

Commissioner's Decision #1247
Décision du commissaire #1247

TOPIC: O and F20
SUJET: O et F20

Application No: 2,040,122 Class: H02P-001/02
Demande No: 2,040,122 Class: H02P-001/02

COMMISSIONER'S DECISION SUMMARY

C.D. 1247Application No. 2,040,122 (O and F20)

Obviousness/availability of references to the public

The examiner rejected this application as being shown in publications which were printed before the filing of the application. The applicant argued that, while the documents may have been printed before the filing date, they were not available to the public. The Board found that the documents had been available to the public prior to the filing date of the application and that they showed the invention.

The application was refused by the Commissioner of Patents.

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application 2,040,122 having been rejected under Rule 30(4) of the Patent Rules, the Applicant asked that the Final Action of the Examiner be reviewed. The rejection has consequently been considered by the Patent Appeal Board and by the Commissioner of Patents. The findings of the Board and the ruling of the Commissioner are as follows:

Agent for Applicant

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This decision deals with the Applicant's request for a review by the Commissioner of Patents of the Examiner's Final Action dated October 10, 1997, on application 2,040,122 (International Classification H02P-001/02), filed on April 10, 1991 and entitled "An Electric Motor Control". The inventors are Rejean Desranleau and Yvan Gingras and the application has been assigned to Télémécanique Canada Ltée.

At the Applicant's request, the Patent Appeal Board conducted a hearing on October 20, 1999, at which time the Applicant was represented by Mr Daniel Artola of the firm of Brouillette Kosie and the Patent Office was represented by Mr Tom Tang, the Examiner in charge of the application and Mr Serge Carrier, Section Head.

The application relates to a control for an electric motor which is comprised of a switch and an electromechanical component. The switch and the electromechanical component are each chosen from different types of known switches and components and together they form a control box. They each have a complementary universal multiple pin connector and the connection between those connectors is such that only the appropriate pins required to produce the appropriate result are activated.

Figure 2 of the application shows a wiring diagram of the electrical control.

In figure 2, the switch (35) is wired to a first multiple pin connector (25) and electromechanical component (45) is wired to a second multiple pin connector (30). The control unit works by connecting together these two complementary connectors.

Claim 1 of the application reads as follows:

Electric motor control means comprising in combination
a switch means,
an electromechanical component means and
a multiple pin connection means comprising
a first multiple pin connector, and
a second multiple pin connector,
said first and second connectors being electrically connected respectively to said switch means and said electromechanical means,
said second connector being complementary to said first connector, and
wherein the connection of said first and said second connectors is unique such that only the appropriate pins of one of the pin connectors of the multiple pin connection means are automatically electrically connected to the other pin connector of the multiple pin connection means.

In the Final Action, the examiner cited the following references to reject all of the claims, as well as the application itself:

United States Patent
2,938,190 May 24, 1960 Krehbiel

Publications
Harness Kit for Starter, Technical Instruction Manual Klockner-Moeller

Instruction sheet IS 7714, AMP Universal Mate-N-Lok Connectors, AMP Incorporated

The United States Patent and Instruction Sheet IS 7714 were brought to the attention of the Examiner in the form of a protest which was filed on September 27, 1995. This protest also included several other United States patents and an affidavit of a Mr. Donald Harding who states that at the time he swore the affidavit he was a manager with Klockner-Moeller Ltd.

A Supplemental Protest was filed on September 17, 1997. It was accompanied by two copies of a Klockner-Moeller catalogue for 1986/87 and two copies of a Klockner-Moeller Instruction Sheet.

In rejecting claims 1 to 24 and the application itself, the Examiner stated, in part:

The Klockner-Moeller publication is directed to a motor starter including a box which can have two push buttons or other appropriate means on its front face, such as a start-stop switch, a selector switch or a forward/reverse/stop switch. Multiple pin connectors means are being used for connecting the switch means to the electromechanical means wherein one of the pin connectors of the multiple connection means are automatically connected to the other pin connector of the multiple pin connection means.

The Amp Universal Mate-N-Lok Connectors publication also shows clearly a multiple connection means comprising a first multiple pin connector and a second multiple pin connector wherein the connection of the said first and said second

connector is unique such that only appropriate pins of one of the pin connectors of the multiple pin connection means automatically connected to the other pin connector of the multiple pin connection means.

Krehbiel teaches a multiple connection means including a first multiple pin connector 12 and a second multiple pin connector 13 wherein the connection of said first and second connectors is unique such that only appropriate pins of one of the pin connectors of the multiple connection means automatically connected to the other pin connector of the multiple connection means.

In its April 9, 1998 reply to the Examiner's Final Action, the Applicant stated, in part:

Applicant respectfully submits that the examiner has inappropriately relied on Mr. Harding's affidavit. Namely, the examiner appears to have taken as a proven fact that the exhibits of the affidavit of Mr. Harding demonstrate the information contained therein was available to the public prior to the filing date of the instant application. Applicant disputes this conclusion of the examiner. Applicant submits that the Klockner-Moeller non-patent references are not opposable against the present application.

Before turning to the opposability of the non-patent references of Mr. Harding's affidavit, the applicant wishes to address the issue of copyright. Applicant respectfully submits that the examiner has inappropriately placed undue importance on the fact that a document displays the copyright notice ©. A copyright notice © displayed on a document **does not constitute evidence** that the document was available to the public.

The examiner appears to have confused the concept of copyright and the concept of publication. The fact that copyright exists in no way demonstrates that a copyrighted document was available to the public. The Copyright Act makes a distinction between the creation of a copyright, and its publication.

A document may be copyrighted, and still be secret. For example, a document may be part of the internal papers of a company, and never have been made available to the public. The courts have dealt with precisely this situation in *Massie & Renwick Ltd. v. Underwriters' Survey Bureau Ltd, (1940)* S.C.R. 118 (Supreme Court of Canada). In this case the Supreme Court rules that circulation of a document within the walls of a given establishment, such as a corporation, does not constitute publication. The circulation must be aimed at a public outside this milieu.

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In addition, the examiner indicates that exhibit B of the Klockner-Moeller manual bears product identifier Dd/KD-NA, and that said part can be found on page 3/39 of the 1986-1987 Klockner-Moeller catalogue retailing for 32.00\$. Applicant submits that at page 3/39 there is no indication of part number Dd/KD-NA, but rather a part number Dd/Kd/D-NA. The applicant submits that, these parts are different, and therefore there is no **justification** that the part identified in exhibit B, nor in any other exhibit of Mr. Harding's affidavit, were indeed available to the public prior to the filing date of the instant application.

During the hearing, it became apparent that the Applicant was not aware of the existence of the supplemental protest. The Board gave Mr Artola a further period of one month from the date of the hearing to study this material and, if necessary, make a further submission. A document entitled SUPPLEMENTAL REASONS was filed on November 17, 1999. In that document, Mr Artola reiterated the applicant's position that the prior art which the examiner used to reject the application was not citable because there is no evidence that it had been made available to the

public before the filing date of the application.

The Board is presented with two questions. The first concerns the admissibility of the documents which were cited by the examiner to reject the claims and the application. Should the Board find that the prior art citations are documents which were available to the public, then it must be determined if they show a device which makes the motor control disclosed and claimed in the instant application obvious.

The Board has carefully review all of the documents which were submitted with the two protests, both as to form and to content. Much of the Applicant=s submission concerns the question of whether the documents cited by the examiner were available to the public before the filing date of the application.

With respect to the AMP Incorporated Instruction sheet, the examiner concluded that it was available to the public as early as 1979 because a copyright notice states "Copyright 1975, 1979 by AMP Incorporated, Harrisburg, Pa." and the first page also bears the notice "RELEASED 2-2-79". However, the Applicant argued that a copyright notice does not prove that the document was available to the public on that date but that it had been printed at that date and that it could have been part of the internal papers of the company. The Board is satisfied that this document is not merely an internal company document because it includes wording which is directed to others. For example, on page 2 column 1, the penultimate paragraph includes the following "Consult your local AMP representative for assistance in selecting the machine that will suit your needs." The next paragraph states "Read the instruction sheet packed with the tool for proper crimping procedure." Finally, footnote 4 on page 4 states "PRO-CRIMPER< tooling is for field repair/prototyping only". This is not the type of wording that would be used in a document which is to be seen only by AMP Incorporated employees.

Turning to the Klockner-Moeller Technical Instruction Manual, the Board notes that page 1 includes complete instructions on how to install and wire the starter kit. Page 3, of the Manual shows a wiring diagram. Parts of the diagram are outlined by a broken line which indicates that these parts are pre-assembled components and the wiring diagram is clearly intended to show how to use these components in a real-life situation. These sheets also have several dates shown, the latest of which is June 1986 (06/86). The Board concludes that these sheets are instructions which are directed to the public, and as such, are available as citations against the instant application.

The Board must now analyse the content of the references cited by the examiner.

The AMP Inc. Instruction Sheet and the United States patent to Krehbiel each shows multiple pin connectors which uniquely connect together. They are clearly of the type disclosed and claimed

in the instant application.

The Klockner-Moeller Technical Instruction Manual shows a motor starter device which can include various means to control the operation of the motor. The device is connected by multiple pin connectors and is of the same construction as the control means disclosed and claimed in the instant application.

The Board concludes that there are no inventive features in the instant application. There is no invention required to use the multiple pin connectors as shown in the AMP Inc. Instruction Sheet and the Krehbiel United States patent to connect the two complementary parts together for use as a control on a starter motor as shown in the Klockner-Moeller manual. This type of multiple pin connector has been developed for precisely this type of use. This is essentially what is disclosed in this application.

For these reasons, the Board is satisfied that the electric motor control means disclosed and claimed in this application is obvious in view the references cited by the Examiner.

In summary, the Board recommends that the examiner's rejection of the instant application be upheld.

P. J. Davies
Chairman

M. Wilson
Member

I concur with the findings and the recommendation of the Patent Appeal Board. Accordingly, I refuse to grant a patent on this application.

David Tobin
Commissioner of Patents

Dated at Hull, Quebec
this 13th day of September 2000