

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD W. HOLLING, PATRICK J. GLOTZBACH
and JEROME D. HUENER

Appeal No. 97-0391
Application 08/443,044¹

ON BRIEF

Before HAIRSTON, BARRETT, and LALL, Administrative Patent Judges.

LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of Claims 1 to 12. Claims 6, 8 and 9 were canceled in an amendment after the final rejection,

¹ Application for patent filed May 17, 1995. According to the appellant, the application is a continuation of Application 08/042,439, filed April 5, 1993, now abandoned.

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[paper no. 14].

The disclosed invention is a remote control device for an appliance and it has a sensor capable of detecting an adverse or hostile environmental condition adverse to the normal operation or structural integrity of the remote control. Such a condition would be detected by, for example, a temperature sensor capable of detecting when the remote control has been placed on the burner of a stove. The heat from the burner is typically sufficient to damage the remote control so that it cannot operate or is physically damaged. The sensor will detect the adverse condition and the remote control will provide a warning. The remote control can also turn off the burner in response to the sensor to prevent damage to the remote control.

Representative claim 1 is reproduced as follows:

1. An electronic control for use with a cooking appliance, comprising:

a control unit adapted to be detached from and located remote from a cooking appliance, said control unit having

sensor means for sensing an adverse predefined environmental condition adverse to operation of said control unit, and

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warning means operatively connected to said sensor means whereby, in the event said sensor means senses said predefined environmental condition, said warning means generates a warning signal.

The Examiner relies on the following references:

U.S. Patents

Durst et al. al. (Durst) 1990	4,977,404	Dec. 11,
Doyle et al. al. (Doyle) 1995	5,402,105	Mar. 28,

Foreign Patents

Zinkann 1986 (Translation of German Offenlegungsschrift)	3,437,398	Apr. 17,
Malik	WO 90/14,563	Nov. 29, 1990

Claims 1, 4, 7 and 10 stand rejected under 35 U.S.C. § 102 as being anticipated by Zinkann. Claims 1, 2, 4, 7 and 10 stand rejected under 35 U.S.C. § 102 as being anticipated by Malik. Claims 3 and 5 stand rejected under 35 U.S.C. § 103 as being obvious over Malik and Durst, while claims 11 and 12 stand rejected under 35 U.S.C. § 103 as being obvious over Malik, Durst and Doyle.

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Rather than repeat the arguments of Appellants or the Examiner, we make reference to the brief² and the answer for the respective details thereof.

OPINION

We have considered the rejections advanced by the Examiner and the supporting arguments. We have, likewise, reviewed the Appellants' arguments set forth in the brief.

It is our view that claims 1, 4, 7 and 10 are anticipated by Zinkann and that claims 1, 2, 4, 7 and 10 are anticipated by Malik. Claims 3 and 5 are obvious over Malik and Durst. However, claims 11 and 12 are unobvious over Malik, Durst and Doyle. Accordingly, we affirm in part.

We now consider the various rejections. In our analysis, we are guided by the precedence of our reviewing court that the limitations from the disclosure are not to be imported

²A supplemental brief was filed as paper no. 21. However, it merely corrected the informal deficiencies in the original brief and presented no further arguments.

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into the claims. In re Lundberg, 244 F.2d 543, 548, 113 USPQ 530, 534 (CCPA 1957); In re Queener, 796 F.2d. 461, 464, 230 USPQ 438, , (Fed. Cir. 1986). We are also mindful of the requirements of anticipation under 35 U.S.C. § 102.

Anticipation under 35 U.S.C. § 102 is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See RCA Corp. V. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Rejection of claims 1, 4, 7 and 10 over Zinkann

We take claim 1 as representative. We have reviewed Appellants' arguments [brief, pages 3 to 9] and Examiner's position [final rejection, page 1 and answer, pages 4 to 7]. The parties disagree on the meaning of the term "adverse . . . environmental condition adverse to operation of said control unit" (claim 1, lines 4 to 5). The Examiner quotes Webster's New World Dictionary, 3rd College Edition, for the meaning of "environmental" as "'all the conditions,

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circumstances, and influences surrounding, and affecting . . .
. ' something, . . . " [answer, page 6]. The Examiner continues
that, in the claims, "'environmental' conditions are not
limited to external atmospheric conditions, but could be
electrical conditions as well, . . . or merely the absence of
a critical voltage or current level," id. Appellants have had
an opportunity to rebut this argument but have not. So we
assume that they agree with this definition of
"environmental". Appellants, however, elaborate that the
words "adverse" and "hostile" as used in the claims and the
specification define the "predetermined environmental
condition" to mean "an environmental condition that can
prevent the remote control from operating normally, including
structural damage to the remote control." [Brief, page 5].
Appellants further explain their position that "the term
hostile defines an environmental condition that is more harsh
. . . , but is a condition that impairs the operation or
structural integrity of the remote control (emphasis added)".
[Brief, page 6].

Therefore, we come to the conclusion that "environmental"

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means any condition, internal or external to the device, surrounding and affecting the device, and "adverse" or "hostile" means any condition that impairs the operation or structural integrity of the device. Keeping this in mind, we agree with the Examiner that Zinkann anticipates the claimed invention of claim 1 as argued by the Examiner. Zinkann inherently has to have a sensor that will detect the "adverse . . . environmental condition" in order to be able to provide to the user an indication of its malfunction. We agree with Appellants that Zinkann's two remote controls are used for a different purpose, however, the teaching of the operation of each remote control is, nevertheless, available as a reference for anticipation of the claimed invention. Therefore, we sustain the anticipation rejection of claim 1 over Zinkann. Appellants have not separately and individually argued other claims under this heading. It is not the function of the Board to examine claims in greater detail than argued by Appellants. In re Baxter Travenol Labs., 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991). Therefore, the anticipation rejection of claims 4, 7 and 10 over Zinkann is

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also sustained.

Rejection of Claims 1, 2, 4, 7 and 10 over Malik

These claims are rejected as being anticipated by Malik under 35 U.S.C. § 102. We have studied Appellants' arguments [brief, pages 10 to 13] and the Examiner's position [answer, pages 7 and 8]. We agree with Appellants that the remote control of Malik transmits a control signal to the controlled unit when the environmental temperature exceeds a desired temperature setting in the remote control, and the remote control does not sense any failure of the remote control as regards the temperature condition of the environment. The Examiner's contention that the remote control of Malik will fail in response to some very high temperature of the environment is mere speculation. However, by Appellants' own admission, the term "adverse" or "hostile" defines an environmental condition as a condition that impairs the operation or structural integrity of the remote control." [Brief, page 6]. With this definition in, Malik properly anticipates the invention of claim 1. For example, Malik "has a display 12 which . . . may also have other display, such as

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BAT as shown on the figure 1 to indicate the battery status, . . . "[page 3]. Thus, we conclude that the remote control of Malik will sense "an adverse . . . environmental condition adverse to operation of said control unit" (claim 1, lines 4 and 5) when it senses that the battery is low and its function will be impaired if a new battery is not substituted. Malik also shows a warning means in the form of the display 12 [figure 1 and page 3]. Therefore, we sustain the anticipation rejection of claim 1 over Malik. Appellants have not individually argued any claims under this heading. It is not the function of the Board to examine claims in greater detail than argued by Appellant. Baxter Travenol Labs. 952 F.2d at 391, 21 USPQ2d at 1285. Consequently, we also sustain the anticipation rejection of claims 2, 4, 7 and 10 over Malik.

Rejection of Claims 3 and 5 over Malik and Durst

The Examiner states:

In view of Durst et al. ('404), . . . it would have been obvious to one of ordinary skill in the art [at the time of the invention,] to provide a [sic] orientation-responsive remote control means in the remote control . . . shown by WO9014563 in order to notify the user when the control unit is in a given operating position. [Final rejection, page 2].

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Appellants do not give any specific arguments against the above combination to reject claims 3 and 5. Instead, they rely on the above arguments relating to claim 1 and Malik. Thus, Appellants urge that claim 1 is not in any way obvious in view of the alleged combination . . . [brief, page 14]. In the absence of any rebuttal to the combination for the purposes of rejecting claims 3 and 5, we will sustain the obviousness rejection of claims 3 and 5 over Malik and Durst.

Rejection of claims 11 and 12 over Malik, Durst and Doyle

We have reviewed Appellants' arguments [brief, pages 15 and 16] and the Examiner's position [final rejection, pages 2 to 3 and answer, pages 8 and 9]. In our view, the Examiner has failed to present a prima facie case to reject claim 11 and hence its dependent claim 12. Claim 11 calls for, among other things, "transmitting an output signal including said error code from said transmitter means to said receiving means" (claim 11, lines 12 to 13). The Examiner has not addressed this limitation. Even though Appellants too have not argued for this limitation, the initial burden is on the Examiner to present a prima facie case to reject a claim. In

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the absence of a prima facie rejection, the offered obviousness rejection of claim 11 and hence claim 12 is not sustained. In summary, we have affirmed the Examiner's rejection under 35 U.S.C. § 102 of claims 1, 4, 7 and 10 as anticipated by Zinkann, claims 1, 2, 4, 7 and 10 as anticipated by Malik. We have also sustained the rejection under 35 U.S.C. § 103 of claims 3 and 5 as being obvious over Malik in view of Durst. However, we have not sustained the rejection under 35 U.S.C. § 103 of claims 11 and 12 as being obvious over Malik in view of Durst and Doyle.

Accordingly, the decision of the Examiner is affirmed in part.

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

AFFIRMED IN PART

KENNETH W. HAIRSTON)
Administrative Patent Judge)
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)
) BOARD OF PATENT
LEE E. BARRETT)
Administrative Patent Judge) APPEALS AND
)
) INTERFERENCES
)
PARSHOTAM S. LALL)
Administrative Patent Judge)

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PSL/pgg

Stephen D. Krefman MD 2200
Whirlpool Corporation
2000 North M 63
Benton Harbor, MI 49022-2692