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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT FONG and DANIEL GARDNER

Appeal 2014-008516
Application 13/905,980
Technology Center 3600

Before WILLIAM A. CAPP, GEORGE R. HOSKINS, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

HOSKINS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Robert Fong and Daniel Gardner (“Appellants”)¹ appeal under 35 U.S.C. § 134 from the Examiner’s decision rejecting claims 1–5 under 35 U.S.C. § 103(a) as unpatentable over Williams (US 1,190,971, iss. July 11, 1916) and Earle (US 2,263,620, iss. Nov. 25, 1941), presenting two alternative theories of obviousness. *See* Final Act. 2–5. The Board has jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

¹ The Appeal Brief identifies Thomas & Betts International, Inc. as the real party in interest. Br. 3.

CLAIMED SUBJECT MATTER

Claim 1 is the sole independent claim on appeal, and it recites:

1. A housing for mounting a high voltage electrical device onto a utility support structure comprising:

a lower housing which is rotatable and which houses a high voltage electrical device;

a mounting bracket that at least partially surrounds the lower housing for mounting the lower housing onto the utility support structure;

a fastener for selectively preventing the lower housing which houses the high voltage electrical device from rotating within the mounting bracket when the fastener is tightened or for allowing the lower housing which houses the high voltage electrical device to rotate within the mounting bracket when the fastener is loosened;

wherein the mounting bracket comprises a ring that at least partially surrounds the lower housing that houses the high voltage electrical device and at least two parallel side walls which protrude from the ring of the mounting bracket and a rear wall which is perpendicular to the side walls and which connects the side walls and fixedly abuts the utility support structure for mounting to the utility support structure; and

wherein the mounting bracket and ring comprise a one-piece component.

Br. 14 (Claims App.).

ANALYSIS

The second of the Examiner's two theories of obviousness starts with Earle, which the Examiner finds to disclose a high voltage electrical device (a lightning arrester) including a lower housing (lower section 1 of housing A) with a lip (the lowest corrugation in housing section 1). Final Act. 4. The Examiner further finds Earle discloses a mounting bracket (support 2). *Id.* According to the Examiner, Earle thereby discloses all the

limitations of claim 1, “except for the mounting bracket including a ring [and] at least two parallel side walls[, and] being one-piece.” *Id.*

The Examiner cites Williams as disclosing a lower housing (column or post 2) and a mounting bracket (hanger 1). *Id.* The Examiner finds Williams’s mounting bracket includes a ring (forming the circular opening within hanger 1), at least two parallel side walls, a rear wall, and an aperture for receiving a fastener (screw 3), and comprises a one-piece component. *Id.* at 4–5. The Examiner further finds Williams’s mounting bracket is attached to a utility support (brace 6). *Id.* at 4. The Examiner determines it would have been obvious to modify Earle to have the mounting bracket of Williams, to “provid[e] a strong, lightweight, and durable bracket for supporting a high voltage device which prevents rotation of the lower housing.” *Id.* at 5.

Appellants argue Williams is non-analogous art to the subject matter of Appellants’ application. Br. 8; Response to Aug. 30, 2013 Office Action (filed Nov. 11, 2013), at 3. Appellants point out Williams discloses “a hanger [1] for the attachment of the crossbraces [6] in the track construction for dry kilns,” and hanger 1 fits over post 2, which is “about two and one-half inches in diameter.” Response (filed Nov. 11, 2013), at 3 (quoting Williams, col. 1, lines 8–18). Appellants contend their application, by contrast, concerns a “*utility* support structure,” for supporting a high voltage electrical device, which Appellants assert would be much larger in magnitude than 2.5 inches in diameter. *Id.* Appellants further contend “ housings for high voltage electrical devices are designed and purchased by highly specialized engineers who work in the high voltage utility industry and have no specialized knowledge of dry kilns,” so “applications and

devices in the dry kiln art would not be obvious to highly skilled engineers in the high voltage utility industry.” Pre-Appeal Brief Request for Review (filed Feb. 26, 2014), at 2.

A prior art reference is analogous to an application (1) if it is from the same field of endeavor as the application, regardless of the problem addressed, or (2) if the reference is not within the field of the inventor’s endeavor, but it is nonetheless reasonably pertinent to the particular problem with which the inventor is involved. *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004). We determine Williams is analogous art to Appellants’ application under both conditions. The common field of endeavor is supporting a structure on a post or a pole. The fact that Williams concerns supporting dry kilns, whereas Appellants’ application concerns supporting electrical devices, is not in our view a sufficient distinction to establish a different field of endeavor.

Further, even if there is a different field of endeavor, Williams is reasonably pertinent to the particular problem with which Appellants are involved. A reference in a field different from an applicant’s endeavor may be reasonably pertinent if it is one that, because of the matter with which it deals, would have logically commended itself to an inventor’s attention in considering his or her invention as a whole. *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379–80 (Fed. Cir. 2007). The problem faced by Appellants was using a bracket to mount electrical equipment onto utility structures, such as transmission or distribution poles. Spec. ¶¶ 2–3. Williams similarly concerns using a bracket (hanger 1) to mount equipment on a pole (post 2). It is “not unreasonable in cases such as this, involving relatively simple everyday-type mechanical concepts, to permit inquiry into

other areas where one of even limited technical skill would be aware that similar problems exist.” *In re Heldt*, 433 F.2d 808, 812 (CCPA 1970).

Appellants also argue the Examiner errs in finding Earle’s lower section 1 of housing A is a “lower *housing* which is rotatable and which *houses a high voltage electrical device*,” as recited in claim 1 (emphases added). Br. 9–11; *see* Earle, pg. 1, col. 2, lines 2–6 (“the housing A comprises a lower cup-like section 1 . . . and an upper inverted cup-like section 3”). Appellants assert lower section 1, instead, “is simply the exterior shell or ‘housing’ of the high voltage arrester,” “which protects the internal electrical components of the arrester.” Br. 9 (citing Earle, pg. 1, col. 1, lines 12–18). Appellants contend the claimed lower housing “serves a completely different purpose” of “mounting a high voltage electrical device” as set forth in the claim preamble, and “does not comprise any outer protective shell” of an electrical device. *Id.* at 9–10. Appellants further assert claim 1 “do[es] not describe a high voltage electrical device which is in direct contact with the one-piece mounting bracket,” which differs from the Examiner’s combination that would result in Earle’s electrical device “being received directly by a mounting bracket.” *Id.* at 10. Appellants read claim 1 as requiring the lower housing to be “*receiving* a high voltage electrical device,” and Earle’s lower housing section 1 does not “house (or receive) a high voltage electrical device.” *Id.* at 11 (emphases added).

We determine a preponderance of evidence supports the Examiner’s finding that Earle’s lower housing section 1 is both “for mounting” and “houses” a high voltage electrical device, as set forth in claim 1. As to the mounting function, support 2 surrounds and engages lower housing 1 for mounting Earle’s lightning arrester. Earle, Figs. 1–2, pg. 1, col. 2, lines 3–5.

As to the housing function, Earle discloses its housing A, comprised of sections 1 and 3, “will facilitate the manufacture and assembly of the [lightning] arrester, which will be moisture-proof [and] offer a maximum flash-over path at the point of juncture” between sections 1 and 3. Earle, pg. 1, col. 1, lines 1–11, and pg. 2, col. 2, lines 31–46. Thus, lower housing section 1 serves to protect the various electrical components within housing A that perform the lightning arrester function of the device, and therefore “houses” those components, as claimed. Appellants suggest claim 1 additionally requires the lower housing to “receive” the electrical device, thereby suggesting the lower housing must be separable from the electrical device. Br. 11. However, the term “receive” does not appear in claim 1, and we determine a broadest reasonable construction of the term “housing” in claim 1 includes a protecting covering that is not separable from the electrical device during the normal use of the device.

Appellants further argue the Examiner errs in finding Williams’s column or post 2 is a “lower housing” as recited in claim 1, because post 2 is “is not any type of housing for any device,” and Williams does not disclose “a housing of any type.” Br. 8–9; *see* Williams, col. 1, lines 30–34.

As discussed above, the Examiner properly found Earle discloses the claimed lower housing, so the Williams disclosure in this regard is a moot point, especially in the context of the Examiner’s second theory for obviousness. Given the similar gripping ring structures of Earle’s support 2 (which embraces the round lower housing 1) and Williams’s hanger 1 (which embraces the round column or post 2), the Examiner’s proposed modification of Earle to replace support 2 with Williams’s hanger 1 is reasonable, even if post 2 does not house anything. *See* Ans. 6, 8 (“a

mounting bracket (1) having a ring shape as that of Williams would be suitable and capable of holding various/multiple types of cylindrical members including that of a cylindrically shaped lower housing (1) as taught by Earle”).

Appellants finally contend the Examiner has not provided an adequate rationale to show that it would have been obvious to modify the high voltage arrester of Earle to incorporate the hanger used for dry kilns of Williams. Br. 11–12 (arguing Examiner’s first theory of obviousness), 12 (arguing Examiner’s second theory of obviousness). The Examiner’s proffered reason for the combination is that it would “provid[e] a strong, lightweight, and durable bracket for supporting a high voltage device which prevents rotation of the lower housing.” Final Act. 5. The conclusory nature of Appellants’ argument in rebuttal does not establish error in the Examiner’s determination, and therefore is not persuasive.

For the foregoing reasons, we sustain the rejection of claim 1 as unpatentable over Williams and Earle, based on the second of the Examiner’s two theories of obviousness. We therefore need not address the Examiner’s first theory of obviousness. Further, Appellants do not argue for the patentability of dependent claims 2–5 separately from their common parent claim 1 (*see* Br. 8–12), so we likewise sustain the rejection of the dependent claims.

Appeal 2014-008516
Application 13/905,980

DECISION

The Examiner's decision to reject claims 1–5 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