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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EVANS H. NGUYEN, JASON R. CROWE, SCOTT D.
BUBLITZ, MIKE N. JONES, WAI NANG TSE,
PAK FAI SIU, and MAN KIT HO

Appeal 2019-004902
Application 15/592,410
Technology Center 2800

Before MONTÉ T. SQUIRE, BRIAN D. RANGE, and JANE E. INGLESE,
Administrative Patent Judges.

RANGE, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–5, 7–11, and 13–20. We have jurisdiction 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. Appellant identifies the real party in interest as Milwaukee Electric Tool Corporation. Appeal Br. 2.

CLAIMED SUBJECT MATTER²

Appellant describes the invention as relating to a wall sensor that can, for example, detect wooden or metal studs hidden behind a surface. Spec.

¶ 2. In particular, appellant seeks to provide a plurality of wall scanning technologies and a high-resolution display in a single hand-held device. *Id.*

¶ 3. Claim 1 is illustrative:

1. A wall scanner for sensing objects behind a surface, the wall scanner comprising:

a housing including a handle portion defining a first axis and defining a first recess having an open axial end and a body portion defining a second axis approximately parallel to and offset from the first axis;

a power terminal within the first recess;

wherein a second recess is formed between the body portion and the handle portion; and

wherein the first recess is operable to receive a removable battery into the open axial end,

the battery being electrically connectable to the power terminal;

wherein the handle portion has an outer surface generally defining a cylinder along the first axis, the battery being within the cylinder;

an outer housing covering the open axial end of the first recess, the outer housing extending from and substantially continuing the outer surface of the handle portion;

a sensor supported in the body portion and for sensing an object behind the surface;

a non-contact voltage sensor operable to detect a medium carrying an alternating current behind the surface; and

a display configured to display a plurality of indications to a user.

² In this Decision, we refer to the Final Office Action dated May 29, 2018 (“Final Act.”), the Appeal Brief filed Dec. 18, 2018 (“Appeal Br.”), the Examiner’s Answer dated April 3, 2019 (“Ans.”), and the Reply Brief filed June 3, 2019 (“Reply Br.”).

REFERENCES

The Examiner relies upon the prior art below in rejecting the claims on appeal:

<u>Name</u>	<u>Reference</u>	<u>Date</u>
DuBois et al. ("DuBois")	US 5,762,029	June 9, 1998
Brazell et al. ("Brazell")	US 2003/0218469 A1	Nov. 27, 2003
Uehlein-Proctor et al. ("Uehlein-Proctor")	US 2006/0267556 A1	Nov. 30, 2006

The Examiner also relies on The Wallscanner D-tect 100, available on Nov. 17, 2004, at <http://bosch.com.ph/content/language1/html/1769.htm> ("Bosch") and relies on Wallscanner D-tect 100, available on Nov. 17, 2004, at <http://www.surveyors-equipment.com/content/equipment/D-Tect100MANUALRICS.pdf> ("Wallscanner") "to establish the inherent characteristics of Bosch." Final Act. 4.

REJECTION

The Examiner maintains the following rejection on appeal: claims 1–5, 7–11, and 13–20 under 35 U.S.C. § 103 as obvious over Bosch, Wallscanner, DuBois, Brazell, and Uehlein-Proctor. Ans. 4.

OPINION

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 primarily for emphasis.

Appellant does not present substantively distinct arguments for any claim other than claim 1. *See* Appeal Br. 8–9. Therefore, consistent with the provisions of 37 C.F.R. § 41.37(c)(1)(iv) (2013), we limit our discussion to claim 1, and all other claims on appeal stand or fall together with claim 1.

The Examiner rejects claim 1 as obvious over Bosch with Wallscanner describing characteristics of Bosch in view of DuBois, Brazell, and Uehlein-Proctor. The Examiner finds that Bosch and Wallscanner teach a wall scanner having a housing, handle, and removable battery. Ans. 4–5 (citing Bosch and Wallscanner). The Examiner also finds that Brazell teaches a non-contact voltage sensor and determines that it would have been obvious to combine this sensor with Bosch “to detect a medium carrying an alternating current behind the surface” and to alert users to “potentially hazardous voltages.” *Id.* at 7.

The Examiner determines that Bosch does not teach a handle having a battery component. *Id.* at 5–6. The Examiner finds that, “[t]ool handles containing recesses and associated power terminals operable to receive a removable battery . . . were well-known in the art at the time the invention was made.” *Id.* at 6. The Examiner finds that DuBois teaches a leash/flashlight combination having a recess for a removable battery in its

handle and similarly finds that Uehlein-Proctor teaches a battery-powered tool having a recess for a removable battery in its handle. *Id.* at 6–8. The Examiner determines that it would have been obvious to place the battery compartment of Bosch in Bosch’s handle as taught by DuBois and Uehlein-Proctor so that “the battery pack is easily accessible to a user.” *Id.* at 7 (referencing reason to combine DuBois’s teaching); *see also id.* at 8 (providing a similar rationale to combine Uehlein-Proctor’s teaching).

Appellant argues that DuBois is not a single tool and is instead a combination of a dog leash and a flashlight where the battery housing of the flashlight is in the same housing as the flashlight. Appeal Br. 7. Appellant further argues that neither Bosch nor DuBois teach placement of the battery and placement of a powered portion in separate portions of the device. *Id.* at 7–8; *see also* Reply Br. 2–4. Appellant thus argues that a person of skill in the art would not have combined the disclosures of Bosch and DuBois to place the sensor in the body portion and a battery recess in the handle portion. Appeal Br. 8.

Appellant’s argument does not persuasively identify Examiner error. Bosch and Wallscanner teach a wallscanner with a handle. *See, e.g.*, Wallscanner 8. DuBois and Uehlein-Proctor each teach electrical devices having a recess for a battery in the handle. *See, e.g.*, DuBois, Fig 4a; Uehlein-Proctor, Fig. 5. The preponderance of the evidence, therefore, supports the Examiner’s finding that tool handles with recesses for receiving a battery were well-known in the art. Ans. 6. Appellant does not persuasively dispute this finding.

The Examiner determines that it would have been obvious to apply the well-known technique of putting a battery recess in a tool handle to

Bosch to make the battery pack easily accessible to a user. Ans. 7–8.

Alternatively, the Examiner determines that it would have been obvious to put a battery recess in a tool handle as a known combination that would perform the same function. *Id.* at 8–9. Appellant does not persuasively rebut or otherwise demonstrate error in the Examiner’s stated rationales for combining the references’ teachings.

Appellant’s argument that neither Bosch nor DuBois teach a battery in the same portion as the electric device is unpersuasive because DuBois teaches that its lights could be located separately from the battery.

Ans. 32–34. DuBois teaches that its lights “could be located at the bottom of the housing or any other suitable location on the housing.” DuBois 3:22–43.

As another example of how DuBois’s lights could be separated from the DuBois battery, one embodiment of DuBois teaches battery 160 in housing 152 while lights are strung all along a dog leash. DuBois Fig. 8, 9; 5:7–17.

In view of these teachings, a person of skill in the art desiring to place batteries in Bosch’s handle would understand that such a modification could be performed without undue experimentation. Ans. 32 (“one of ordinary skill . . . would appreciate that in battery-powered apparatuses generally the battery and its associated circuitry may be independently positioned”).

Appellant argues routing conductors through a pivot could damage the conductors (Reply Br. 4), but Appellant offers no evidence to support this point. Moreover, Appellant does not address the Examiner’s findings and conclusion regarding Uehlein-Proctor.

Because Appellant’s arguments do not identify harmful error, we sustain the Examiner’s rejection.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-5, 7-11, 13-20	103	Bosch, Wallscanner, DuBois, Brazell, Uehlein-Proctor	1-5, 7-11, 13-20	

TIME PERIOD FOR RESPONSE

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. § 1.136(a)(1)(iv).

AFFIRMED