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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/524,610	06/15/2012	John B. Kirk	780139.00347	5358

26710 7590 09/23/2016

QUARLES & BRADY LLP
Attn: IP Docket
411 E. WISCONSIN AVENUE
SUITE 2350
MILWAUKEE, WI 53202-4426

EXAMINER

TROOST, AARON L

ART UNIT	PAPER NUMBER
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3668

NOTIFICATION DATE	DELIVERY MODE
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09/23/2016

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN B. KIRK, RYAN A. MAGILL, TIMOTHY E. DONAHUE,
and RICHARD M. DAY

Appeal 2014–009181
Application 13/524,610¹
Technology Center 3600

Before MICHAEL L. HOELTER, THOMAS F. SMEGAL, and
LISA M. GUIJT, *Administrative Patent Judges*.

SMEGAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

John B. Kirk et al. (Appellants) seek our review under 35 U.S.C. § 134 of the Examiner's Final Rejection under 35 U.S.C. § 103(a) of claims 12–17, 19, 23–26, 28–30, 32, 33, and 35 as unpatentable over Ambrosio (US 7,471,066 B2, iss. Dec. 30, 2008), Eguchi (US 2012/0146776 A1, pub. June 14, 2012), and Hori (US 2006/0279265 A1, pub. Dec. 14, 2006); and claims 18, 27, and 34 as unpatentable over Ambrosio, Eguchi, Hori, and Yamashita (US 2008/0303343 A1, pub. Dec. 11, 2008).² We have jurisdiction under 35 U.S.C. § 6(b).

¹ According to Appellants, the real party in interest is The Raymond Corporation. Br. 1.

² Claims 1–11, 20–22, and 31 have been canceled. Br. A1–4, Claims App.

We AFFIRM.

CLAIMED SUBJECT MATTER

Claims 12, 23, and 29 are independent. Claim 12 is reproduced below and illustrates the claimed subject matter, with disputed limitations emphasized.

12. A system for transmitting data between components of an industrial vehicle that are powered by electricity received through a power line, said system comprising

a first electrical choke with a conductor passing there through, wherein the conductor connects a first component to the power line;

and a first communication circuit for at least one of sending and receiving message signals and having *a transmission wire for carrying the message signals, wherein the transmission wire passes through the first electrical choke* and is electrically attached to the conductor at a point between the first electrical choke and the first component.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments in the Appeal Brief and the Examiner’s Answer. We disagree with Appellants’ conclusions, and agree with, and adopt as our own, the Examiner’s findings and conclusions of law set forth at pages 14–19 of the Examiner’s Answer. Specific arguments are highlighted and addressed below for emphasis.

Obviousness of Claims 12–17, 19, 23–26, 28–30, 32, 33, and 35 over Ambrosio, Eguchi, and Hori

Appellants first contend that Ambrosio “does not disclose any electrical choke.” Br. 5. However, Appellants are simply attacking Ambrosia in isolation for lacking support for findings not relied upon by the

Examiner, rather than addressing the Examiner’s combination of Ambrosia, Eguchi, and Hori.³ Nonobviousness cannot be established by attacking references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). The rejection relies on Eguchi for its teaching of a first electrical choke.

We are also not persuaded by Appellants’ argument that Ambrosia “does not even recognize . . . attenuation of the message signals resulting from a low impedance shunt path through a battery or other vehicle component.” *Id.* While we offer no opinion as to whether Appellants may be correct, the argument fails from the outset because . . . it is “not based on limitations appearing in the claims.” *See In re Self*, 671 F. 2d 1344, 1348 (CCPA 1982). Claim 12 is not limited to a recognition of attenuation of messages signals of any kind. Rather, claim 12 merely recites “a transmission wire for carrying the message signals.” Br. A–1, Claims App.

Also not persuasive is Appellants’ contention that “[t]he second power line 27 [of Eguchi] does not pass through the battery choke 14.” Br. 5–6. As with Ambrosia, Appellants are simply attacking Eguchi in isolation for lacking support for findings not relied upon by the Examiner, rather than addressing the Examiner’s combination of Ambrosia, Eguchi, and Hori. *In re Merck*, 800 F.2d at 1097. As explained by the Examiner, the rejection relies on Hori for its teaching of a conductor and transmission wire both passing through a first electrical choke.⁴

³ *See* Final Act. 5–7.

⁴ *See* Final Act. 5–7.

While recognizing that the Examiner looks to Hori for teaching “a communication system that has a first electrical choke (citing ‘ferrite core’ 23b in Figure 3) through which both a conductor of power line 10 and a message transmission wire 11 pass,” Appellants contend that “[n]ot all ferrite cores function as an electrical choke that blocks a signal travelling in a conductor, some serve as the core of a transformer that inductively couples message signals between two separate conductors.” Br. 6–7.

However, again Appellants contentions are not commensurate in scope with claim 12, which is not limited to an electrical choke that blocks a signal traveling in a conductor, but merely recites an electrical choke through which pass a conductor and a transmission wire. *See* Br. A–1, Claims App. Furthermore, as the Examiner notes, claim 12 “does not provide any additional limitations as to how the choke is configured to function.” Ans. 14. As we are instructed by our reviewing court, “limitations are not to be read into the claims from the [S]pecification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

Appellants also contend that “the separate transmission wire 11 carrying the message signals [in Hori] is not attached to the power line conductor 10.” Br. 9. Whether or not Appellants’ contention is correct, Appellants are again simply attacking a reference in isolation for lacking support for findings not relied upon by the Examiner, rather than addressing the Examiner’s combination of Ambrosia, Eguchi, and Hori. *In re Merck*, 800 F.2d at 1097. The Examiner relies on Ambrosia for teaching a first

communication circuit having a transmission wire electrically coupled to the conductor.⁵

Also not persuasive is Appellants’ argument with respect to dependent claim 17, that “none of Ambrosio, Eguchi and Hori . . . render obvious the relative directions in which the conductor and the transmission wire pass through a choke.” Br. 11. Elements such as conductors and transmission wires don’t have a “direction”. As the Examiner had previously explained, “[p]ower flows from the positive battery terminal through the conductor in a first direction,” while “[t]ransmission signals traveling from the transceiver to the positive battery terminal would pass through the choke in a second direction opposite the first direction.” Final Act. 8–9.

In summary, we find the arguments presented on pages 5–12 of Appellants’ Appeal Brief to be conclusory and unsupported by objective evidence (e.g., declaration by one skilled in the art). Argument of counsel cannot take the place of evidence lacking in the record. *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977); *see also In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). *See also In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984) (holding that arguments and conclusions unsupported by factual evidence carry no evidentiary weight).

The Examiner initially determined, as set forth at page 3 of the Final Action, that “the combination [of Ambrosia, Eguchi, and Hori] yields a configuration having a single choke, where both the conductor and transmission wire pass there through, and where the conductor and the transmission wire are attached at a point after the choke and prior to the

⁵ See Final Act. 5–7.

battery,” as recited by claim 12. The Examiner also augmented the final rejection at pages 14–19 of the Answer with additional findings and conclusions of law that Appellants do not dispute.

Accordingly, we sustain the Examiner’s rejection of claims 12–17, 19, 23–26, 28–30, 32, 33, and 35 under 35 U.S.C. § 103(a) as unpatentable over Ambrosio, Eguchi, and Hori.

Obviousness of Claims 18, 27, and 34 as unpatentable over Ambrosio, Eguchi, Hori, and Yamashita

Other than observing that Yamashita “does not teach both a power conductor and a communication transmission wire passing through the same electrical choke,” we understand Appellants’ appeal of the rejection of dependent claims 18, 27, and 34 to rest on the arguments presented *supra* regarding the combination of Ambrosio, Eguchi, and Hori. Br. 13. We are not persuaded that Appellants’ arguments are demonstrative of error in the Examiner’s rejection of claim 12, as set forth *supra*. See Br.12–13. As such, for the same reasons, we sustain the rejection of claims 18, 27, and 34 under 35 U.S.C. § 103(a) as unpatentable over Ambrosio, Eguchi, Hori, and Yamashita.

DECISION

We AFFIRM the Examiner’s rejections.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED