

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte THOR H. LIGARD

Appeal No. 2002-0061
Application No. 09/253,475

ON BRIEF

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

DECISION ON APPEAL

A patent examiner rejected claims 1-21. The appellant appeals therefrom under 35 U.S.C. § 134(a). We reverse.

BACKGROUND

The invention at issue on appeal is an anti-theft device designed to interrupt a break-in by discharging pepper gas or tear gas into a vehicle to hinder an intruder. (Spec. at 3.) More specifically, a local switch 16 or a remote controller 70 is used to arm the device. When a motion detector 21 senses motion inside the vehicle, an electronic circuit 110 opens a valve 141 to discharge the gas. (Appeal Br. at 4.)

A further understanding of the invention can be achieved by reading the following claim.

1. A device for deterring the presence of an intruder in a protected area comprising:

a source of a deterrent medium;

a valve for gating release of the deterrent medium from said source;

an electronic circuit including a means for operating said valve;

means for switching the device to an electrically activated condition;

means responsive to a motion detector in the protected area for providing an electronic signal only while motion occurs in the protected area; and

means responsive to said switching means and to said motion detector responsive means for activating said electronic circuit during the simultaneous occurrence of the device being in said electrically activated condition and said electronic signal being provided to open said valve and issue the deterrent medium from said source into the protected area.

Claims 1-5, 7-12, and 18-21 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 4,958,142 ("Sayers") and U.S. Patent No. 5,398,016 ("Burayez").

Claims 6, 13-15, and 17 stand rejected under § 103(a) as obvious over Sayers, Burayez, and U.S. Patent No. 5,467,070 ("Drori"). Claim 16 stands rejected under

§ 103(a) as obvious over Sayers, Burayez, Drori, and U.S. Patent No. 4,642,612 ("Crump").¹

OPINION

Rather than reiterate the positions of the examiner or the appellant *in toto*, we address the main point of contention therebetween. Admitting that "[i]t is not very clear in Sayers that the intrusion detector is a motion detector," (Examiner's Answer at 4), the examiner asserts, "Burayez teaches a similar system wherein a motion detector is used to detect an intrusion." (*Id.*) The appellant argues, "Burayez' motion detector, if any, is positioned *outside* of the area to be protected. . . ." (Appeal Br. at 10.)

"Analysis begins with a key legal question -- *what is the invention claimed?*" *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987). In answering the question, "the Board must give claims their broadest reasonable construction. . . ." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1668 (Fed. Cir. 2000).

¹"Where a reference is relied on to support a rejection, whether or not in a 'minor capacity,' there would appear to be no excuse for not positively including the reference in the statement of rejection." *In re Hoch*, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970). Here, although the examiner mentions "Reeder," (Examiner's Answer at 21), he fails to include the reference in the statements of the three rejections. (*Id.* at 3, 7, 9.) Accordingly, we will not consider the reference in deciding this appeal.

Here, independent claim 1 specifies in pertinent part the following limitations: "means responsive to a motion detector in the protected area for providing an electronic signal only while motion occurs in the protected area; and means . . . for activating said electronic circuit during the simultaneous occurrence of the device being in said electrically activated condition and said electronic signal being provided to open said valve. . . ." Similarly, independent claim 10 specifies in pertinent part the following limitations: "means responsive to a motion detector in the protected vehicle for providing an electronic signal only while motion occurs in the protected vehicle; and means . . . for activating said electronic circuit during the simultaneous occurrence of the device being in said electrically activated condition and said electronic signal being provided to open said valve. . . ." Giving the independent claims their broadest, reasonable construction, the limitations require locating a motion detector inside an area to be protected to generate a triggering signal only in response to motion inside the area.

Having determined what subject matter is being claimed, the next inquiry is whether the subject matter would have been obvious. "In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness." *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993) (citing *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444

(Fed. Cir. 1992)). "a *prima facie* case of obviousness is established when the teachings from the prior art itself would . . . have suggested the claimed subject matter to a person of ordinary skill in the art." *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)).

Here, the examiner admits that "[i]t is not very clear in Sayers that the intrusion detector is a motion detector," (Examiner's Answer at 4), and we find no mention of a motion detector therein. For its part, Burayez discloses "a Vehicle Defense System (VDS)," col. 1, l. 11, "for defending or protecting an enclosed property, such as an automobile. . . ." *Id.* at ll. 9-11. In the VDS, "sensors 3 sense or detect any violation or insult to the integrity of the vehicle and produce or send a signal to the logic controller 2a. The signal to the logic controller 2a is used to determine whether or not to trigger the VDS." Col. 2, ll. 39-44. These sensors "can include . . . motion sensors" *Id.* at ll. 44-45.

The sensors of Burayez, however, are not located inside the vehicle. To the contrary, the "sensors are located outside the vehicle. . . ." *Id.* at l. 20. Because the sensors are located outside the vehicle, these would not generate a triggering signal

only in response to motion **inside** the vehicle. To the contrary, the outside sensors would generate a triggering signal responsive to motion outside the vehicle.

Because Sayers does not mention any motion detector, and Burayez locates its sensors outside a vehicle to be protected, we are not persuaded that teachings from the references would have suggested locating a motion detector inside an area to be protected to generate a triggering signal only in response to motion inside the area. Therefore, we reverse the obviousness rejection of claim 1; of claims 2-5 and 7-9, which fall therewith; of claim 10; and of claims 11, 12, and 18-21, which fall therewith.

The examiner fails to allege, let alone show, that the addition of Drori or Crump cures the aforementioned deficiency of Sayers and Burayez. Therefore, we reverse the obviousness rejections of claims 6 and 13-17.

CONCLUSION

In summary, the rejections of claims 1-21 under § 103(a) are reversed.

REVERSED

LEE E. BARRETT
Administrative Patent Judge

ANITA PELLMAN GROSS
Administrative Patent Judge

LANCE LEONARD BARRY
Administrative Patent Judge

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