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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/585,129	08/14/2012	Todd Brian Lozier	EBM0026-02/P-326B	6741
832	7590	12/02/2016	EXAMINER	
FAEGRE BAKER DANIELS LLP 110 WEST BERRY STREET SUITE 2400 FORT WAYNE, IN 46802			GANEY, STEVEN J	
			ART UNIT	PAPER NUMBER
			3752	
			NOTIFICATION DATE	DELIVERY MODE
			12/02/2016	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TODD BRIAN LOZIER

Appeal 2015-003006
Application 13/585,129¹
Technology Center 3700

Before MICHAEL C. ASTORINO, JAMES A. WORTH, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 23–26 under 35 U.S.C. § 102(b) as anticipated by Pillar (US 6,922,615 B2, iss. July 26, 2005). We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ According to the Appellant, “[t]he real party in interest is ELKHART BRASS MANUFACTURING COMPANY.” Appeal Br. 2.

STATEMENT OF THE CASE

Claimed Subject Matter

Claim 23, the sole independent claim, is representative of the subject matter on appeal and is reproduced below.

23. Control system for a fire fighting device having a base and a first portion moveable relative to the base, said control system comprising:

a touch screen display;

a controller in communication with the touch screen display, said controller generating a manipulatable input icon to be displayed on the touch screen display, the manipulatable input icon being a graphical representation of the first portion of the fire fighting device, said controller generating a first input position signal in response to a manipulation of the manipulatable input icon;

said controller adjusting a position of the first portion of the fire fighting device relative to the base in response to said input position signal.

ANALYSIS

The Appellant contends, among other things, that Pillar lacks a “controller generating a first input position signal in response to a manipulation of the manipulatable input icon” where “the manipulatable input icon [is] a graphical representation of the first portion of the firefighting device,” as required by independent claim 23. *See* Appeal Br. 6–7. The Appellant supports this contention by asserting that Pillar lacks a manipulatable input icon and as such, “it is impossible to have disclosure that the controller generates a first input position signal in response to a manipulation of that manipulatable input icon.” *Id.* at 7. Also, the Appellant asserts that “Pillar does not disclose that an icon is displayed on the touch

screen, let alone an icon that is manipulatable.” *Id.* at 6. The Appellant’s contention is persuasive.

The Examiner’s finding that Pillar discloses the aforementioned limitation of claim 23 is essentially supported by a two-fold approach. First, the Examiner takes the position that “as currently claimed the only apparatus limitations/features positively recited are a touch screen display[](i.e. touch screen 773 to Pillar et al '615) and a controller (i.e. controller 660 to Pillar et al '615) which Pillar et al '615 clearly discloses and anticipates.” Ans. 5. As such, it appears that the Examiner is taking the position that the aforementioned contested limitation is not positively recited (i.e., not given patentable weight). *See also* Appeal Br. 5. At best, the Examiner’s position appears to rely on a claim construction that is incomplete. Although the aforementioned contested limitation includes functional language, the claim requires that Pillar disclose that functional language. In other words, Pillar must disclose a corresponding structure to the claimed “controller” and that corresponding structure must be capable of performing the claimed function without being later modified to perform the function. *See also Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1380 (Fed. Cir. 2011) (discussing *Microprocessor Enhancement Corp. v. Texas Instruments, Inc.*, 520 F.3d 1367 (Fed. Cir. 2008)).

Second, the Examiner finds that the aforementioned contested limitation reads on Pillar because of the description provided at column 42, lines 40–53, which states:

Also shown in FIG. 26 is an additional operator interface 773 which includes an additional joystick 774 and an additional display 775. The operator interface 773 is identical to the operator interfaces 616, and operates in the same manner as the

operator interfaces **616**, except that it is coupled to the control system **612** by way of a wireless (e.g., radio-frequency) communication link. According to one embodiment, the additional operator interface **773** is implemented using a personal digital assistant or other handheld computer and joystick operation is simulated using a touch screen interface of the handheld computer.

Ans. 4; *see* Final Act. 4. The Examiner explains that “manipulatable icon/joystick operation 774 is simulated using a touch screen interface of the handheld computer” and that it “is a graphical representation of at least the first portion[](i.e. first arm 626) of the fire fighting device.” Ans. 4.

However, the above-quoted portion of Pillar lacks an explicit description of an icon. As such, Pillar may still anticipate the aforementioned limitation as long as it is inherent in Pillar’s disclosure. *See In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349 (Fed. Cir. 2002) (citations omitted) (“It is well settled that a prior art reference may anticipate when the claim limitations not expressly found in that reference are nonetheless inherent in it. ‘Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates.’”).

However, it is not necessarily the case that a “joystick operation . . . simulated using a touch screen interface” is in the form of a “manipulatable input icon.” A “joystick operation” is a control input which can be simulated using a touch screen in many different forms. And it is not necessarily the case that all of those forms are manifested as a “manipulatable input icon being a graphical representation of the first portion of the fire fighting device” or more broadly, a “manipulatable input icon.” As such, Pillar’s description at column 42, lines 40–53 fails to explicitly or inherently (i.e., necessarily) disclose a “manipulatable input

icon,” as required by claim 23. Additionally, the Examiner’s citations to other portions of Pillar’s description (e.g., column 43, lines 16–33 and Figure 26) do not disclose a “manipulatable input icon,” as required by claim 23. Therefore, the Examiner’s finding that Pillar discloses a “controller generating a first input position signal in response to a manipulation of the manipulatable input icon” where “the manipulatable input icon [is] a graphical representation of the first portion of the firefighting device,” as required by claim 23, is not adequately supported.

Thus, we do not sustain the Examiner’s rejection of independent claim 23, and dependent claims 24–26, as anticipated by Pillar.

DECISION

We REVERSE the Examiner’s decision rejecting claims 23–26.

REVERSED