The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte RONALD S. JOYCE,
CARL H. POPPE,
and PAUL H. TUMA

_____

Appeal No. 1998-1090
Application No. 08/534,965

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ON BRIEF

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Before JERRY SMITH, RUGGIERO, and GROSS, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 4-14, the only claims remaining in the application. Claims 1-3 have been canceled. An amendment after final rejection filed September 29, 1997, concurrently with the Appeal Brief, was approved for entry by the Examiner.

The claimed invention relates to a pressure switch

assembly having a movable pressure responsive member which operates a cantilevered switch contact blade spring in response to pressure changes in a pressure chamber. An adjustment screw located at adjustable positions at the free end of the blade spring operates to change the position of the free end of the blade spring to vary the bias on the pressure responsive member to thereby change the pressure level at which the switch operates.

Claim 6 is illustrative of the invention and reads as follows:

6. A pressure switch assembly comprising:

(a) housing means including pressure responsive means defining a pressure sensing chamber having a fluid pressure signal port, said pressure responsive means moveable in response to changes in pressure in said cavity;

(b) a blade spring anchored at one end on said housing a second end free and contacting said pressure responsive means at a point intermediate said ends and operative for biasing said pressure responsive means;

(c) adjustment means disposed for contacting said blade spring intermediate said second end and said pressure responsive member contact point; said adjustment means operative to vary said biasing on said pressure responsive member; and,

(d) said blade spring including a moveable contact disposed intermediate said one end and said pressure responsive means contact point and operative to make and break with respect to a stationary contact upon a predetermined movement of said pressure responsive means.

The Examiner relies on the following prior art:

Barnes	3,764,763	Oct. 09, 1973
Budlane et al. (Budlane)	3,984,650	Oct. 05, 1976

Claims 4-14 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Budlane in view of Barnes.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Brief and Answer for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Brief along with the Examiner's rationale in

support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 4-14. Accordingly, we reverse.

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, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some

teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

With respect to independent claims 6 and 14, the Examiner, as the basis for the obviousness rejection, proposes

to modify the pressure switch assembly disclosure of Budlane. As recognized by the Examiner, Budlane discloses separate lever and switch blade components rather than a single switch blade component which is contacted and actuated by a pressure responsive member as in the appealed claims. To address this deficiency, the Examiner turns to Barnes, which discloses a pressure activated switch blade with a movable contact located between the switch blade ends for operating the switch. In the Examiner's view (Answer, page 5);

> It would have been obvious to one of ordinary skill in the art to apply the teachings of Barnes to Budlane et al[.] to form the lever as a switch blade having an over center spring rather than a separate lever and switch blade because both Barnes and Budlane et al[.] are in the same field of endeavor of adjustable pressure switches which operate snap action switch [sic, switches] in which the switch blade is adjusted in which providing the lever as the switch blade would reduce the number of operating parts reducing the amount of assembly and also reduces [sic, reducing] the chances of misoperation due to fewer parts forming the assembly while providing the same operation and function.

In response, Appellants contend (Brief, pages 3 and 4), that in order to make the combination proposed by the Examiner,
each of the Budlane and Barnes references would have to be reconstructed in a manner not suggested by either of the references. Further, Appellants assert that any structure that might possibly result from the Examiner's proposed combination would not teach the claimed structure of independent claims 6 and 14.

After careful review of the Budlane and Barnes references in light of the arguments of record, we are in general agreement with Appellants' position as stated in the Brief. In our view, the Examiner has combined the blade switch and lever structure of Budlane with the blade switch structure of Barnes in some vague manner without specifically describing how the teachings would be combined. This does not persuade us that one of ordinary skill in the art having the references before her or him, and using her or his own knowledge of the art, would have been put in possession of the claimed subject matter.

We note that in the "Response to argument" portion at

page 5 of the Answer, the Examiner suggests the placement of the contacts from Budlane’s switch blade member 3 directly on the

beam spring lever 13. There is no indication from the Examiner as to where on the lever 13 the contacts would be placed, let alone how any such modification would address the specifics of the claim language of independent claims 6 and 14, which requires a specific positional relationship among the actuator contact points, movable contacts, and adjustment members. In order for us to sustain the Examiner's rejection under 35 U.S.C. § 103, we would need to resort to speculation or unfounded assumptions or rationales to supply deficiencies in the factual basis of the rejection before us. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968), reh'g denied, 390 U.S. 1000 (1968).

Accordingly, since the Examiner has not established a prima facie case of obviousness, the 35 U.S.C. § 103 rejection of independent claims 6 and 14, and claims 4, 5, and 7-13 dependent thereon, cannot be sustained. Therefore, the decision of the Examiner rejecting claims 4-14 is reversed.

REVERSED

JERRY SMITH Administrative Patent Judge	)
JOSEPH F. RUGGIERO Administrative Patent Judge	) BOARD OF PATENT) APPEALS AND) INTERFERENCES
ANITA PELLMAN GROSS Administrative Patent Judge	)

JFR:hh

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