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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/886,173	10/19/2015	TODD MATTHEW LATHROP	14-MCB-1249	6204
101730	7590	06/23/2020	EXAMINER	
ECKERT SEAMANS CHERIN & MELLOTT, LLC			CRUM, JACOB R	
EATON CORPORATION			ART UNIT	
600 GRANT STREET			PAPER NUMBER	
44TH FLOOR			2835	
PITTSBURGH, PA 15219			NOTIFICATION DATE	
			DELIVERY MODE	
			06/23/2020	
			ELECTRONIC	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TODD MATTHEW LATHROP, JEFFREY WAYNE
LOCKHART, ANDREW ROBERT ZAHN, LANSON DWIGHT
RELYEA, and JAY NICHOLSON HAUGEN

Appeal 2019-004648
Application 14/886,173
Technology Center 2800

Before KAREN M. HASTINGS, RAE LYNN P. GUEST, and
JULIA HEANEY, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ requests our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1–9 and 12–15. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Eaton Corporation (Appeal Br. 1).

REJECTION

Claims 1–8 and 12–15 are rejected under 35 U.S.C. § 103 as being anticipated by Morris '600 (US 4,686,600; published Aug. 11, 1987), incorporating Morris '263 (US 4,667,263; published May 19, 1987), Morris '216 (US 4,641,216; published Feb. 3, 1987) and Baran (US 2014/0126158 A1; published May 8, 2014).

Claim 9 is rejected under 35 U.S.C. § 103 over Morris '600, Morris '263, Morris '216, and Baran, further in view of Lee (US 2015/0123751 A1; published May 7, 2015).

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of the subject matter on appeal (emphasis added to highlight key limitation in dispute):

1. An interruption apparatus structured to be electrically connected with a line conductor and a load conductor of an electrical circuit and to switch at least a portion of the circuit between an ON condition and an OFF condition, the interruption apparatus comprising:
 - a first portion comprising:
 - a first housing,
 - a first electrical apparatus *enclosed within the first housing* and comprising a set of separable electrical contacts and a first conductor, the first conductor being electrically connected with the set of separable electrical contacts and comprising a first connection element that is structured to be electrically connected with one of the line conductor and the load conductor, and
 - a trip unit situated on the first housing, the trip unit being operatively connected with the set of separable electrical contacts and structured to switch the set of

separable electrical contacts between an OPEN state and a CLOSED state;

a second portion comprising:

a second housing, and

a second electrical apparatus situated on the second housing and comprising a second conductor having a second connection element that is structured to be electrically connected with the other of the line conductor and the load conductor;

the second portion being selected from a plurality of second portions which are each alternatively cooperable with the first portion, *one second portion of the plurality of second portions having a detection system that is structured to detect a number of types of faults in the electrical circuit and to responsively generate an output that is communicated to the first portion, another second portion of the plurality of second portions having another detection system that is structured to detect another number of types of faults in the electrical circuit and to responsively generate another output that is communicated to the first portion, at least one of the number of types of faults and the another number of types of faults including a type of fault that is absent from the other of the number of types of faults and the another number of types of faults;* and

the first portion and the second portion being movable from a detached configuration to a connected configuration, the first and second portions being physically and electrically disconnected from one another in the detached configuration, the first and second housings being affixed together and the first and second electrical apparatuses being electrically connected together in the connected configuration.

(Claims App. Appeal Br. 9–12).

ANALYSIS

We review the appealed rejections for error based upon the issues identified by Appellant and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential), cited with approval in *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (“[I]t has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections.”). After considering the evidence presented in this Appeal and each of Appellant’s arguments, we are not persuaded that Appellant identifies reversible error. Thus, we affirm the Examiner’s rejections for the reasons expressed in the Final Office Action and the Answer.

We add the following for emphasis.

First, the Examiner’s determination that Morris ’600 teaches an interruption apparatus to be electrically connected with a line conductor and a load conductor of an electrical switch, and has a trip unit with a set of separable electrical contacts and structured to switch the set of separable electrical contacts between an open state and a closed state is not in dispute (*generally* Appeal Br.; Ans.).

Appellant mainly contends that 1) Baran does not disclose that modules have separate and distinct fault detection functions, so cannot render obvious the modification of Morris ’600 to have two second portions, where “at least one of the number of types of faults and the another number of types of faults” are different (Appeal Br. 4–5; Reply Br. 1–2), and 2) the electrical apparatus “enclosed within the first housing” does not encompass the housing structure of Morris ’600 (Appeal Br. 5–6; Reply Br. 1–2).

First, Appellant argues that the combination of Morris '600 and Baran do not render claim 1 obvious because “nothing in Baran et al., mentions, for instance, that *one* module could include . . . motor jam detection and current imbalance detection whereas an *alternative* module could include . . . current imbalance detection and ground fault detection” (Appeal Br. 4). Appellant disputes the Examiner’s characterization of ¶ 55 of Baran as teaching different modules possessing at least one of the three types of fault detection functions enumerated (Reply Br. 2).

We note that “[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference. . . . Rather, the test is what the combined teachings of [those] references would have suggested to those of ordinary skill in the art.”). *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). *See also In re Nievelt*, 482 F.2d 965, 968 (CCPA 1973) (“Combining the *teachings* of references does not involve an ability to combine their specific structures.”).

As the Examiner points out, Baran is directed to solving the problem of overload relays of different functions because there are many different types of components for these overload relays based on the desired parameters (Ans. 5–6). Baran states that there are a “large number of catalog numbers that need to be manufactured and warehoused” for different relays each with “a small current range, and possibly a fixed set of functional options” and an attempt to increase the function and range “results in increased size, cost, and heat generation” (Baran ¶ 6, cited by Examiner in Final Act. 4). Because Baran’s components are modular, the overload relay can be tailored with modules that have the needed functions, without additional functions that would result in the abovementioned “increased size,

cost, and heat generation.” The Examiner further cites Baran’s “physical separation of the modules” which can allow “a variety of overload relays of *different* functions to be offered in a cost-effective basis” (Final Act. 5, citing Baran ¶ 54, emphasis added), adding context to the “functions” referenced in next paragraph that Appellant argues (Appeal Br. 4, citing ¶ 55). Further, keeping in mind the overall goal of Baran, the different functions of ¶ 54 cannot fairly be limited to the optional remote reset or trip functions mentioned in ¶ 55, as Appellant argues (Appeal Br. 5), because omitting a mere two functions would not allow the level of tailoring that the background implies is needed.

Considering Baran’s teachings as a whole, the functions listed in the first sentence of Baran ¶ 55 are functions that each *can* be a function of the overload relay, but there is no disclosure that those functions *must* be used together. The Appellant’s interpretation, that all of those listed functions must be in a single module, would undercut the overall goal of Baran to allow tailoring of the overload relays to the necessary components for the application, although reducing the cost or size from adding other functions. Having multiple functions that are unnecessary in the overload relay could increase the cost or size or heat generation. *Cf. DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1367–68, (Fed. Cir. 2006). (“Indeed, we have repeatedly held that an implicit motivation to combine exists not only when a suggestion may be gleaned from the prior art as a whole, but when the ‘improvement’ is technology-independent and the combination of references results in a product or process that is more desirable, for example, because it is stronger, cheaper, cleaner, faster, lighter, smaller, more durable, or more efficient.”).

Therefore, Appellant has failed to show why the Examiner erred when finding that Baran's overall goal, along with the implicit disclosures of portions cited, suggest a modular setup with a second portion that performs only the necessary function instead of another function of a different second portion, in order to reduce cost and size.

Turning to the second point, "the PTO must give claims their broadest reasonable construction consistent with the specification. . . . Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation." *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007). "[A]s applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee." *Id.* See also, *Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1370 (Fed. Cir. 2003) (A court must not read particular embodiments and examples appearing in the Specification into the claims unless the Specification requires it.).

Appellant contends that their amendment to recite the electrical apparatus was "enclosed within" the first housing was to overcome the prior art of Morris and that an electrical apparatus not fully enclosed within the first housing would raise "considerations of safety" and "constitute an extremely dangerous situation" (Appeal Br. 5–6). However, Appellant has not directed us to any special definition in the Specification to support their position that an electrical apparatus "enclosed within" a first housing is limited to that apparatus being enclosed *completely* within the housing, different from the housing of Morris '600. The Examiner cited the dictionary definition of "enclose," which includes "to close in" or "to hold in" to explain that the housing does not require complete three-dimensional

coverage (Ans. 6). Further, the Examiner persuasively points out that the first housing of Morris '600 is only partially enclosing the electrical apparatus, yet the end product has a complete enclosure, rendering the safety concerns moot (Ans. 7). Thus, Appellant has not shown error in the Examiner's interpretation of "enclosed within" as encompassing the housing of Morris '600.

To the extent Appellant presents any substantive arguments for any of the remaining dependent claims, no reversible error has been identified (*see also, Ans. generally*).

Accordingly, we sustain the § 103 rejections of all of the claims on appeal.

CONCLUSION

The decision of the Examiner is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-8, 12-15	103	Morris '600, Morris '263, Morris '216, Baran	1-8, 12-15	
9	103	Morris '600, Morris '263, Morris '216, Baran, Lee	9	
Overall Outcome			1-9, 12-15	

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).

Appeal 2019-004648
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AFFIRMED