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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 13/014,323 | 01/26/2011 | Timothy J. Nordberg | H0027339-1264.1117101 | 1386 |
| 90545 | 7590 | 12/06/2016 | EXAMINER | |
| HONEYWELL/STW Patent Services 115 Tabor Road P.O. Box 377 MORRIS PLAINS, NJ 07950 | | | GAMI, TEJAL | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2126 | |
| | | | NOTIFICATION DATE | DELIVERY MODE |
| | | | 12/06/2016 | ELECTRONIC |

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TIMOTHY J. NORDBERG, JIM I. BARTELS,
and NATHAN LONGEN

Appeal 2016-000195
Application 13/014,323
Technology Center 2100

Before ALLEN R. MacDONALD, JON M. JURGOVAN, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

JURGOVAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ seek review under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.²

¹ Appellants identify Honeywell International, Inc. as the real party in interest. (App. Br. 3.)

² Our Decision refers to the Specification filed Jan 26, 2011 (“Spec.”), the Final Office Action mailed Aug. 7, 2014 (“Final Act.”), the Appeal Brief filed Mar. 2, 2015 (“App. Br.”), the Examiner’s Answer mailed July 29, 2015 (“Ans.”), and the Reply Brief filed Sept. 29, 2015 (“Reply Br.”).

CLAIMED INVENTION

The claims are directed to a programmable controller with both safety and application functions. (Spec. Title.) Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A combustion controller configured for controlling combustion equipment, the combustion controller comprising:

a safety processor including safety functions that safely operate the combustion equipment, wherein the safety functions are pre-programmed with pre-defined equipment configuration and/or pre-defined selection options;

an application processor for controlling application specific programmable functions of the combustion equipment, the application processor being separate from the safety processor but in communication with the safety processor via a communication link;

wherein the application specific programmable functions are programmable by a user and the application specific programmable functions of the user are prevented from overriding or otherwise affecting the safety functions of the safety processor.³

REJECTION

Claims 1–20 stand rejected under 35 U.S.C. § 103(a) based on Sederlund (US 6,647,301 B1, iss. Nov. 11, 2003) and Mierzwinski (US 4,872,828, iss. Oct. 10, 1989). (Final Act. 2–19.)

³ The Examiner should consider whether the “wherein” clause of claim 1 is sufficiently definite under 35 U.S.C. § 112, second paragraph. The “wherein” clause does not recite what element prevents the user-programmed functions from overriding the safety functions. The Examiner likewise should determine whether the term “partitioning” in claim 15 is sufficiently definite to establish that it alone prevents overriding of the safety functions. Furthermore, the Examiner should consider whether “cannot extend beyond” and “are preventing from” are sufficiently definite in claim 15.

ANALYSIS

Claim 1

Appellants argue that the cited references fail to teach or suggest the claim language reciting “the application processor being separate from the safety processor but in communication with the safety processor via a communication link.” (App. Br. 7, Reply Br. 3.)

In the rejection, the Examiner relies on Figure 1 of Sederlund, shown below, to disclose this feature. (Final Act. 4, Ans. 19.) Specifically, the Examiner finds that the controlled apparatus **84** is the communication link supporting communication between the control computer **92** and the safety control computer **93**. (*Id.*)

FIG. 1

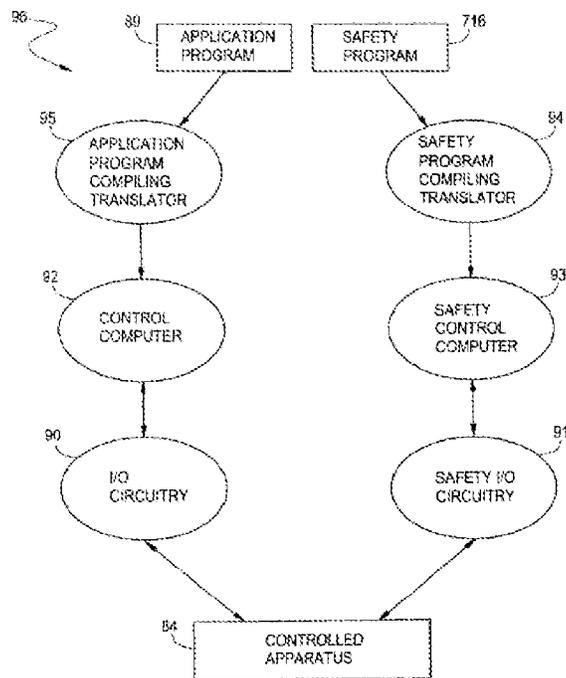


Figure 1 of Sederlund showing controlled apparatus **84**, control computer **92**, and safety control computer **93**.

To the contrary, Appellants argue there is no teaching in Figure 1 of Sederlund, or the corresponding description of Figure 1, that the control computer **92** communicates in any way with the safety control computer **93** (or vice versa) through the controlled apparatus **84**, as asserted by the Examiner. (*Id.*)

We agree with Appellants that the Examiner has not established on the record that Sederlund's control computer **92** and safety control computer **93** communicate with each other through the controlled apparatus **84**. More specifically, Figure 1 shows the control computer **92** and safety control computer **93** each communicate with the controlled apparatus **84**, but this does not necessarily mean or imply the control computer **92** and safety control computer **93** communicate with each other through the controlled apparatus **84**. More than mere citation to Figure 1 and what it shows is required to support the Examiner's finding.

The Examiner also relies on Sederlund's Figure 4 in the Final Office Action, which is, like Figure 1, cited without explanation. (Final Act. 4.) No further reference is made to Figure 4 in the Answer. Figure 4 depicts a control computer system **310** including two redundant control computers **10a**, **10b** with a link between them. (*See* Sederlund 5:35–36, 27:54–59 (“System **310** includes a pair of actively redundant control computers **10a** and **10b**, which are preferably each identical to control computer **10**”).) The Examiner has not established that one of the redundant controllers **10a**, **10b** is the application processor and the other is the safety processor, as claimed. Moreover, the Final Office Action provides no explanation of any relationship between Figures 1 and 4 of Sederlund. Thus, the record does not establish Sederlund, Figures 1 and 4 teach or suggest the claimed feature, and we do not sustain the rejection.

Claim 15

Claim 15 recites a bi-directional communication link between the application processor and the safety processor. (App. Br. 18–19 (Claims App’x).) Appellants argue this feature distinguishes over the cited references for the reasons stated with respect to claim 1. (App. Br. 14.) The Examiner again cites Sederlund, Figures 1 and 4, as teaching the claimed limitation. (Final Act. 5.) For similar reasons to those stated above with respect to claim 1, we do not sustain the rejection of claim 15.

Claims 2–14 and 16–17

We also do not sustain the rejection of dependent claims 2–14 and 16–17 for the reasons stated with respect to independent claims 1 and 15.

Claim 18

Appellants argue for patentability of claim 18 on the same basis as for claim 1. (App. Br. 15.) However, claim 18 is substantially different from claim 1, and does not recite any communication link between an application processor and a safety processor. (*See* App. Br. 19–20 (Claims App’x).) Claim 18 also differs from claim 1 by not reciting that the application processor is separate from the safety processor. Accordingly, Appellants’ arguments with respect to claim 1 do not apply to claim 18, which has no commensurate language supporting those arguments. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (stating that limitations not appearing in the claims cannot be relied upon for patentability).

Regarding the motivation to combine Sederlund and Mierzwinski (App. Br. 11–12), we are not persuaded the Examiner errs. As the Examiner notes, one of ordinary skill in the art would have appreciated that applying Mierzwinski’s safety features to Sederlunds’ control features would lead to safer controls. (Final Act. 7.) In addition, both references mention control

Appeal 2016-000195
Application 13/014,323

of furnaces. (*See, e.g.*, Sederlund 78:11–14, Mierzwinski Title and Abstract.) With these similar teachings in the references, “there was an apparent reason to combine the known elements in the fashion claimed.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

Accordingly, we sustain the rejection of claim 18.

Claims 19 and 20

Appellants argue for patentability of claims 19 and 20 using the same arguments presented for claims 2 and 3. (App. Br. 15.) Claims 19 and 20, however, are substantially different from claims 2 and 3. (*See* App. Br. 16, 20 (Claims App’x).) Specifically, unlike claims 2 and 3, claims 19 and 20 do not recite input/outputs configurable by the safety processor to be controllable by the application processor via the communication link, as argued with respect to claims 2 and 3. (*See* App. Br. 12.) Accordingly, Appellants’ arguments with respect to claims 2 and 3 do not apply to claims 19 and 20. Accordingly, we sustain the rejection of claims 19 and 20.

CONCLUSION

Our reversal of the rejection of claims 1–17 should not be interpreted as an instruction to the Examiner to allow the claims. See MPEP § 1213.02. Although the Board has the authority to enter new grounds of rejection under 37 C.F.R. § 41.50(b), the Board’s primary role is to review the adverse decision as presented by the Examiner, and not to conduct its own separate examination of the claims. Since the exercise of authority under 37 C.F.R. § 41.50(b) to enter a new ground of rejection is discretionary, no inference should be drawn when the Board elects not to exercise that discretion.

DECISION

We reverse the rejection of claims 1–17 under 35 U.S.C. § 103(a).

Appeal 2016-000195
Application 13/014,323

We affirm the rejection of claims 18–20 under 35 U.S.C. § 103(a).

AFFIRMED-IN-PART