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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* TIMOTHY FREDERICK SUMMERS<sup>1</sup>

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Appeal 2016-000047  
Application 12/072,187  
Technology Center 2600

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Before ROBERT E. NAPPI, JAMES W. DEJMEK, and  
JOHN D. HAMANN, *Administrative Patent Judges*.

DEJMEK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–20. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Appellant identifies Corning Cable Systems LLC as the real party in interest. Br. 2.

## STATEMENT OF THE CASE

### *Introduction*

Appellant's claimed invention is directed to a multipurpose signal distribution apparatus (MSDA) for use in a multi-dwelling unit. Spec. ¶ 18. "The MSDA consolidates multiple devices into a single housing of an electrical device." Spec. ¶ 18. In a disclosed embodiment, an existing door chime is adapted and replaced by a MSDA to include the door chime, but also include an optical network terminal within the same housing. Spec. ¶¶ 21–23. As part of the required connections, the existing electrical connection is made through an entry in the housing and a connection to the fiber optic cable is made through a second entry in the housing. Spec. ¶ 22.

Claim 6 is representative of the subject matter on appeal and is reproduced below with the disputed limitations emphasized in *italics*:

6. A multi-dwelling unit multipurpose signal distribution apparatus, comprising:

a housing adapted to be disposed in a multi-dwelling unit room, *the housing including an entry and a second entry*;

a door chime disposed in the housing, the door chime configured for *electrical connection through the entry* with an electrical power source of the multi-dwelling unit room; and

an optical network terminal disposed in the housing proximate the door chime, the optical network terminal configured for electrical connection with the electrical power source, the optical network terminal configured for *optical connection through the second entry* with a fiber optic cable.

### *The Examiner's Rejections*

1. Claims 6, 7, 10, and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lefkowitz et al. (US 4,524,384; June 18, 1985)

(“Lefkowitz”) and Imamura (US 6,880,982 B2; Apr. 19, 2005). Final Act. 9–11.

2. Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lefkowitz, Imamura, and Nazari (US 2006/0279423 A1; Dec. 14, 2006). Final Act. 11–12.

3. Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lefkowitz, Imamura, and Ferguson (US 2004/0150267 A1; Aug. 5, 2004). Final Act. 12–13.

4. Claims 1, 2, 5, 13, 14, 16, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Imamura and Haram (US 3,054,994; Sept. 18, 1962). Final Act. 13–19; Ans. 7–12.

5. Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Imamura, Haram, and Bonnassieux et al. (US 2005/0152306 A1; July 14, 2005) (“Bonnassieux”). Final Act. 19–20.

6. Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Imamura, Haram, and Nazari. Final Act. 21.

7. Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Imamura, Haram, and Opaluch et al. (US 7,406,241 B1; July 29, 2008) (“Opaluch”). Final Act. 21–22.

8. Claims 3 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Imamura, Haram, and Ferguson. Final Act. 22–25.

### *Issues on Appeal*

1. Did the Examiner fail to provide a legal basis for rejecting claims 2 and 14?

2. Did the Examiner err in finding the combination of Lefkowitz and Imamura teaches or suggests an “optical network terminal configured for optical connection through the second entry with a fiber optic cable,” as recited in claim 6?

3. Did the Examiner err in finding the combination of Imamura and Haram teaches or suggests an “optical network terminal is configured for optical connection to a fiber optic drop cable through the second entry,” as recited in claim 1?

4. Did the Examiner err in finding the combination of Imamura and Haram teaches or suggests an “optical network terminal powered by the power line of the multi-dwelling unit room power source,” as recited in claim 13?

## ANALYSIS<sup>2</sup>

### *Claims 2 and 14*

Appellant asserts “there is no statement anywhere in the Office Action that sets forth any specific legal basis or reasoned grounds for the rejection of [claims 2 or 14].” Br. 7. Notwithstanding the foregoing statement, Appellant acknowledges the Examiner does find Haram teaches or suggests the limitations recited in claims 2 and 14. Br. 7 (citing Final Act. 19). Appellant argues because claims 2 and 14 were not included expressly in the statement of rejection along with claims 1, 5, 13, 16, 19, and 20 (*see* Final Act. 13), the claims were not properly rejected. Br. 8.

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<sup>2</sup> Throughout this Decision, we have considered the Appeal Brief, filed September 29, 2014 (“Br.”); the Examiner’s Answer, mailed on December 19, 2014 (“Ans.”); and the Final Office Action (“Final Act.”), mailed on May 27, 2014, from which this Appeal is taken.

We do not agree. As the Examiner explains, the rejection statement rejecting claims 1, 5, 13, 16, 19, and 20 under 35 U.S.C. § 103(a) over Imamura and Haram is equally applicable to claims 2 and 14, which were included in the same rejection section. *See* Final Act. 13–19. The Examiner further explains the omission of claims 2 and 14 from the heading in the statement of rejection was a mere typographical error, which has been corrected in the Grounds of Rejection to be Reviewed on Appeal section of the Answer. *See* Ans. 7.

We agree with the Examiner that the omission of claims 2 and 14 from the statement of rejection heading was an inadvertent typographical error. Appellant admitted being aware of the Examiner’s findings supporting the rejection of claims 2 and 14, but did not substantively respond or rebut those findings. We find Appellant was not prejudiced by the typographical error. Further, we note Appellant had another opportunity to respond to the Examiner’s findings by filing a Reply Brief, but declined to do so.

Additionally, the correction of a typographical error to include claims inadvertently omitted from a heading but appearing in the body of the rejection did not change the thrust of the rejection and did not deny Appellant a fair opportunity to react to the rejection. Accordingly, the Examiner’s correction of the typographical error does not constitute a new ground of rejection. *In re Kronig*, 539 F.2d 1300, 1302–03 (CCPA 1976).

Accordingly, we sustain the Examiner’s rejection of claims 2 and 14.

*Claims 6–12*

Appellant contends the Examiner erred in finding Lefkowitz teaches making an optical connection through a second entry of the housing. Br. 8–11. Instead, Appellant asserts Figure 9 of Lefkowitz, as relied upon by the Examiner, does not identify the claimed “entry” and “second entry.” Br. 9. Rather, Appellant argues Lefkowitz illustrates that the plurality of cables are routed through a single entry and are connected using a single mating connector. Br. 9–10. Additionally, Appellant disputes the Examiner’s finding that it would have been obvious to route the various cables of Lefkowitz using separate entries as either a matter of practicality, design choice, or to reduce electromagnetic interference between the cables. Br. 10. Rather, Appellant asserts there is “no way” to rearrange the cabling of Lefkowitz and that they “must be” routed through a single entry in the housing. Br. 10–11. Appellant further argues that separating the cabling of Lefkowitz as suggested by the Examiner would frustrate the purpose of Lefkowitz’s use of a single mating connector. Br. 11.

In response, the Examiner explains, that the “entry” and “second entry” are simply holes drilled by an installer to route cables. Ans. 20. The Examiner further explains:

it is extremely common and well known for installers to drill holes on the wall, or use a second existing hole on the wall for that matter, to route [a] different cable as a matter of design choice, a matter of convenience, or as a matter of the installer’s personal preference.

Ans. 20–21. The Examiner finds that such an adaptation would have been an obvious design choice. Ans. 21. Similarly, the Examiner finds an installer’s use of multiple connectors instead of a single connector is an obvious design choice (the Examiner provides the example where a single

connector is too big for a particular hole in the wall and an installer would simply substitute two smaller connectors). Ans. 21. The Examiner further finds that the motivation to rearrange the cables in Lefkowitz “would have been to separate the electromagnetic interference between the wire[s] by routing them thru [sic] different holes in the wall.” Ans. 21.

With respect to the Examiner's “design choice” determination, we note that design choice may be an acceptable rationale for an obviousness rejection when a claimed product merely arranges known elements in a configuration recognized as functionally equivalent to a known configuration. *See In re Kuhle*, 526 F.2d 553, 555 (CCPA 1975) (“The manner in which electrical contact is made for Smith’s battery would be an obvious matter of design choice within the skill of the art.”). We note that Appellant has not identified a particular advantage or particular purpose, or whether the second entry solves a stated problem. We find the Examiner has provided a convincing line of reasoning—relying on Appellant’s explanation of the entries and determining that Lefkowitz’s solution would perform equally as well as Appellant’s claimed invention—to support the conclusion that using a second hole in the wall to route cabling would have been an obvious design choice. *See Ex parte Clapp*, 227 USPQ 972, 973 (BPAI 1985). As explained by the Examiner, we disagree with Appellant that the proposed modification of Lefkowitz to use a second entry would frustrate the purpose of Lefkowitz.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner’s rejection of claim 6. For similar reasons, we also sustain the Examiner’s rejections of claims 7–12, which depend therefrom and were not argued separately. *See* Br. 11–12.

*Claims 1 and 3–5*

Regarding independent claim 1, Appellant contends Imamura, as relied upon by the Examiner, fails to teach or suggest “an optical network terminal configured for optical connection *through the second entry* with a fiber optic cable.” Br. 12 (emphasis added). Instead, Appellant argues Imamura teaches a single entry containing both the in-building electrical distribution cable and an optical fiber cable. Br. 9 (citing Imamura, Fig. 3).

The Examiner responds, and we agree, that Figure 1 of Imamura illustrates two entries—an entry on top providing a connection to the electrical distribution line (i.e., power) and a second entry at the bottom of Figure 1, providing a connection to the optical fiber cable. Ans. 22–23 (citing Imamura, Fig. 1); *see also* Final Act. 14.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner’s rejection of claim 1. Additionally, we sustain the Examiner’s rejections of claims 3–5, which depend therefrom and were not argued separately. *See* Br. 13–15.

*Claims 13 and 15–20*

Regarding independent claim 13, Appellant contends the Examiner erred in finding the combination of Imamura and Haram teaches or suggests an optical network terminal powered by the power line of the multi-dwelling unit room power source. Br. 13. Appellant asserts Imamura discloses replacing the existing power line and Haram fails to teach powering an optical network terminal powered by the existing power line. Br. 13. Additionally, Appellant argues the Examiner fails to explain how the

teachings of Imamura and Haram could be combined to teach the claim language. Br. 13.

The Examiner finds Imamura teaches the housing can have an electrical outlet implemented thereon. Ans. 23 (citing Imamura, Fig. 3, item 43A). The Examiner explains, and we agree, “[i]t is extremely common and well known to a person of ordinary skill, that [an] additional electrical device that runs on power can be plugged into Imamura’s outlet . . . to accommodate additional electrical devices as discussed by Haram.” Ans. 23 (emphases omitted). The Examiner further explains, contrary to Appellant’s assertion, the rejection does not rely on modifying or replacing Imamura’s power line power sources. Ans. 23; *see also* Final Act. 16–17 (citing Imamura, col. 20, ll. 22–30, Figs. 1, 3). Appellants do not persuasively rebut the Examiner’s findings or reasoning.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner’s rejection of claim 13. Additionally, we sustain the Examiner’s rejections of claims 15–20, which depend therefrom and were not argued separately. *See* Br. 13–15.

#### DECISION

We affirm the Examiner’s decision to reject claims 1–20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED