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EXAMINER
QUIGLEY, THOMAS K

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ARA PANOSYAN, SAID FAROUK SAID EL-BARBARI
and STEFAN SCHROEDER

Appeal 2016-005851
Application 14/085,392
Technology Center 2800

Before BEVERLY A. FRANKLIN, MICHAEL P. COLAIANNI, and MERRELL C. CASHION, JR., *Administrative Patent Judges*.

CASHION, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Appellants' invention is best illustrated by independent claim 1, reproduced below:

> 1. A power generation system comprising:
>
> a generator mechanically coupled to an engine to generate electrical power;
>
> a fault ride through system connected between the generator and a power grid, the fault ride through system comprising:
>
> a mechanical switch electrically connected in parallel with a solid state switch; and
>
> a controller for controlling the mechanical switch, the solid state switch and ignition of the engine in coordination.

Appellants appeal the Examiner's rejection of claims 1–20 under 35 U.S.C. § 103(a) as unpatentable over Pendray (US 2012/0175876 A1, published July 12, 2012). Final Act. 2; App. Br. 3.

Appellants argue independent claims 1 and 12 together and rely on these arguments to address the rejection of dependent claims 2–11, 13–20. *See generally* Appeal Brief. Accordingly, we select claim 1 as representative of the subject matter before us on appeal. Claims 2–20 stand or fall with claim 1.

OPINION

We have reviewed each of Appellants' arguments for patentability and agree with the Examiner that the subject matter of representative claim 1 is unpatentable. Accordingly, we sustain the Examiner's prior art rejection. Our reasons follow.

Independent claim 1 is directed to a power generation system comprising a fault ride through system connected between a generator and a power grid, wherein the fault ride through system has a mechanical switch electrically connected in parallel with a solid state switch.

The Examiner found Pendray discloses a power generation system having a fault ride through system comprising a bypass breaker electrically connected in parallel with a solid state switch. Final Act. 2; Pendray Figure 3, ¶¶ 18, 28, 45–49. The Examiner found Pendray does not explicitly disclose that the bypass breaker is a mechanical switch. Final Act. 2. The Examiner determined it would have been obvious to one skilled in the art to modify Pendray by utilizing a mechanical switch for the bypass breaker to minimize system costs. Final Act. 2–3.

Appellants argue Pendray does not disclose electrically connecting a mechanical switch and a solid state switch in parallel because a parallel connection would require the two terminals of Pendray's bypass breaker to be connected to the solid state switch. App. Br. 4. According to Appellants, one terminal of Pendray's bypass breaker is connected to the parallel line having a plurality of resistors connected in series instead of the switch. *Id.* Thus, Appellants argue, in Electrical engineering, no one would say that the bypass breaker and the switch are electrically connected in parallel. *Id.*

We are unpersuaded by these arguments and agree with the Examiner's determination of obviousness. Ans. 2–3. Figure 3 of Pendray shows a pathway comprising a bypass breaker and a pathway comprising a plurality of switches with both pathways connected to two sets of electrically common points, one point associated with the generator/consumer load and another point leading to the grid load. Therefore, the pathways comprising the respective bypass breaker and switches are electrically connected in parallel and, as a result, the voltage across the respective element (bypass breaker) and combined elements (switches) in each pathway would be the same.

While Appellants assert the arrangement of Pendray's pathways is not considered to be a parallel arrangement in electrical engineering (App. Br. 4), Appellants have neither directed us to any evidence nor provided an adequate explanation in support of this assertion. Appellants, at most, have provided mere attorney arguments and such arguments of counsel cannot take the place of evidence. *See In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984); *In re Payne*, 606 F.2d 303, 315 (CCPA 1979). Thus, Appellants have not adequately explained why the two above noted pathways of Pendray are not electrically connected in parallel.

We have also considered the arguments in the Reply Brief filed May 17, 2016 in our deliberation to the extent that they are consistent with the Appeal Brief. We note, however, Appellants argue for the first time that Pendray advises against mechanical switches due to their low speed. Reply Br. 2; Pendray ¶ 45. Any argument not presented in the Appeal Brief will not be considered when filed in a Reply Brief, absent a showing of good cause explaining why the argument could not have been presented in the

Appeal Brief. *See* 37 C.F.R. § 41.41(b)(2). *See also*, *Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative) ("the reply brief [is not] an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner's rejections, but were not."); *compare also Optivus Tech., Inc. v. Ion Beam Applications S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) (argument raised for the first time in the Reply Brief is considered waived). Appellants have not shown good cause why the new arguments should now be considered.

Therefore, we affirm the Examiner's prior art rejection of claims 1–20 under 35 U.S.C. § 103(a) for the reasons given above.

ORDER

The Examiner's prior art rejection of claims 1–20 under 35 U.S.C. § 103(a) is affirmed.

TIME PERIOD

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).

AFFIRMED