

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

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Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte BRUNO MARBACHER

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Appeal No. 1998-2485  
Application 08/711,996<sup>1</sup>

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ON BRIEF

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Before BARRETT, GROSS, and BARRY, Administrative Patent Judges.

BARRETT, Administrative Patent Judge.

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<sup>1</sup> Application for patent filed September 10, 1996, entitled "Plug For An Appliance Having A Fuse," which is a continuation of Application 08/354,245, filed December 12, 1994, now abandoned, which claims the foreign filing priority benefit under 35 U.S.C. § 119 of Swiss Application 00305/94-2, filed February 2, 1994.

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DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the final rejection of claims 7-10.

We reverse but enter a new ground of rejection.

BACKGROUND

The disclosed invention relates to a plug having a replaceable fuse. The plug is mounted to the housing of an appliance with the replaceable fuse on the inside of the housing so that the fuse is not accessible from the outside. This provides a structure whereby the exchanging of the fuse must be done by a skilled person.

Claim 7 is reproduced below.

7. A fuse containing plug for mounting on an appliance with a replaceable fuse confined inside a housing for the appliance, comprising in combination,

an insulation plug body having structure for receiving and supporting electrical contact pins for electrical connection between an electrical wire assembly outside the appliance and appliance electrical wiring inside the appliance, and

plug body structure to non-removably mount the plug on an appliance with only the contact pin terminals for connecting the plug to the electrical wire assembly being accessible from outside of the appliance,

wherein said plug body structure supports a replaceable fuse positioned on the plug body structure

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at a position to reside inside the appliance for making circuit connection between a contact pin accessible from outside the appliance and electrical wiring of the appliance thus requiring entry into the housing while the plug body structure is confined in place to replace the fuse.

The Examiner relies on the following prior art:

Eberhard et al. (Eberhard) 4,959,025 September 25,  
1990

Claims 7-10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Eberhard.

We refer to the Final Rejection (Paper No. 14) and the Examiner's Answer (Paper No. 20) (pages referred to as "EA\_\_") for a statement of the Examiner's position, and to the Brief (Paper No. 19) and the Reply Brief (Paper No. 21) (pages referred to as "RBr\_\_") for a statement of Appellant's arguments thereagainst.

#### OPINION

The Examiner states for the first time in the Examiner's Answer that the recitation that the fuse is only to be accessed from inside of the appliance for replacement has not been given any weight because the recitation occurs in the preamble (EA4).

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Appellant points to specific language in the bodies of independent claims 7, 9, and 10 that requires that the fuse is not accessible for replacement from outside the housing (RBr5-6). The Examiner does not respond to these arguments in Paper No. 22, which notes entry of the Reply Brief and states that no further response is necessary. We find that claims 7, 9, and 10 require that the fuse is not accessible from outside the housing and, thus, conclude that the Examiner erred as a matter of law in interpreting the claims to not require this feature. It is uncontroverted that the fuses in Eberhard are removable from outside the housing and do not meet the limitation of the fuse being inaccessible from outside the appliance housing. Accordingly, the rejection of claims 7-10 is reversed.

NEW GROUND OF REJECTION PURSUANT TO 37 CFR § 1.196(b)

Claims 9 and 10 are rejected under 35 U.S.C. § 112, first paragraph, based on a lack of written description in the original disclosure. Claims 9 and 10 recite that the plug body is female, having female electrical connectors for receiving an external mating male power plug. However, what is disclosed in the application, as filed, is a plug body

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which supports contact pins 3-5, i.e., a male connector like that disclosed in Eberhard, which is commonly used on computers and printers. Although we have no doubt that a female plug body would have been obvious over the male plug body disclosed, a description which renders obvious the claimed invention is not sufficient. See Lockwood v. American Airlines, Inc., 107 F.3d 1565, 1571-72, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

#### CONCLUSION

The rejection of claims 7-10 is reversed.

A new ground of rejection has been entered against claims 9 and 10 pursuant to 37 CFR § 1.196(b).

This decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b)(amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53,131, 53,197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. & Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides that, "A new ground of rejection shall not be considered final for purposes of judicial review."

37 CFR § 1.196(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must

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exercise one of the following two options with respect to the new ground of rejection to avoid termination of proceedings (§ 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

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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).

REVERSED - 37 CFR § 1.196(b)

	LEE E. BARRETT	)	
	Administrative	Patent Judge	)
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		)	
		)	BOARD OF
PATENT		)	
	ANITA PELLMAN GROSS	)	APPEALS
	Administrative Patent Judge	)	AND
		)	INTERFERENCES
		)	
		)	
		)	
	LANCE LEONARD BARRY	)	
	Administrative Patent Judge	)	

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