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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS BUDMIGER

Appeal 2011-012092
Reissue Application 11/255,236
U.S. Patent 6,634,238
Technology Center 2800

Before ALLEN R. MACDONALD, ROBERT E. NAPPI, and DENISE M.
POTHIER, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the rejection of claims 1 through 32 and 34 through 45.

We affirm.

INVENTION

The invention is directed an electromagnetic flow meter. *See* column 1 of Appellant's Patent (i.e., U.S. Patent No. 6,634,238 B2). Claim 1 is representative of the invention and reproduced below:

1. A method of operating an electromagnetic flowmeter having a flow tube connected into a fluid-conveying line, said method comprising the steps of:

causing the fluid to flow th[r]ough the flow tube;

causing a first excitation current of predeterminable strength, said first excitation current being generated by means of a measuring and control circuit of the electromagnetic flowmeter, to flow through a first field coil mounted on the flow tube for producing a first partial magnetic field of predeterminable average strength which cuts through the fluid;

causing a second excitation current of predeterminable strength, said second excitation current being generated by means of said measuring and control circuit, to flow through a second field coil mounted on the flow tube for producing a second partial magnetic field of predeterminable average strength which also cuts through the fluid;

varying the strength of at least one of the excitation currents in such a manner that the average strengths of the two partial magnetic fields are at least temporarily different from each other;

reversing the polarity of one of the two excitation currents in such a manner that the two partial magnetic fields are at least temporarily directed opposite to each other while having different average strengths;

inducing a voltage in the moving fluid traversed by the two partial magnetic fields for changing potentials applied to measuring electrodes positioned at the flow tube; and

picking off potentials applied to the measuring electrodes for producing a measurement signal derived from the voltage induced in the moving fluid.

REJECTIONS AT ISSUE

The Examiner has rejected claims 1 through 32 and 34 through 45 as being based upon a defective reissue oath and declaration under 35 U.S.C. § 251. Final Rejection 2.¹

ISSUES

The issue presented to us is: did the Examiner error in concluding that the reissue oath failed to state at least one specific error?

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments that the Examiner has erred. We disagree with Appellant's conclusion that the Examiner erred in finding that the reissue oath failed to state at least one specific error. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellant's Appeal Brief. We concur with the conclusion reached by the Examiner.

¹ Throughout this opinion we refer to the Examiner's Final Rejection dated December 17, 2009 and the Examiner's Answer mailed on April 13, 2011.

Specifically, the Appellant argues, that the statement “I disclosed but did not claim the subject matter now included in claims 20-45” in the reissue declaration is sufficient. Brief 5.² Appellant reasons this is sufficient as method claim 20 is broader than claim 1 as it has four (4) steps where as method claim 1 has seven (7) steps. Brief 5. In response the Examiner cites to MPEP § 1414 and finds that the statement in the declaration fails to identify one distinguishing feature of the newly added claim over the patented claim which necessitated either broadening or narrowing the patented claim. Answer 3. Based upon this finding the Examiner concludes that the reason cited in the declaration is not sufficient enough for filing of a reissue application. Answer 3. We concur with the Examiner.

We note that MPEP § 1414 (II)(C) states “[a]ny error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error.” MPEP § 1414(II)(C) also states “[a] statement of “. . . failure to include a claim directed to . . .” and then presenting a newly added claim, would not be considered [a] sufficient “error” statement because applicant has not pointed out what the other claims lacked that the newly added claim has, or vice versa. Such a statement would be no better than saying in the reissue oath or declaration that “this application is being filed to correct errors in the patent which may be noted from the change made by adding new claim 10. In both cases, the error has not been identified.” Further, we note Appellant’s argument directed to the number of method steps in claim 20 versus claim 1 is not persuasive. In as much as the argument is a statement about the differences

² Throughout this opinion we refer to the Brief dated June 21, 2010, and the Footnote continued on next page.

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in the claims, it is not in the declaration and does not identify specific claim limitations (i.e., the errors are not readily apparent from looking at the claims as there are differences in the manner of reciting the method).

Accordingly, we sustain the Examiner's rejection of claims 1 through 32 and 34 through 45 as being based upon a defective reissue oath and declaration under 35 U.S.C. § 251.

ORDER

The decision of the Examiner to reject claims 1 through 32 and 34 through 45 is affirmed.

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

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Reissue declaration dated November 8, 2007.