

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM R. ERWIN

Appeal No. 95-1803
Application 07/765,596¹

ON BRIEF

MAILED

JUN 26 1996

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Before THOMAS, KRASS and BARRETT, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 and 3 through 11, constituting all the claims pending in the application.

¹ Application for patent filed September 26, 1991. According to applicant, the application is a continuation-in-part of Application 07/752,004, filed August 29, 1991.

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The invention is directed to an automatic lighting controller wherein an audible signal is generated after a time period of no motion detection in an area so as to give an occupant of the area a second time period in which to do something in order to reset the first time period. If nothing is done, power is shut off at the end of the second time period.

Representative independent claim 1 is reproduced as follows:

1. An automatic lighting controller for applying electrical power to a lighting load from a power distribution circuit in which the lighting load is selectively connectable to the power distribution circuit through a gate controlled power switch, said automatic lighting controller comprising a circuit for controlling the ON/OFF operation of the gate controlled power switch, means for detecting motion activity above a prescribed threshold level which occurs within an area served by the lighting load during a first time interval, means responsive to the motion detection means for causing the control circuit to maintain the gate controlled power switch in the ON condition in response to the detection of motion activity in the service area during the first time interval, means for operating an audible alert output device during a second time interval subsequent to the first time interval if motion activity above the threshold level is not detected during the first time interval, and means responsive to the motion detection means for causing the control circuit to switch OFF the gate controlled power switch if motion activity above the threshold level is not detected during the second time interval.

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The examiner relies on the following references:

Grimes et al. (Grimes)	4,223,301	Sep. 16, 1980
Fried	4,367,455	Jan. 4, 1983
Koehring et al. (Koehring)	4,751,399	Jun. 14, 1988
Pollack	5,153,580	Oct. 6, 1992
		(filed Jan. 16, 1990)

Claims 1 and 3 through 11 stand rejected under 35 U.S.C. 103 as unpatentable over Koehring taken with Grimes, Fried and Pollack.

Reference is made to the brief and answer for the respective positions of appellant and the examiner.

OPINION

We have carefully considered the arguments of appellant and the examiner and, based on the evidence provided by the applied references, we will sustain the rejection of claims 1 and 3 but we will not sustain the rejection of claims 4 through 11.

Turning first to instant claim 1, we agree with the examiner that, as broadly claimed, the subject matter of claim 1 would have been obvious, within the meaning of 35 U.S.C. 103, in

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view of the collective teachings of Koehring, Grimes, Fried and Pollack.

Koehring discloses an automatic lighting controller which detects movement in an area above a prescribed threshold level during a first time interval. If no movement has occurred during that time period, the circuit providing power is disabled. However the power may be restored during a second time period subsequent to the first time period if movement is detected during the second time period. No audible signal is provided by Koehring.

Grimes teaches the provision of a delay sequence during which time an occupant of a room has sufficient time to exit the room prior to deenergization of appliances, the delay sequence being initiated by release of a door deadbolt. In order to encourage the occupant to engage a deadbolt on the door for safety reasons when occupying the room, if the deadbolt is not engaged, the occupant is given 2.5 minutes, from the time of disengaging the deadbolt when entering the room, to engage the deadbolt. If this is not done, power to appliances is disabled at the end of the time period. However, a "gentle beep signal" is provided during the 2.5 minute interval in order to remind the occupant to engage the deadbolt [see column 4, lines 15-23].

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Similarly, in Fried's powersaving room security system, a gate is provided to be responsive to a final two minute cycle during which time the lights in the room are dimmed and the gate operates a beeper [see column 6, lines 4-13].

Pollack also teaches an audible alert that power is about to be shut off, although the audible alert in Pollack is in the opposite direction, i.e., the television to be controlled has its volume lowered.

The artisan familiar with such audible alerts in power saving devices which disable power to appliances after a certain time period would clearly have found it obvious to provide such an audible alert in the automatic lighting device of Koehring by providing the audible signal during the last few minutes or seconds of the first time period in order to alert the occupant that the power is about to be disabled. This is the clear suggestion of Grimes, Fried and Pollack.

Appellant argues that Koehring provides no audible alert, that Grimes fails to teach any motion detection in the room, that Fried provides the beeper to sound simultaneous with the dimming of the lights and merely provides a circuit for preventing the occupant from turning off the lights unless a door

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deadbolt lock is engaged and that Pollack's steadily decreasing volume is not an alert signal as required by the claims.

The major problem with appellant's arguments is that they are clearly directed to the references taken individually and do not address the combination of references as applied by the examiner as to what would have been suggested to the artisan by such a combination. One may not argue nonobviousness by addressing the references individually where the rejection is based on a combination of the references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

With regard to Koehring's lack of a disclosure of a "grace period," we agree with the examiner that the claims do not require any such "grace period." To the extent appellant is arguing the interaction of the claimed two time intervals, clearly Koehring teaches two such time periods, i.e., one wherein no motion is detected so power is disabled and another subsequent to the first wherein an occupant may do something, e.g., move, in order to restore the power. The secondary references merely suggest that an audible signal may also be produced before the end of the first time period.

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Appellant's arguments relating to safety, stress reduction, etc. in warning occupants before the lights are extinguished as in the instant invention as compared to a lack of safety, etc. in Koehring where lights are first extinguished and then restored by action of the occupant are not persuasive since the instant claims do not recite any such limitations as safety, stress reduction, etc.

On page 13 of the brief, appellant argues that Grimes provides a beep signal "simultaneously" with the expiration of the 2.5 minute delay, providing no advance warning of imminent power shut-off. We find this statement to be inaccurate in view of column 4, lines 15-25 of Grimes which clearly states that the beep signal is provided "within" [emphasis added] the 2.5 minute time delay, not simultaneously with the expiration of the delay as asserted by appellant.

While appellant argues, at page 14 of the brief, that Fried's beeper is sounded simultaneously with dimming of the lights, "providing a visual and an audible reminder," nothing in the instant claims precludes an additional visual reminder along with the claimed "audible" signal. As far as being simultaneous with the occurrence of an event, i.e., dimming of the lights, the

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audible signal in Fried still occurs prior to the actual shut-off of the lights, just as appellant intends.

Contrary to appellant's assertion regarding Pollack, it is clear to us that gradual reduction of sound volume may still reasonably be construed to be an audible signal.

Accordingly, we will sustain the rejection of claim 1 under 35 U.S.C. 103. We will also sustain the rejection of claim 3 under 35 U.S.C. 103 since this claim depends from independent claim 1 and appellant has not separately argued the merits of claim 3.

Turning now to independent claim 8, although appellant does not separately address this claim and, in fact, states that all the claims "fall within a single grouping of claims" [brief, page 8], claim 8 does recite a "delay logic circuit" and a "latch means" which have been argued by appellant on page 16 of the brief with regard to dependent claim 4. Accordingly, we will treat claim 8 separately from independent claim 1 and treat it together with dependent claim 4 which includes the "delay logic circuit" and "latch means."

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Further, although not mentioned by name, appellant has argued the merits of claims 5 and 9 by arguing, at page 16 of the brief, that the references do not disclose "a counter circuit for counting a sequence of N-clock pulses, with the first N-1 clock pulses constituting the primary sensing interval, and the Nth clock pulse corresponding with a grace period."

The examiner, on the other hand, has responded to these specific claim limitations by asserting merely that Koehring "provides an equivalent implementation to that claimed as such control circuitry is well known" or that the implementation of the claimed features "merely constitutes conventional implementation of well known conventional timer control circuitry, as is conventional in the art" [answer, pages 10, 17]. Yet the examiner has pointed to no evidence in support of his position that the claimed limitations are "well known." The applied references are not seen to disclose or suggest the claimed "delay logic circuit" together with the claimed "latch means" nor are they seen to disclose or suggest the claimed counter circuit as set forth in claims 5 and 9.

Accordingly, the examiner has failed to establish a prima facie case of obviousness with regard to the claimed subject matter of claims 4 through 11. To the extent the

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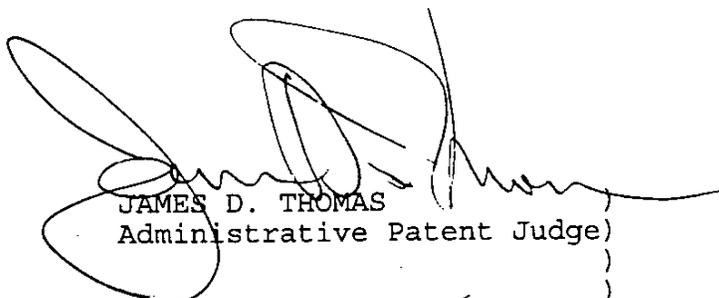
examiner's position is one of taking "official notice" of well known features, appellant's arguments relative to the limitations of claims 4, 5, 8 and 9 constitute a challenge to such "official notice," placing the burden back on the examiner to establish, with evidence, the truth of his allegation of well known, conventional features. The record is devoid of any evidence that the examiner has done this. Accordingly, we cannot support the examiner's position and the rejection of claims 4 through 11 under 35 U.S.C. 103 must be reversed.

We have sustained the rejection of claims 1 and 3 under 35 U.S.C. 103 but we have not sustained the rejection of claims 4 through 11 under 35 U.S.C. 103. Accordingly, the examiner's decision is affirmed-in-part.

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

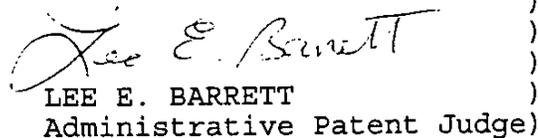
AFFIRMED-IN-PART



JAMES D. THOMAS
Administrative Patent Judge)



ERROL A. KRASS
Administrative Patent Judge)



LEE E. BARRETT
Administrative Patent Judge)

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