okamoto, as teaching an output that is directed at the relatively moving object (*i.e.*, the vehicle) (Ans. 3 and 6).

Appellant's argument attacking Okamoto individually when the rejection is based on a combination of Bloomfield and Okamoto is unpersuasive for the same reasons given above with respect to Appellant's similar first contention.

Third Contention

Appellant's third contention is that the Examiner applied an incorrect construction of the term *directed* (see claim 1, the only claim in which this exact phrase appears), and that the proper construction of the term is “to aim,” as described at pages 3 and 4 of the Specification (Reply Br. 2). Appellant draws a distinction between Bloomfield's stationary (*i.e.*, passive) outputs, and Appellant's movable (*i.e.*, active) outputs (Reply Br. 2-3). Appellant asserts the term “directed” incorporates the feature of being “movable,” and attempts to construct the term “directed” to mean something that is aimed by being actively moved (Reply Br. 2-3). Appellant argues that “nowhere in either of the cited references is disclosed the *actively* movable sensor output feature of Applicant's invention” (Reply Br. 2-3)(emphasis added). None of these lines of argument is convincing since the terms “actively” or “aimed” do not appear in claim 1, or any claim on appeal for that matter. Furthermore, Appellant's argument that the adjustable output must be *movable* is unpersuasive since claim 1 merely defines the output as being adjustable and directed. Claim 1 only recites that the *sensor* be movable (see claim 1 which recites, “A movable sensor in a housing ...”).

Because “claims ... are to be given their broadest reasonable interpretation consistent with the specification, and ... claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art” (*Am. Acad. of Sci. Tech. Cir.*, 367 F.3d at 1364; *Morris*, 127 F.3d at 1053-54), one of ordinary skill in the art would interpret the term *directed* from claim 1 in light of the Specification. Appellant does not provide an explicit definition for *directed* in the Specification (Finding of Fact 3). However, Appellant's Specification uses the

phrase *directed at* in a manner that indicates the term is broad enough to be reasonably interpreted as an output which is *pointed in the general direction of* an object (*see* Finding of Fact 3). Thus, the use of the term *directed* in original claim 1 and at page 5 of the Specification encompasses active and passively directed lights.

Because “it is important not to import into a claim limitations that are not a part of the claim” and “a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment” (*Superguide Corp.*, 358 F.3d at 875), the term *directed* is not limited to the *aiming* embodiment of page 4 of the Specification. As discussed above, the phrase *directed at* can reasonably be interpreted as *generally pointed in the direction of* the object. In addition, the fact that the Specification discloses that the outputs may only be adjustable in one direction and not another (*see* Finding of Fact 2) supports the proposition that the outputs can be adjustable and directed without being *aimed* (*e.g.*, at least two axes are required to pinpoint the location of an object in order to *aim* an output at the object, while only one axis is needed to *direct* the output in the general direction of the object).

Furthermore, the doctrine of claim differentiation warrants reading “directed” in claim 1 as *not* including the adjusting or aiming feature since claim 9 on appeal further defines the term “adjustable” to mean directionally adjustable. Under the doctrine of claim differentiation, we look to differences between claims to determine the meaning of claim language. *See Phillips*, 415 F.3d at 1314-15 (“[T]he presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent

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claim.”); *Saunders Group, Inc. v. Comfortrac, Inc.*, 492 F.3d, 1326, 1331 (Fed. Cir. 2007) (stating that where a dependent claim adds a limitation to an independent claim, the doctrine of claim differentiation supports the inference that the independent claim encompasses subject matter which does not include the added limitation).

Although Appellant argues that the claimed “directed” outputs are not the same as Bloomfield’s “stationary” outputs (Reply Br. 2), Appellant chose not to use the narrower terms “actively directed” or “passively directed” to define the output of claim 1. Appellant’s disclosure uses the phrase *directed at* to include the possibility of *pointed in the general direction of* as opposed to *actively aimed* (see Finding of Fact 3). Therefore, Appellant’s own disclosure supports the Examiner’s construction of the term *directed* as encompassing Bloomfield’s output (indicator 14) which faces the general direction of a following vehicle. The term *directed* as claimed and as broadly defined in the Specification includes passively directed outputs as taught by Bloomfield.

Appellant has not shown that the Examiner erred in interpreting the term “directed” in claim 1 as broadly encompassing the directed outputs disclosed by Bloomfield.

Summary

One of ordinary skill in the art would have found Appellant’s claimed subject matter in claim 1 obvious in light of the combination of Bloomfield and Okamoto, and Appellant has not overcome the Examiner’s prima facie case of obviousness with respect to these claims. Appellant’s arguments throughout the briefs do not convince us of any error in the Examiner’s positions in the rejection.

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Oetiker, 977 F.2d at 1445. Accordingly, we sustain the rejection of representative claim 1. Claims 2, 3, and 6 to 9 fall with representative claim 1 as previously discussed.

For all of the above reasons, Appellant's arguments have not persuaded us of error in the Examiner's rejection of claims 1 to 3 and 6 to 9 under 35 U.S.C. § 103(a) as being unpatentable over Bloomfield and Okamoto, and we sustain the Examiner's rejection.

CONCLUSION OF LAW

Appellant has not shown that the Examiner erred in determining that the combination of Bloomfield and Okamoto teaches or suggests the subject matter claimed in representative claim 1.

ORDER

The decision of the Examiner to reject claims 1 to 3 and 6 to 9 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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