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Raritan v Server Technology
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IPR PAGE 1

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN POWER CONVERSION CORPORATION
Requester and Respondent

v.

SERVER TECHNOLOGY, INC.
Patent Owner and Appellant

Appeal 2015-004779
Reexamination Control No. 95/001,485
Patent US 7,043,543 B2
Technology Center 3900

Before JAMES T. MOORE, ANDREW J. DILLON, and JENNIFER L.
McKEOWN, *Administrative Patent Judges*.

DILLON, *Administrative Patent Judge*

DECISION ON APPEAL

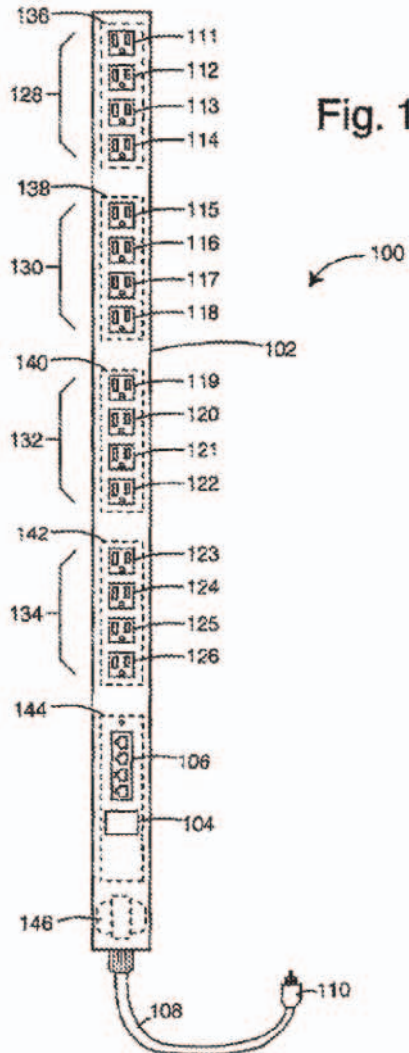
STATEMENT OF THE CASE

Owner appeals under 35 U.S.C. § 134(b) (2002) from the final decision of the Examiner adverse to the patentability of claims 1–26, 29–31, 33, 34, 37, 39–43, 46–48, and 50. Requester appeals from the final decision of the Examiner favorable to the patentability of claims 28, 32, 35, 36, 38, 44, 45, 49, 51–53, and 54–62. Requester also appeals the final decision of the Examiner regarding claims 1–26 and 28–62, which failed to adopt various alternate grounds of rejection proposed by Requester. We have jurisdiction under 35 U.S.C. § 315 (2002).

Invention

The '543 patent describes a vertical-mount electrical power distribution plugstrip comprising a long, thin plugstrip body with several power outlet plugs distributed along the length of one face. A power input cord is provided at one end, and this supplies operating power to each of the power outlet plugs through individual relay control. Abstract.

Figure 1, reproduced below, is said to depict a functional block diagram of an electrical power distribution plugstrip embodiment of the '543 patent.



As illustrated above, Figure 1 depicts an elongate vertical mount plugstrip 100 with multiple power outlet plugs 111–126. Plugstrip 100 also includes a power input cord 108, a user display 104, and a plurality of RJ-11 jacks 106.

Claims

Claims 1–26 and 28–62 are subject to reexamination. Claims 1–26, 29–31, 33, 34, 37, 39–43, 46–48, and 50 have been rejected. Claims 28, 32, 35, 36, 38, 44, 45, 49, 51–62 were found patentable. Claims 1–23 are original patent claims. Claim 27 has been canceled. Claims 24–26 and 28–62 are added new claims. Claims 1, 15, 28, 44, 45, and 53 are independent.

Claims 1 and 53 are illustrative.

1. An electrical power distribution plugstrip connectable to one or more electrical loads in a vertical electrical equipment rack, the electrical power distribution plugstrip comprising in combination:

- A. a vertical strip enclosure having a thickness and a length longer than a width of the enclosure;
- B. a power input penetrating said vertical strip enclosure;
- C. a plurality of power outputs disposed along a face of said length of the strip enclosure, each among the plurality of power outputs being connectable to a corresponding one of said one or more electrical loads;
- D. a plurality of power control relays disposed in said vertical strip enclosure, each among said plurality of power control relays being connected to said power input and in independent power controlling communication with one or more corresponding power outputs among said plurality of power outputs;
- E. a current-related information display disposed on said vertical strip enclosure in current-related information-determining communication with at least one among

said power input and said plurality of power outputs;
and

- F. a current-related information reporting system associated with said vertical strip enclosure and being (i) in current-related information-determining communication with at least one among said power input and said plurality of power outputs, and (ii) connectable in current-related information transfer communication with a separate communications network distal from the electrical power distribution plugstrip.

53. A fully integrated electrical power distribution plugstrip connectable to one or more electrical loads in a vertical electrical equipment rack within a data center, the electrical power distribution plugstrip comprising in combination:

- A. a unitary vertical strip enclosure having a thickness and a length longer than a width of the enclosure;
- B. a power input penetrating said vertical strip enclosure;
- C. a plurality of power outputs disposed along a face of said length of said strip enclosure, each among the plurality of power outputs being connectable to a corresponding one of said one or more electrical loads;
- D. a plurality of power control relays disposed in said vertical strip enclosure, each among said plurality of power control relays being connected to said power input and in independent power controlling communication with one or more corresponding power outputs among said plurality of power outputs;

- E. a current sensing device comprising at least one sensor and associated circuitry, disposed in the vertical strip enclosure, that senses electrical current associated with at least one among said power input and said plurality of power outputs and provides quantified current information based on the sensed electrical current;
- F. a numerical current display disposed on said vertical strip enclosure that receives and displays said quantified current information; and
- G. a current-related information reporting system disposed in said vertical strip enclosure comprising a network interface controller directly connectable to a separate communications network distal from the electrical power distribution plugstrip, and that (i) receives said quantified measured current information, and (ii) communicates said quantified measured current information to a remote system through the separate communications network.

Prior Art

Wiebe	U.S. Patent No. 5,595,494	Jan. 21, 1997
Lee	U.S. Patent No. 5,650,771	July 22, 1997
Ewing	U.S. Patent No. 5,949,974	Sep. 07, 1999
Liu	U.S. Patent No. 6,476,729	Nov. 05, 2002
McNally	U.S. Patent No. 6,741,442	May 25, 2004

American Power Conversion Corp., MasterSwitch VM User Guide (1999)
("MSVM User Guide");

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American Power Conversion Corp., MasterSwitch VM Power Distribution Unit: Installation and Quick Start Manual (2000) (“MSVM Quick Start Manual”);

American Power Conversion Corp., PowerNet SNMP Management Information Base (MIB) v. 3.1.0 Reference Guide (1999) (“MSVM PowerNet Guide”);

Bay Technical Associates, Owner’s Manual: BayTech Remote Power Control Unit (January 2000) (the “BayTech Manual”);

Press Release, M2 Communications Ltd., BayTech, “BayTech’s Vertically Mounted Power Strip Helps Network Managers Keep Equipment Up And Naming,” M2 Presswire (November 19, 1999) (the “BayTech Article”);

Systems Enhancement Corp., Power Administrator 800 User Guide (1996) (“PA-800”);

Press Release, Bay Technical Associates, *Vertical-Mount Data Center Power Control*, <http://web.archive.org/web/19991117210906/>

<http://www.baytech.net/> (October 13, 1999) (announcing the BayTech RPC 7 and 21 products) (“BayTech Front Webpage”);

Bay Technical Associates, RPC Series: Remote Power Control, <http://web.archive.org/web/20001006052744/www.baytech.net/products/rpc-series.shtml> (October 6, 2000) (Section of the BayTech website describing generally the line of products) (“BayTech RPC Series Webpage”);

Bay Technical Associates, RPC 22 Remote Power Control, <http://web.archive.org/web/2000110122295>

[8/www.baytech.net/products/rpc22.shtml](http://www.baytech.net/products/rpc22.shtml) (November 1, 2000) (Section of

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the BayTech website describing specifically the RPC 22 product) (“BayTech RPC-22 Webpage”);

Betty Yuan, “Remote Control Equals Power,” Teleconnect 60–66 (February 2000) (“Yuan”);

Philips Semiconductors, 87LPC762 Microcontroller Data Sheet (August 27, 1999) (“Phillips”);

Technical Paper STP 98-1, Paul Emerald, Allegro Microsystems, Inc., Non-Intrusive Hall Effect Current-Sensing Techniques Provide Safe, Reliable Detection and Protection for Power Electronics (May 6, 1998) (“Allegro”);
and

Philips Semiconductors, I²C-bus Specification (December 1998) (“I²C Bus”).

Owner’s Contentions

Owner contends that the Examiner erred in construing the claim term “plugstrip.” Owner’s Supplemental App. Br. 3–5.

Owner contends the Examiner has failed to clearly articulate a rational basis for combining various references. Owner’s Supplemental App. Br. 5–8.

Owner contends the Examiner erred in entering the following grounds of rejections against claims 1–26, 29–31, 33, 34, 37, 39–43, 46–48, and 50:

A. The rejection of claims 1–3, 6, 9, and 10 under 35 U.S.C. § 103(a) as unpatentable over the MSVM references (Owner’s Supplemental App. Br. 8–14);

B. The rejection of claims 15–17, 20, 21, 24, 30, and 39 under 35 U.S.C. § 103(a) as unpatentable over all of the MSVM references and Lee (Owner’s Supplemental App. Br. 14–15);

C. The rejection of claims 1–3, 6, 9, and 10 under 35 U.S.C. § 102(e) as anticipated by McNally (Owner’s Supplemental App. Br. 15–18);

D. The rejection of claims 15–17, 20, 21, and 39 under 35 U.S.C. § 103(a) as unpatentable over McNally and Liu (Owner’s Supplemental App. Br. 18);

E. The rejection of claims 1–26, 29–31, 33, 37, 39–43, 46, 47, and 50 under 35 U.S.C. § 103(a) as unpatentable over Ewing, Wiebe, and Lee (Owner’s Supplemental App. Br. 19–20); and

F. The rejection of claims 25, 26, 34, 37, 40–43, and 48 under 35 U.S.C. § 103(a) as unpatentable over the MSVM references and Lee, and further in view of official notice, as exemplified by Wiebe and BayTech RPC Series Webpage (Owner’s Supplemental App. Br. 20–21);

Finally, Owner contends the Examiner erred in failing to consider objective evidence of the non-obviousness of claims 1 and 15. Owner’s Supplemental App. Br. 21–30.

Requester’s Contentions

Requester contends the Examiner erred in failing to adopt the following proposed grounds of rejections against claims 1–26 and 27–62:

A. The rejections of independent claim 53 under 35 U.S.C. § 103(a) as unpatentable over Ewing, Wiebe and Lee (Proposed Ground

- 13); the MSVM references, Lee and Wiebe (Proposed Ground 18); the MSVM references, BayTech Front Webpage, BayTech RPC Series Webpage, and BayTech Manual (Proposed Ground 19); and Ewing, BayTech Front Webpage, BayTech RPC Series Webpage, BayTech Manual, and Lee (Proposed Ground 22) (Req. App. Br. 9–18);
- B. The rejection of claims 28, 32, 35, 36, 38, 44, 45, 49, 51, 52, and 54–62 under 35 U.S.C. § 103(a) as unpatentable over Ewing, Wiebe and Lee (Proposed Grounds 8 and 13) and as unpatentable over the MSVM references, Lee, and further in view of official notice, as exemplified by Wiebe and BayTech RPC Series Webpage (Proposed Ground 15) (Req. App. Br. 18–24); and
- C. The rejection of claims 1–26 and 28–62 under 35 U.S.C. § 103(a) as unpatentable over BayTech Front Webpage, BayTech RPC Series Webpage, BayTech RPC-22 Webpage, BayTech Manual; BayTech Article, and Lee (Proposed Grounds 3, 4, and 10); and PA-800 and Wiebe (Proposed Grounds 4 and 10) (Req. App. Br. 24–26).

ANALYSIS

Owner's Appeal

Claim Interpretation

In this proceeding, the claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. Of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The Office must apply the broadest reasonable meaning to the claim language,

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taking into account any definitions presented in the specification. *Id.* (citing *In re Bass*, 314 F.3d 575, 577 (Fed. Cir. 2002)).

However, our reviewing court has repeatedly warned against confining the claims to specific embodiments described in the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc).

There is also a “heavy presumption” that a claim term carries its ordinary and customary meaning. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002).

“*plugstrip*”

Owner argues that “plugstrip” is a structural limitation meaning a fully-integrated, one-piece, unitary device. Owner argues this definition is consistent with the ’543 Patent specification and prosecution history. Further, Owner argues the term “plugstrip” is understood by those of ordinary skill in the art to mean a one-piece unitary device. Owner’s Supplemental App. Br. 3–5.

In support of this position, Owner submits the declaration of Carrel W. Ewing, one of the inventors of the ’543 Patent, who opines that:

To those skilled in the pertinent art at the time of invention in issue, the term “electrical power distribution plugstrip” means a single “strip” with a power input penetrating the strip, and has in, on, or as a part of the one “plugstrip” – not only the recited vertical strip enclosure, power input, outlets, relays, and digital current display in current-determining communication, but also the recited current reporting system.

Owner’s Supplemental App. Br., Exhibit 6, paragraph 33.

Similarly, Owner submits the declaration of B. Michael Aucoin, the President of Electrical Expert, Inc., who offers as his opinion:

With the exception of their power infeeds, plugstrips are understood and recognized in the pertinent art as being self-contained units; with the term “plugstrip” being synonymous in the pertinent art with the term “power strip.” Evidence of this may be found, for example, in the references relied upon in this reexamination proceeding. By the term “self-contained,” I mean that the strip structure would not require other structure(s) to distribute power or to communicate with an external network other than a network cable or wireless connection.
Owner’s Supplemental App. Br., Exhibit 7, paragraph 20.

Owner also submits declarations from Chris Hardin (Exhibit 8) and KC Mares (Exhibit 9) who each opine that the term “plugstrip” means “a single, integrated, operation power distribution ‘strip’ with a power input penetrating the strip, not a separated multi-component system such as that disclosed in the MSVM references, having a horizontal controller box connected by a communications cable to physically separate vertical box” (Hardin Declaration, paragraph 18) or “a single ‘strip’ with a power input penetrating the strip, not a separated multi-component system such as that disclosed in the MSVM references, having a horizontal controller box connected by a communications cable to physically separate vertical box.” (Mares Declaration, paragraph 21).

(We note that both Hardin (Paragraph 18) and Mares (Paragraph 21) refer to the disparaged MSMV multi-component system as a “plugstrip.”)

Finally, Owner points out that their proposed limited definition of “plugstrip” is consistent with the definition applied by the United States District Court in Nevada in related litigation, which found that definition

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mandated by: the title of the '543 Patent; the summary references of the '543 Patent; the '543 Patent disclosure; and the illustrations of the '543 Patent. Owner's Supplemental App. Br. 3.

First, we note that claims before the Patent Trial and Appeal Board, pursuant to 37 C.F.R §42.100(b), are construed according to the “broadest reasonable interpretation” in view of the specification as read by one having ordinary skill in the art at the time of the invention without importing limitations into the claims from the specifications.

This standard is in clear contrast to the District Court standard which utilizes the “ordinary and customary meaning” of disputed terms according to the Federal Circuit’s guidance in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005).

Under the broadest reasonable standard, as defined above, we find that the term “plugstrip” is not limited to an integrated, one-piece, unitary device, as we are not convinced that would be the broadest reasonable interpretation of one of ordinary skill in the art at the time of the invention. Namely, nothing in the claim requires the plugstrip to be “fully integrated.” *See* TPR Resp. Br. 5–6. To the contrary, the claim expressly recites that the electrical power distribution plugstrip comprising in combination, a vertical enclosure and then identifies the relationship of the other listed elements with respect to that vertical enclosure, such as being disposed along, on, or in. Notably, the recited a current-related information reporting system that must only be “associated with” the vertical enclosure. *See* TPR Resp. Br. 5 (citing Office Action, dated Mar. 29, 2012; RAN 69). As such, it would be inconsistent

with the plain language of the claims to interpret plugstrip to be a fully-integrated, one-piece, unitary device.

Moreover, Owner's specification, at Column 10, lines 17–18, sets forth that PDU 700 “is **preferably** fully integrated within power distribution plugstrip 100, in FIG. 1” (emphasis added). Additionally, as pointed out by Requester, Owner's specification describes a second preferred embodiment which includes network interface components in another chassis. *See* TPR Resp. Br. 5–6 (citing ‘543 Patent at col. 3, l. 66 through col. 4, l. 2).

These facts leads us to the conclusion that recited plugstrip need not be fully integrated. This is particularly true in view of the use of the term “plugstrip” by two of Owner's experts when referring to a *multi-part* prior art device. *Supra*.

We will now address Owner's remaining arguments, *seriatim*, in the order those arguments were presented.

Owner argues the Examiner has not clearly articulated reasons, with rational underpinnings, for combining the references set forth in Grounds 2, 7, 8, 9, 12, and 13. Owner's Supplemental App. Br. 5.

Specifically, Owner argues the Examiner failed to provide reasons why it would have been obvious to combine the MSVM references with Lee, or with the Liu reference, given that the MSVM PDU monitors current overload utilizing an LED indicator, while both Lee and Liu teach the use of a digital display. Owner argues there is no suggestion within the references that a display separate from the LED indicator would be desirable. *Id.* at 7.

The Examiner finds that one of ordinary skill in the art at the time the invention was made would have found it obvious to add a digital display, as

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taught by Lee or Liu, to the power strip of the MSVM references to provide more detailed current information, “such as the values of the line current, the line voltage, the ambient temperature” or the like. RAN 19, 33–34.

The presence or absence of a reason “to combine references in an obviousness determination is a pure question of fact.” *In re Gartside*, 203 F.3d 1305, 1316 (Fed. Cir. 2000) (citation omitted).

Here we find the Examiner’s basis for these combinations to be sound. The MSVM references depict providing an indication of current flow utilizing an LED indicator while each secondary reference in the same field, Lee and Liu, teach the utilization of digital displays to provide such information. [CITES] ; *see also* Req. Resp. Br. 7–8.

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l v. Teleflex Inc.*, 550 U.S. 398, 416 (2007). More specifically, “when a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.” *Id.* at 417 (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)).

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

KSR, 550 U.S. at 417.

Owner makes similar arguments regarding the Examiner's proposed combination of Ewing, Wiebe, and Lee, arguing there is no suggestion to combine the display of Lee with the power distribution system of Ewing as modified by Wiebe. Owner's Supplemental App. Br. 8.

For the same reasons we set forth above, and set forth by the Examiner and Requester, we find no error in the Examiner's proposed combination of Ewing, Wiebe, and Lee. *See* Req. Resp. Br. 8-9.

Owner next argues the Examiner erred in rejecting claims 1-3, 6, 9, and 10 as unpatentable under 35 U.S.C. § 103(a) over the MSVM references. *Id.* at 8.

One basis for Owner's assertion of error is the Examiner's construing of the overcurrent alarm LED of MSVM as a "current-related information display" in a manner that is inconsistent with the plain meaning of "display" and inconsistent with the '543 Patent specification. *Id.* at 9-11.

Owner also asserts error in the Examiner's finding within the MSVM references of a display "in current-related information-determining communication" with the input or the outputs and the finding of a "current-related information reporting system." *Id.* at 11-13.

Finally, Owner asserts the MSVM references fail to show or suggest an "intelligent power module" and that the intelligent power module is disposed within the vertical strip enclosure. *Id.* at 13-14.

The Examiner finds the overcurrent alarm LED of the MSVM PDU constitutes a current-related information display. RAN 10.

We concur with the Examiner. Under the broadest reasonable interpretation standard, we find a "display" in the broadest sense consistent

with the Specification is merely a visual indication. The overcurrent alarm LED of the MSVM references provides a visual indication by lighting green when the current is under normal levels, flashing green as an overload condition is approached and lighting red to indicate an overload condition. Consequently, we find the overcurrent alarm LED necessarily constitutes a current-related information display. Similarly, we find the overcurrent alarm LED is necessarily coupled to an output of the MSVM PDU, in order to be able to visually indicate (display) an overcurrent situation.

The Examiner also finds that the MSVM PDU includes an “intelligent power module” pointing to the SNMP agent with eight relay-controlled outlets. RAN 12.

Again, under the broadest reasonable interpretation consistent with the Specification, we find the Examiner has not erred. Relay-controlled outlets are within the broadest reasonable interpretation of an “intelligent power module.” As for the Owner’s argument regarding the necessity of the intelligent power module being disposed within the vertical strip enclosure, we find the relay-controlled outlets are indeed disposed within the vertical strip enclosure, and although the SNMP agent may be disposed elsewhere, we find the presence of relay-controlled outlets within the vertical strip enclosure teaches this feature. *Id.* We therefore find no error by the Examiner.

Next, Owner argues the Examiner erred in rejecting claims 15–17, 20, 21, 24, 30, and 39 under 35 U.S.C. § 103(a) over the MSVM references and Lee. Specifically, Owner urges the MSVM references fail to show the claimed display in current-determining communication with the input or

output, and “a one-piece plugstrip current reporting system” as set forth in claim 15. Owner argues that the “plugstrip current reporting system” must necessarily be disposed within the plugstrip, whether or not the “plugstrip” is construed as a one-piece, unitary device. Further, Owner argues the cited MSVM references fail to show communication between the plugstrip current reporting system and a distal current reporting system. Owner’s Supplemental App. Br. 14–15.

The Examiner finds, as we note above, the overcurrent alarm LED of the MSVM references must necessarily be in current-determining communication with at least one output in order to detect an overcurrent condition. The Examiner also finds that the MSVM references teach a plugstrip current reporting system, which communicates over either the Web or the Control Console. RAN 14–15.

The Examiner’s position is persuasive. We find the overcurrent alarm system of the MSVM references is in communication with an output of the plugstrip, in order to detect an overcurrent situation. We find Owner’s argument regarding a “one-piece plugstrip current reporting system” is not commensurate with the scope of the claims appealed, as “one-piece” is not recited within the claims. Further, we are not persuaded that the characterization of the “current reporting system” as a “plugstrip current reporting system” leads to the inescapable conclusion that the entire current reporting system must be located within the plugstrip. A broad, but reasonable interpretation of “plugstrip current reporting system” could also be a “current reporting system” that detects current that enters the plugstrip. We therefore find no error in the Examiner’s position. Moreover, claim 15

merely recites that the plugstrip current reporting system is “associated with the vertical strip enclosure.” Req. Resp. Br. 11.

With regard to the rejection of claims 1–3, 6, 9, and 10 under 35 U.S.C. § 102(e) as anticipated by McNally, Owner again argues the Examiner has misconstrued the term “display” by once again characterizing the LED of McNally as a “display.” Further, Owner argues McNally fails to teach a display in current-related information-determining communication with the input or outputs, a plugstrip having a current-related information reporting system or an intelligent power module. Owner’s Supplemental App. Br. 15–18.

The Examiner once again finds that an overload indicating LED comprises a “display” under a broad but reasonable definition of “display.” Further, the Examiner finds that in order to indicate an overload condition, the overload indicating LED “display” must necessarily be in communication with an output. Additionally, the Examiner finds that the power management circuitry 50 of McNally comprises a current-related information reporting system, as that circuitry reports to the overload indicating LED and an audible alarm. Finally, the Examiner notes McNally discloses outlet relays controlled by microcontroller 62, comprising an intelligent power module. RAN 28–30.

For the same reasons we set forth above, and set forth by the Examiner and Requester, with respect to the rejection of these claims as unpatentable over the MSVM references, we find no error in the Examiner’s position.

Owner argues the Examiner erred in rejecting claims 15–17, 20, 21, and 39 under 35 U.S.C. § 103(a) as unpatentable over McNally and Liu. Specifically, Owner argues that MacNally fails to teach a “one-piece plugstrip current reporting system” and an “intelligent power module.” Owner’s Supplemental App. Br. 18.

The Examiner finds that MacNally discloses a plugstrip current reporting system which includes power management circuitry 50 in association with current sensor 52 which is positioned within housing 12. Once again, the Examiner finds the outlet relays of MacNally, which are controlled by microcontroller 62, comprise an “intelligent power module.” RAN 32–34.

For the same reasons we set forth above, and set forth by the Examiner and Requester, we find no error in the Examiner position.

Owner argues the Examiner erred in rejecting claims 1–26, 29–31, 33, 37, 39–43, 46, 47, and 50 under 35 U.S.C. § 103(a) as unpatentable over Ewing, Wiebe and Lee. Owner urges the Examiner erroneously and inconsistently construed the term “current-related information-determining communication” within claim 1 and that the load sensor of Ewing merely indicates the presence of a load and is thus not a current reporting system as set forth in claim 15. Owner’s Supplemental App. Br. 19–20.

The Examiner finds that Ewing discloses multiple power control relays which each include a current load sensor and wherein each current load sensor reports the load condition status using an SNMP connection to a screen interface which allows a user to control individual modules. With regard to claim 15, the Examiner finds the load sensor of each intelligent

power module (IPM) provides an indication of the presence or absence of a load at that module. RAN 36–40.

We find no error or inconsistency in the Examiner’s interpretation above of “current-related information-determining communication” given that we hold that the presence or absence of a load at each IPM is the very definition of whether or not current is flowing through a particular IPM.

Owner argues the Examiner erred in rejecting claims 25, 26, 34, 37, 40–43, and 48 under 35 U.S.C. § 103(a) as unpatentable over the MSVM references and Lee, and further in view of official notice, as exemplified by Wiebe and BayTech RPC Series Webpage. Specifically, Owner urges that the cited references fail to show a reporting system disposed in a vertical strip enclosure and comprising a network interface controller. Owner’s Supplemental App. Br. 20–21.

The Examiner finds that the MSVM references disclose a Master Switch VM with an associated Controller that includes a network interface controller. The Examiner then takes Official Notice that forming an element in one piece that had previously been formed in two pieces would be well known to those of ordinary skill in the art. RAN 51–52.

We agree with the Examiner’s position. *See In re Larson*, 340 F.2d 965, 968 (CCPA 1965) (A claim to a fluid transporting vehicle was rejected as obvious over a prior art reference which differed from the prior art in claiming a brake drum integral with a clamping means, whereas the brake disc and clamp of the prior art comprise several parts rigidly secured together as a single unit. The court affirmed the rejection holding, among other reasons, “that the use of a one piece construction instead of the

structure disclosed in [the prior art] would be merely a matter of obvious engineering choice.”).

Finally, Owner argues that the Examiner failed to properly consider the objective evidence of non-obviousness submitted by Owner including the commercial success enjoyed by the patented products, the adoption of the patented features by others, and praise from industry observers. Owner’s Supplemental App. Br. 22–30.

The Examiner finds that Owner’s submitted evidence of long-felt need, increased sales, commercial awards, and industry copying is insufficient to overcome the substantial evidence of obviousness in the present Record. Action Closing Prosecution 3–6.

We concur and adopt the Examiner’s reasoning as our own. *Id.*; see also Req. Resp. Br. 19–23. We note that evidence pertaining to secondary considerations must be taken into account whenever present; however, it does not necessarily control the obviousness conclusion. *See, e.g., Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1372 (Fed. Cir. 2007) (“the record establish[ed] such a strong case of obviousness” that allegedly unexpectedly superior results were ultimately insufficient to overcome obviousness conclusion); *Leapfrog Enterprises Inc. v. Fisher-Price Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (“given the strength of the prima facie obviousness showing, the evidence on secondary considerations was inadequate to overcome a final conclusion” of obviousness); and *Newell Cos., Inc. v. Kenney Mfg. Co.*, 864 F.2d 757, 768 (Fed. Cir. 1988).

Conclusion Regarding Owner's Contentions

We sustain the Examiner's rejections of claims 1–26, 29–31, 33, 34, 37, 39–43, 46–48, and 50.

Requester's Appeal

Requester argues the Examiner erred by failing to adopt the proposed rejections of Claim 53 based upon the same reasoning applied to the rejected claims. Specifically, Requester argues there is no substantive difference between claim 53 and rejected claims 1 and 15. Req. App. Br. 9.

The Examiner declined to adopt Requester's proposed rejection of claims 53 as unpatentable under 35 U.S.C. § 103(a) over the Ewing, Wiebe, and Lee. (Grounds 8 and 13). The stated basis for the Examiner's failure to adopt this rejection was the Examiner's belief that the cited references fail to show or suggest the features set forth in subparagraph G. of claim 53 which recites:

- a current-related information reporting system disposed in said vertical strip enclosure comprising a network interface controller directly connectable to a separate communications network distal from the electrical power distribution plugstrip, and that
- (i) receives said quantified measured current information, and
- (ii) communicates said quantified measured current information to a remote system through the separate communications network.

Specifically, the Examiner found that the cited references were silent regarding (i) a current-related information reporting system is disposed in the unitary vertical strip enclosure; (ii) said current-related information reporting system disposed in said unitary vertical strip enclosure comprises a network interface controller directly connectable to a separate

communications network; and (iii) said network interface controller communicates quantified measured current information to a remote system through the separate communications network. RAN 45–47.

However, the Examiner did find the cited references sufficient to sustain a rejection under 35 U.S.C. § 103(a) of claims 1–26, 29–31, 33, 37, 39–43, 46, 47, and 50. RAN 36.

Comparing rejected claim 15 with claim 53, we find the vertical strip enclosure within claim 53 is characterized as “unitary.” Beyond that, the only substantive difference between these two claims is the aforementioned subparagraph G. Analyzing that subparagraph, we find the first recited element in rejected claim 15 is “a plugstrip current reporting system . . . associated with the vertical strip enclosure” which compares with “a current-related reporting system disposed in said vertical strip enclosure” within claim 53. We find the characterization of the vertical strip enclosure as “unitary” and the express recitation that the current reporting system is disposed within that unitary enclosure are not patentable distinctions. This is particularly true in view of the Examiner’s taking Official Notice that “forming in one piece said vertical strip enclosure which has formerly been formed in two pieces (i.e., the network interface controller (NIC) and the current-related information reporting system in the vertical strip enclosure) and put together, what was well known to one of ordinary skill in the art.” (RAN 51)

Subparagraph G within claim 53 next recites a “network interface controller directly connectable to a separate communications network distal from the electrical power distribution plugstrip.” We note that claim 25,

which depends indirectly from claim 15, is one of the claims rejected by the Examiner over this combination of references and that claim 25 expressly recites the presence of a “network interface controller.” The connection with distal networks is the very definition of a network interface controller. Consequently we find no patentable distinction within this recitation.

Subparagraph G next recites the receipt of “quantified measured current information.” Our examination of the ’543 patent reveals no special definition for “quantified” current. We therefore find, under a broadest reasonable interpretation, that digital display 26 (*See* Fig. 1) of the Lee patent necessarily demonstrates the receipt of a voltage or current which, as an analog element, has been necessarily “quantified” in order to be displayed digitally. We therefore find no patentable distinction in this recitation.

Finally, subparagraph G recites the communication of the “quantified measured current information” to a “remote system through the separate communications system.” Given our previous finding regarding the use of network interface controllers we do not find any patentable distinction in this recitation.

In view of the Examiner’s reliance on subparagraph G as a basis for not adopting the proposed rejection of claim 53, we find the Examiner erred by failing to reject claim 53. In our analysis of claims 54–62, we find the Examiner failed to set forth separate grounds for rejection for those claims. Given our reversal of one of the grounds of rejection of claim 53, we also reverse the Examiner’s failure to reject claims 54–62.

Requester argues the Examiner erred by failing to adopt the proposed rejections of claims 28, 32, 34–36, 38, 44, 45, 48, and 49. The Examiner

declined to adopt Requester's proposed rejection of claims 28, 32, 34–36, 38, 44, 45, 48, and 49 as unpatentable under 35 U.S.C. § 103(a) over Ewing, Wiebe, and Lee. (Grounds 8 and 13). The stated basis for the Examiner's failure to adopt this rejection was the Examiner's belief that the cited references fail to show or suggest "a personality module in communication with the intelligent power section disposed in the vertical strip enclosure, the personality module providing at least one of a hypertext transfer protocol browser interface and a terminal-server (or terminal-service) interface, whereby a user of an external power manager may control power provided to selectable ones of said plurality of power outputs via the 30 personality module," as set forth in independent claims 28, 44, and 45.

Requester points out that the '543 patent specification, at column 9, lines 51–52, describes a "personality module" as something that can be "installed for various kinds of control input/output communications." Req. Comments after ACP, 8/21/2013, page 23. Requester pointed out that Ewing discloses power manager 28, which includes an SNMP agent 46, and "supports a wide variety of communication interfaces, such as RS-232 and Ethernet." *Id.* at 25.

Consequently, we find that Ewing discloses an element which meets the stated purpose of the claimed "personality module," and in the absence of another basis for failing to adopt the proposed rejection of claims 28, 32, 34–36, 38, 44, 45, 48, and 49 as unpatentable under 35 U.S.C. § 103(a) over Ewing, Wiebe, and Lee, we find the Examiner erred.

Finally, Requester argues the Examiner erred by failing to adopt certain other proposed rejections of claims 1–26 and 28–62. In view of our

conclusion that the Examiner did not err in rejecting claims 1–26, 29–31, 33, 34, 37, 39–43, 46–48, and 50 and should have adopted certain of the proposed rejections of claims 28, 32, 35, 36, 38, 44, 45, 49, 51–53, and 54–62, we decline to address the cumulative rejections asserted by Requester. *See In re Gleave*, 560 F.3d 1331, 1338 (Fed. Cir. 2009) (not reaching other rejections after upholding an anticipation rejection).

Conclusion Regarding Requester's Contentions

We reverse the Examiner's failure to adopt the rejections of claims 28, 32, 35, 36, 38, 44, 45, 49, 51–53, and 54–62.

DECISION

The Examiner's decision adverse to the patentability of claims 1–26, 29–31, 33, 34, 37, 39–43, 46–48, and 50 is affirmed, and the Examiner's failure to adopt the rejections of 28, 32, 35, 36, 38, 44, 45, 49, 51–53, and 54–62 is reversed. We enter a new ground of rejection of claims 28, 32, 34–36, 38, 44, 45, 48, and 49 as unpatentable under 35 U.S.C. § 103(a) over Ewing, Wiebe, and Lee.

Section 41.77(b) provides that “a new ground of rejection . . . shall not be considered final for judicial review.” That section also provides that Patent Owner, WITHIN ONE MONTH FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal proceeding as to the rejected claims:

- (1) Reopen prosecution. The owner may file a response requesting reopening of prosecution before the examiner. Such

a response must be either an amendment of the claims so rejected or new evidence relating to the claims so rejected, or both.

(2) Request rehearing. The owner may request that the proceeding be reheard under § 41.79 by the Board upon the same record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

In accordance with 37 C.F.R. § 41.79(a)(1), the “[p]arties to the appeal may file a request for rehearing of the decision within one month of the date of . . . [t]he original decision of the Board under § 41.77(a).” A request for rehearing must be in compliance with 37 C.F.R. § 41.79(b). Comments in opposition to the request and additional requests for rehearing must be in accordance with 37 C.F.R. § 41.79(c)-(d), respectively. Under 37 C.F.R. § 41.79(e), the time periods for requesting rehearing under paragraph (a) of this section, for requesting further rehearing under paragraph (c) of this section, and for submitting comments under paragraph (b) of this section may not be extended.

An appeal to the United States Court of Appeals for the Federal Circuit under 35 U.S.C. §§ 141-44 and 315 and 37 C.F.R. § 1.983 for an *inter partes* reexamination proceeding “commenced” on or after November 2, 2002, may not be taken “until all parties’ rights to request rehearing have been exhausted, at which time the decision of the Board is final and appealable by any party to the appeal to the Board.” 37 C.F.R. § 41.81. *See also* MPEP § 2682.

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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).

In the event neither party files a request for rehearing within the time provided in 37 C.F.R. § 41.79, and this decision becomes final and appealable under 37 C.F.R. § 41.81, a party seeking judicial review must timely serve notice on the Director of the United States Patent and Trademark Office. *See* 37 C.F.R. §§ 90.1 and 1.983.

Requests for extensions of time in this proceeding are governed by 37 C.F.R. §§ 1.956 and 41.79(e).

AFFIRMED-IN-PART; 37 C.F.R. § 41.77 (b)

peb

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