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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIAN L. OTT

Appeal 2010-010801
Application 11/276,288
Technology Center 3700

Before PHILLIP J. KAUFFMAN, LYNNE H. BROWNE and REMY J. VANOPHEM, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Brian L. Ott (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision finally provisionally rejecting claim 1 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 11/609,871, claims 1-3, 5-17, 19 and 21 under 35 U.S.C. § 102(b) as being anticipated by Nitta (JP 2003191075 A, pub. Jul. 8, 2003)[1] and rejecting claims 4, 18, 20 and 22-25 under 35 U.S.C. § 103(a) as being unpatentable over Nitta. We have jurisdiction under 35 U.S.C. § 6(b).

We Reverse.

THE INVENTION

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

> 1. A welding-type system comprising:
>
> a power source designed to deliver power for a welding-type process;
>
> a remote device operably connected to receive power from the power source across a weld cable; and
>
> a communications link configured to carry control commands at least between the remote device and the power source, and established between the power source and the remote device across the weld cable, wherein the control commands are encoded using narrow-band binary phase shift key modulation.

[1] The Examiner rejects claims 22-25 under 35 U.S.C. § 102(b); however, these claims depend from claim 18 which is rejected under 35 U.S.C. § 103(a). Accordingly, we will address claims 22-25 with claim 18 from which they depend.

OPINION

Double Patenting

The Examiner provisionally rejects claim 1 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 11/609,871. Ans. 3.

Claim 1 of copending Application No. 11/609,871 was amended on July 2, 2010, after the Examiner's rejection that is the subject of this appeal (*see* Office Action dated April 6, 2009, at 2-3)[2]. For that reason, we decline to reach this rejection. *See Ex parte Moncla*, 95 USPQ2d 1884, 1885 (BPAI 2010) (Precedential) (Panels have the flexibility to not reach provisional obviousness-type double-patenting rejections.).

Anticipation

Claims 1-3 and 5-11:

Independent claim 1 calls for a communications link configured to carry control commands encoded using narrow-band phase shift key modulation at least between the remote device and the power source.

The Examiner finds that Nitta discloses a communications link as claimed (citing to the Abstract and Figures 1, 2 and 6); however, the finding simply echoes the claim language and does not identify the elements of Nitta that correspond to the communications link, the remote device, or the power source. Ans. 4-5. Further, the Examiner finds that Nitta's control commands are encoded using narrow-band phase shift key modulation (citing again to the Abstract and Figures 1, 2 and 6), and does not address

[2] Additionally, the Examiner's Answer was prior to the amendment of the co-pending claims. *See* Ans. dated March 1, 2010, at 2-4.

that claim 1 calls for the commands to be so encoded and carried at least between the remote device and the power source. *Id.*

Appellant argues, and we agree, that Nitta's Abstract and Figures 1, 2 and 6 do not support the Examiner's findings. App. Br. 6-7. Appellant goes on to contend that Nitta's communication link utilizes a spread spectrum technique, and not narrow-band phase shift key modulation as claimed. App. Br. 8 (citing Nitta, para. [0056].

In *Response to Argument*, the Examiner finds only that "Nitta does teach of encoding transmitting commanding signals from central operational processing circuit as narrow band phase shift key modulation circuit as Nitta discloses in paragraph 29 and 30 of machine translation." Ans. 9-10. The Examiner does not address Appellant's contention that Nitta's communication link utilizes a spread spectrum technique.

The portion of the reference cited by the Examiner discloses that Nitta's signal modulation circuit MO outputs a modulated wave signal Mo utilizing phase key shifting that is provided to the modulation circuit SI, which performs a spectral diffusion with a spread code to output broadband signal Si. Nitta, paras. [0029]-[0030], fig. 6.

Given this, the Examiner has not established by a preponderance of the evidence that Nitta discloses a communications link as called for in claim 1.

For this reason, we do not sustain the Examiner's rejection of claim 1 and claims 2, 3 and 5-11 which depend from claim 1.

Claims 12-17:

The Examiner finds that Nitta teaches a communications network including:

> a sensor that detects when the trigger is shifted to a weld start position and upon said detection causes the communications network to transmit a power delivery signal to the power source that when received by the power source causes the power source to shift from the stand-by state to the power deliver state such that power for the welding process is delivered from the power source to the wire feeder.

Ans. 6-7 (citing Nitta Abstr. and Figs. 1, 2 and 6).

Appellant argues that Nitta's English-language abstract fails to disclose "shifting a power source from a "stand-by state to the power deliver state" based on detection of a trigger," "does not mention a welding torch or a trigger, and Figs. 1 and 2 of Nitta are unclear as to the disclosure of such elements." App. Br. 10-11.

The Examiner responds to this argument by citing page 10 of Nitta as providing further support that Nitta meets this claim limitation. Ans. 11. The Examiner specifically identifies Nitta's power source PS as being "capable of providing power to welding system and also operates to switch or shift from stand-by mood [mode] during welding waiting period to delivery state to supply power during welding period." Ans. 10-11.

Appellant further argues that even though

> the power supply of Nitta is referred to as a "welding waiting output-control power supply PS." . . . . "the mere description of the power supply of Nitta as a "welding waiting" power supply cannot disclose the recited shifting "from the stand-by state to the power deliver state such that power for the welding process is delivered from the power source to the wire feeder" of claim 12.

Reply Br. 7 (citing Nitta, paras. [0026], [0031], [0033], [0043], and [0054]).

Appellant's argument is convincing. While Nitta's Abstract does describe an output control power supply PS having a standby welding period, in Nitta, power to the wire feeder is delivered from a control power supply SP. Thus, Nitta's Abstract cannot fairly be read to teach delivery of a power source that "causes the power source to shift from the stand-by state to the power deliver state such that power for the welding process is delivered from the power source to the wire feeder" as required by claim 12. Similarly, on page 10[3], Nitta teaches a separate power source SP for delivery of power to the wire feeder.

For these reasons, we do not sustain the Examiner's rejection of claim 12 and claims 13-17 which depend therefrom.

Claims 19 and 21:

The Examiner finds that Nitta teaches a "first control message transmitted at a first frequency" and a "second control message transmitted . . . at a second frequency different than the first frequency." Ans. 7-8 (citing Nitta, Abstr. and Figs. 1, 2 and 6).

Appellant argues Nitta's "English-language abstract does not describe or even mention the transmission of messages at any frequency, and certainly not the 'first frequency' and 'second frequency' recited in claim 19. App. Br. 13; Reply Br. 8. Appellant further argues "Figs. 1, 2 and 6 of Nitta are circuit schematics that do not provide any indication of the

[3] The pages of the machine translation of Nitta are not numbered. The Examiner has not explained what page is considered to be page 10. For purposes of this appeal we assume that the Examiner numbered the pages in the order in which they appear in the machine translation such that page 10 is the page that begins "[i]n consumable electrode type arc welding equipment . . . . "

frequencies of transmitted messages between components of the system illustrated therein." *Id*.

The Examiner responds to this argument by citing paragraphs [0039]-[0050] of Nitta as providing further support that Nitta meets this claim limitation. Ans. 11.

Appellant argues in response to the Examiner's additional citation "[f]or example, nothing in these paragraphs [0039]-[0050] discusses or even mentions a 'first frequency' or a 'second frequency.'" Reply Br. 8.

Appellant's arguments are convincing. The Examiner has not identified nor do we discern what teachings the Examiner is relying on to meet the limitations set forth in claim 19. Nitta's Abstract does not discuss frequencies and, while the signals depicted in Nitta's Figures 1, 2 and 6 necessarily are transmitted at a frequency, there is no indication in these figures that the communications link is configured to transmit any of these signals at first and second frequencies as required by claim 19. While paragraphs [0039]-[0050] describe various functions of the communications link, the Examiner has not explained nor do we discern how the communications link is "configured to transmit a given command signal across the weld cable at a first frequency and if the given command signal is not adequately received then transmit the given command signal across the weld cable at a second frequency different from the first frequency" as required by claim 19. In fact, these paragraphs do not mention frequencies at all.

For these reasons, we do not sustain the Examiner's rejection of claim 19 and claims 20 and 21 which depend therefrom.

Obviousness

Claim 4:

The Examiner's obviousness rejection of claim 4 contains the same factual deficiencies, discussed *supra*, as the rejection of claim 1 from which claim 4 depends and likewise is not sustained.

Claims 18 and 22-25:

The Examiner's obviousness rejection of claim 18 contains the same factual deficiencies, discussed *supra*, as the rejection of claim 12 from which it depends and likewise is not sustained. The Examiner's obviousness rejections of claims 22-25 similarly contain the same factual deficiencies as the rejection of claims 12 and 18 from which they depend and likewise are not sustained.

Claim 20:

The Examiner's obviousness rejection of claim 20 contains the same factual deficiencies, discussed *supra*, as the rejection of claim 19 from which it depends and likewise is not sustained.

DECISION

We reverse the Examiner's rejection of claims 1-3, 5-17, 19 and 21 under 35 U.S.C. § 102(b).

We reverse the Examiner's rejection of claims 4, 18, 20 and 22-25 under 35 U.S.C. § 103(a).

REVERSED

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