

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDRE J. M' SADOQUES

Appeal No. 2000-0398
Application 08/903,406

ON BRIEF

Before THOMAS, HAIRSTON and RUGGIERO, Administrative Patent Judges.
THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellant has appealed to the Board from the examiner's final rejection of claims 1-7, 9, 10 and 12. Representative claim 1 is reproduced below:

1. A programmer cover for preventing access to a circuit breaker programmer unit comprising:

a plate having a window formed therein for visual access to the interior of a circuit breaker cover;

a rating plug access slot for allowing access to a rating plug inserted within a circuit breaker programmer unit; and

a pair of first and second guide tabs arranged on opposite sides of said plate for reception within corresponding slots formed on opposite sides of said circuit breaker cover, wherein said first and second guide tabs include detents for capture within said slots

of said circuit breaker cover, said detents for retaining said plate within said slots of said circuit breaker cover.

The following references are relied on by the examiner:

Bottelson	4,400,672	Aug. 23, 1983
Morris et al. (Morris)	4,728,914	Mar. 1, 1988
Morgan et al. (Morgan)	5,117,211	May 26, 1992

Claims 1-7, 9, 10 and 12 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Morris in view of Bottelson as to claims 1-5, with the addition of Morgan as to claims 6, 7, 9, 10 and 12.

Rather than repeat the positions of the appellant and the examiner, reference is made to the brief and the answer for the respective details thereof.

OPINION

As will be apparent from a review of the following, we sustain the rejection of claims 1, 3 and 4 but reverse the rejection as to all remaining claims on appeal, claims 2, 5-7, 9, 10 and 12.

As to the examiner's interpretation and correlation of the features in the last clause of claim 1 on appeal as set forth in the paragraph bridging pages 3 and 4 of the answer, appellant rightly challenges the examiner's views in the arguments presented at pages 5 and 6 of the brief. What the examiner considers the first and second guide tabs and corresponding slots in Morris are not consistent with the teachings and showings in that reference as brought out by appellant in the noted portion of the brief. As to

Figures 6, 7A and 7B, the examiner incorrectly corresponds the claimed feature of first and second guide tabs to paired element 79 and its corresponding slots to paired element 69. The examiner's perspective as stated in this portion of the rejection of the claims on appeal begins with the correlation of Morris's rating plug cover 21 to the claimed plate or programmer cover. Despite the examiner's views, there are no corresponding guide tabs which include detents associated with the cover 21 in the Figures 6, 7A and 7B showings of Morris's invention. Corresponding elements 79 and 69 in the Figures do not correspond to these structural elements and functions. It is the attachment tabs 81 being fed through the attachment slots 80 which affix to capture and thereby retain in the sense at the end of claim 1 on appeal the rectangular plate cover 21 to the rating plug case 20 best shown in Figure 6.

On the other hand, we do sustain the rejection of independent claim 1 for the modified reasons by the examiner expressed in the middle of page 5 of the answer where the examiner takes the view that the rating plug assembly itself as a whole, which is element 17 as best depicted in Figure 6 with side views shown in Figures 7A and 7B, which acts in its entirety as a cover corresponding to the claimed programmer cover and its plate of claim 1 on appeal. From this perspective then, the examiner's reliance upon the side case projections 69 of case 20 do project through the access hole 23,

best shown in Morris's Figure 2, to capture and retain the entire case 20 within the cover 12 of the electronic circuit breaker 10 of Figure 1. This is shown in side view Figures 7A and 7B. Side case projection 69 is shown in these latter figures to include a pair of detent lips 74 on the outside of them which engage a pair of under cut edges 75 of the lower portion of the cover 12. These correspond to the claimed first and second guide tabs which include detents as well as the claimed slots of the entire circuit breaker cover as recited in claim 1. Since the substance of the claim is met by this view taken of Morris's teachings and in view of the fact that there is no reply brief to rebut this correlation expressed by the examiner beginning at the middle of page 5 of the answer, we will sustain the rejection of claim 1.

As to appellant's third point at the bottom of page 6 of the brief, the arguments here are more specific than the actual language of the claim and involve an intent which is unexpressed within the claim itself. The examiner analogizes the indicating lamp visual access 18 in Morris to the claimed window and the test jack access hole 19 to the claimed rating plug access slot. Note the examiner's comments at the top of page 6 of the answer. Morris shows the claimed feature to the extent it is recited in claim 1.

As to dependent claim 2, we agree with the appellant's view that there is no claimed blocking tab within the indicating lamp visual access hole 18 which the examiner considers to be correlated to the claimed window. The rejection of dependent claims 3 and 4 is sustained because there are no arguments presented against these dependent claims depending from claim 1. We also reverse the rejection of claim 5. There are no claimed locking apertures in the plate proximate to a locking aperture of the circuit breaker cover taught or suggested in Morris.¹

Before we leave the discussion of claim 1 and its dependent claims, the examiner's reliance upon Bottelson to show a bezel 62 allowing visual access to both the rating plug assembly and the circuit breaker interior is misplaced. There appears to us to be little relevance of the need for this teaching in accordance with the recitations of the rejected claims on appeal. Even if it may have been obvious for the artisan to have utilized the entire bezel assembly approach 62 including the transparent door 180 in the embodiment of Morris's invention as a substitution for the rating plug cover 21, within 35 U.S.C. § 103, there appears to be no need

¹ We observe in passing from our study of the specification as filed that these apertures are only discussed at page 2, lines 23-26 but not in the context of being associated with the detents such as the detent 38 shown in Figures 4 and 5 of the disclosed invention, as claimed.

to rely upon it for the substance of the actual features recited in the claims rejected.

In light of these considerations with respect to Bottelson, we also reverse the rejection of independent claim 6 and its respective dependent claims. From our perspective, it appears to be mere conjecture as to the reasoning the examiner would have utilized, but did not state in the rejection, as to his reliance upon Bottelson in view of Morris. Still, the examiner takes the view that Morris and Bottelson show everything except for the parametric access slot. However, the examiner further relies upon Morgan, but fails to discuss this reference at all in the reasoning set forth in this rejection at the bottom of page 4 of the answer. It is therefore readily apparent that there is no prima facie case of obviousness that the examiner has established as to independent claim 6 and its respective dependent claims.

We observe in passing that the feature allegedly not taught in the combination of Morris and Bottelson is taught in Bottelson to the extent there appears to be a recess slot around the inside perimeter of the central opening (CO) in the embodiments shown in Figures 2-4. Yet it is not apparent to us from the examiner's reasoning nor from our own understanding of this reference why the artisan would have found it obvious to have utilized such a parametric access slot as claimed in independent claim 6, and

apparently derivable from the teachings and showings in Bottelson's figures, and apply them to the teachings and showings of Morris's rating plug cover 21. We therefore reverse the rejection of this claim and its respective dependent claims.

In summary, we have sustained the rejection of claims 1, 3 and 4, but have reversed the rejection of claims 2, 5-7, 9, 10 and 12 under 35 U.S.C. § 103. Therefore, the decision of the examiner rejecting various claims on appeal under 35 U.S.C. § 103 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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Administrative Patent Judge)	
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Kenneth W. Hairston)	BOARD OF PATENT
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