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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRIS DIMBERG and MATTHEW PHILIP McDONALD

Appeal 2019-005845
Application 15/464,230
Technology Center 2600

Before JENNIFER S. BISK, JASON J. CHUNG, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals the final rejection of claims 1–37. We have jurisdiction under 35 U.S.C. § 6(b). An Oral Hearing was conducted on August 27, 2020 and a transcript of the Oral Hearing will be added to the record in due course.

We AFFIRM.

INVENTION

The invention relates to a remote control mounted over the toggle actuator of a light switch. Abstract. Claims 1 and 30 are illustrative of the invention and are reproduced below with certain limitations at issue italicized:

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. According to Appellant, Lutron Electronics Co., Inc. is the real party in interest. Appeal Br. 3.

1. A remote control device configured to be mounted over an installed light switch, the light switch having a switch actuator that extends through a faceplate of the light switch, the switch actuator operable between a first position and a second position to control whether power is delivered to an electrical load, the remote control device comprising:

a base having a body that is configured to be mounted over the switch actuator of the light switch;

a control interface that is configured to be attached to the base such that a rotatable portion of the control interface is rotatable around the base;

a printed circuit board configured to be disposed in a cavity defined by the control interface;

a wireless communication circuit; and

a control circuit that is responsive to the control interface and is communicatively coupled to the wireless communication circuit, the control circuit configured to, in response to receiving an input signal from the control interface, cause the wireless communication circuit to transmit a control signal that causes an adjustment of an amount of power delivered to the electrical load,

wherein the body of the base is further configured to, when the remote control device is mounted over the light switch with the switch actuator in the first position, receive a battery and a portion of the switch actuator such that *the battery is disposed in a space vacated by the switch actuator when the switch actuator is operated from the second position to the first position.*

Appeal Br. 17 (Claims Appendix) (emphasis added).

30. A remote control device configured to be mounted over an installed light switch, the light switch having a switch actuator that extends through a faceplate of the light switch, the switch actuator configured to control whether power is delivered to an electrical load, the remote control device comprising:

a control interface having a rotatable portion that includes a front wall and an annular side wall, the front wall and side wall defining a cavity;

a printed circuit board that is configured to be disposed in the cavity of the rotatable portion, the printed circuit board

configured such that when the printed circuit board is disposed in the cavity, the switch actuator of the light switch *extends through a plane of the printed circuit board when the remote control device is mounted over the light switch*; and

a base to which the control interface is configured to be operably coupled such that the rotatable portion is rotatable around the base, the base configured to, when the remote control device is mounted over the light switch, receive a battery and a portion of the switch actuator such that the switch actuator does not interfere with the battery.

Id. at 22–23 (Claims Appendix) (emphasis added).

REJECTION

The Examiner rejects claims 1–37 under 35 U.S.C. § 103 as being unpatentable over the combination of Swatsky (US 9,565,742 B2; filed Mar. 14, 2013, issued Feb. 7, 2017) and Carley (US 8,508,148 B1; issued Aug. 13, 2013). Final Act. 4–14.

ANALYSIS

A. Claims 1–29 Rejected Under 35 U.S.C. § 103

The Examiner finds Carley teaches the limitation “the battery is disposed in a space vacated by the switch actuator when the switch actuator is operated from the second position to the first position” recited in claims 1 and 23. Ans. 3–5 (citing Carley, 4:17–34, 4:52–5:5, 5:19–57, 5:60–66, Figs. 2–4); Final Act. 2–4, 7 (citing Carley, 4:52–60, 5:19–57, 5:60–66, Figs. 2–4). The Examiner determines that it would have been obvious to a person having ordinary skill in the art (hereinafter “PHOSITA”) to combine Swatsky and Carley because installing a small battery into a remote controller for transmitting signals provides an alternative way for assembling the remote control device for a wall-mount switch. Ans. 6–7; Final Act. 7.

Appellant argues Carley's selector switch 120 does not create a space for battery 116 because three-position selector switch 120 can be operated between multiple switch positions 124a, 124b, and 124c while battery 116 remains in the same location. Appeal Br. 10–12. Appellant argues a PHOSITA would have no reason to combine Swatsky and Carley because nothing in Carley would have motivated a PHOSITA to arrive at a battery that is disposed in a space vacated by the switch actuator when the switch actuator is operated from the second position to the first position. Appeal Br. 12–13. We disagree with Appellant.

As an initial matter, the Examiner makes new findings in the Answer. *Compare* Ans. 3–5 (citing Carley, 4:17–34, 4:52–5:5, 5:19–57, 5:60–66, Figs. 2–4) (presenting new findings in the paragraph (i.e., “[f]urthermore, as defined by page 1 . . . that can slide among multiple switch positions”) that spans pages 4 and 5 of the Answer) *with* Final Act. 2–4, 7 (citing Carley, 4:52–60, 5:19–57, 5:60–66, Figs. 2–4). Notably, Appellant does not rebut the Examiner's new findings.

We disagree with Appellant's argument that a PHOSITA would have no reason to combine Swatsky and Carley because nothing in Carley would have motivated a PHOSITA to arrive at a battery that is disposed in a space vacated by the switch actuator when the switch actuator is operated from the second position to the first position. Appeal Br. 12–13. As stated above, the Examiner finds Carley teaches the limitation “the battery is disposed in a space vacated by the switch actuator when the switch actuator is operated from the second position to the first position” recited in claims 1 and 23. Ans. 3–5 (citing Carley, 4:17–34, 4:52–5:5, 5:19–57, 5:60–66, Figs. 2–4), which Appellant does not rebut.

In addition, we agree with the Examiner’s determination that a PHOSITA would combine Swatsky and Carley because installing a small battery into a remote controller for transmitting signals provides an alternative way for assembling the remote control device for a wall-mount switch. Ans. 6–7; Final Act. 7. We, therefore, conclude the Examiner has set forth sufficient “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *Kahn*, 441 F.3d at 988).

Accordingly, Appellant has not persuaded us of error in the Examiner’s articulation of a reason to combine the references or in the finding that Carley teaches the limitation “the battery is disposed in a space vacated by the switch actuator when the switch actuator is operated from the second position to the first position” recited in claims 1 and 23 (and their respective dependent claims).

B. Claims 23–37 Rejected Under 35 U.S.C. § 103

The Examiner finds Swatsky teaches mounting base portion 325/425 of rotary remote control device 320 over toggle actuator 106/406 of switch 104; the rotary remote control device includes control circuit 530 and one or more processors, which the Examiner maps to the limitation “the switch actuator of the light switch extends through a plane of the printed circuit board when the remote control device is mounted over the light switch” recited in claims 23 and 30. Ans. 7–8 (citing Swatsky, 4:21–40, 10:35–50, 11:60–12:49, Figs. 3–6); Final Act. 8.

Appellant argues Swatsky fails to teach that the switch actuator of the light switch extends through a plane of the printed circuit board when the remote control device is mounted over the light switch because Swatsky

merely teaches that the remote control device may include a control circuit.

Appeal Br. 14. We disagree with Appellant.

The cited portions of Swatsky teach mounting base portion 325/425 of rotary remote control device 320 over toggle actuator 106/406 of switch 104; the rotary remote control device includes control circuit 530 (i.e., 530 is built onto printed circuit board) and one or more processors (i.e., base portion 325/425 includes control circuit 530 and is configured to receive toggle actuator 106/406), which suggests the limitation “the switch actuator of the light switch extends through a plane of the printed circuit board when the remote control device is mounted over the light switch” recited in claims 23 and 30. Swatsky, 4:21–40, 10:35–50, 11:60–12:49, Figs. 3–6 (cited at Ans. 7–8; Final Act. 8).

Therefore, Appellant has not persuaded us of error in the Examiner’s finding that Swatsky teaches or at least suggests the limitation “the switch actuator of the light switch extends through a plane of the printed circuit board when the remote control device is mounted over the light switch” recited in claims 23 and 30 (and their respective dependent claims).

Accordingly, we sustain the Examiner’s rejection of: (1) independent claims 1, 23, and 30; and (2) dependent claims 2–12, 14–22, 24–29, and 31–37 under 35 U.S.C. § 103.

C. Claim 13 Rejected Under 35 U.S.C. § 103

The Examiner finds Carley teaches a remote control device with a battery, which the Examiner maps to the limitation “the base defines a recess that is configured to at least partially receive the battery” recited in claim 13. Final Act. 11 (citing Carley, 4:52–60, Figs. 1, 3, and 4).

Appellant argues Carley fails to teach a base that defines a recess that is configured to at least partially receive the battery. Appeal Br. 15. We disagree with Appellant.

The cited portions of Carley teach a remote control device with a battery inserted in the housing (i.e., this teaches a base that defines a recess in order to house the battery), which teaches the limitation “the base defines a recess that is configured to at least partially receive the battery” recited in claim 13. Carley, 4:52–60, Figs. 1, 3, and 4 (cited at Final Act. 11).

Therefore, Appellant has not persuaded us of error in the Examiner’s finding that Carley teaches the limitation “the base defines a recess that is configured to at least partially receive the battery” recited in claim 13. Accordingly, we sustain the Examiner’s rejection of claim 13 under 35 U.S.C. § 103.

We have only considered those arguments that Appellant actually raised in the Brief. Arguments Appellant could have made, but chose not to make, in the Brief has not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

In summary:

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–37	103	Swatsky, Carley	1–37	

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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)(iv). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED