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Paper 36
Entered: October 30, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOTIVEPOWER, INC.,
Petitioner,

v.

CUTSFORTH, INC.,
Patent Owner.

Case IPR2013-00270
Patent 7,417,354 B2

Before TRENTON A. WARD, MIRIAM L. QUINN, and CARL M. DeFRANCO, *Administrative Patent Judges.*

QUINN, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. BACKGROUND

MotivePower, Inc., Petitioner, filed a Petition to institute an *inter partes* review of all the claims (1–13) (the "challenged claims") of U.S. Patent No. 7,417,354 B2 (Ex. 1001, "the '354 patent") pursuant to 35 U.S.C. §§ 311–19. Paper 1 ("Pet."). The Board granted the Petition and instituted trial for all asserted claims. Paper 9 ("Dec. on Inst."). Although Petitioner proposed five grounds of unpatentability, the panel instituted trial on the following grounds: [1]

(1) Claims 1–13 as anticipated by Kartman;

(2) Claims 1–7 and 11–13 as anticipated by Baylis;

(3) Claims 1–13 as obvious over Bissett and Kartman; and

(4) Claims 8–10 as obvious over Baylis and Kartman.

During trial, Patent Owner, Cutsforth, Inc. filed a Patent Owner Response relying on Declarations of Dr. Thomas A. Keim (Ex. 2001) and Mr. Dustin Cutsforth (Ex. 2050). Paper 15 ("PO Resp."). Petitioner filed a Reply to Patent Owner's Response. Paper 26 ("Pet. Reply").

We granted Patent Owner's motion requesting cancellation of claim 3 of the '354 patent. Paper 17, Order on Mot. to Amend. Additionally, an oral hearing was held on August 6, 2014, and a transcript of the hearing is included in the record. Paper 35 ("Tr.").

We have jurisdiction under 35 U.S.C. § 6(c). This final written decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

[1] U.S. Patent No. 5,043,619 (Ex. 1003) ("Kartman"); U.S. Patent No. 3,432,708 (Ex. 1004) ("Bissett"); and U.S. Patent No. 629,418 (Ex. 1005) ("Baylis").

For the reasons that follow, we determine that Petitioner has met its burden to prove by a preponderance of the evidence that claims 1–2 and 4–13 of the '354 patent are unpatentable.

A. The '354 Patent (Exhibit 1001)

The '354 patent generally relates to a brush holder assembly for use in electrical devices and slip ring assemblies. Ex. 1001, col. 1, ll. 17–19. In particular, the patent describes that a brush is used in an electrical device to pass electrical current from a stationary contact to a moving contact surface, and vice versa. *Id.* at col. 1, ll. 23–25. Because the brush typically is in contact with a moving surface, the surface of the brush wears down, thus reducing the quality of the electrical contact. *Id.* at col. 1, ll. 36–55. The '354 patent describes that when the brush is so worn that it requires replacement, the moving contact surface may need to be halted, which may be difficult or expensive. *Id.* at col. 1, l. 66 – col. 2, l. 4. Alternatively, the '354 patent describes that maintaining the relative motion during replacement of the brush may be unsafe because of the risk of arcing and an accidental short circuit in the electrical components. *Id.* at col. 2, ll. 5–9. The patent thus describes that it would be an advantage to remove or replace a worn brush without stopping the moving parts involved. *Id.* at col. 2, ll. 9–13.

One embodiment of the '354 patent describes a brush holder assembly with a mounting bracket in an "engaged" configuration, relative to a lower mount block. *Id.* at col. 2, ll. 61–64. For example, Figure 1 of the '354 patent, reproduced below, illustrates an "engaged" configuration where brush 12, surrounded by brush box 10, is put in contact with a conducting surface because brush spring 24 pushes the brush toward the bottom edge of box 10. *Id.* at Fig. 1; col. 4, ll. 22–28; col. 6, ll. 15–29.

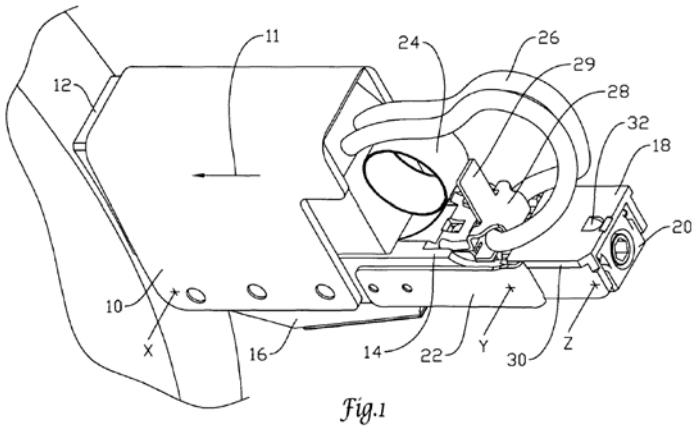

Fig.1

According to Figure 1 above, brush box 10 is affixed to beam 14, which is attached, via a hinge, to lower mount block 16. *Id.* at col. 4, ll. 28–36. In the "engaged" position, a conductive path is formed from brush 12 through brush conductor 26, terminal 28, and conductor strap 34 (shown in Figure 2, reproduced *infra*). *Id.* at col. 7, ll. 1–11.

The '354 patent further describes a "disengaged" configuration, shown in particular with respect to Figure 2, reproduced below.

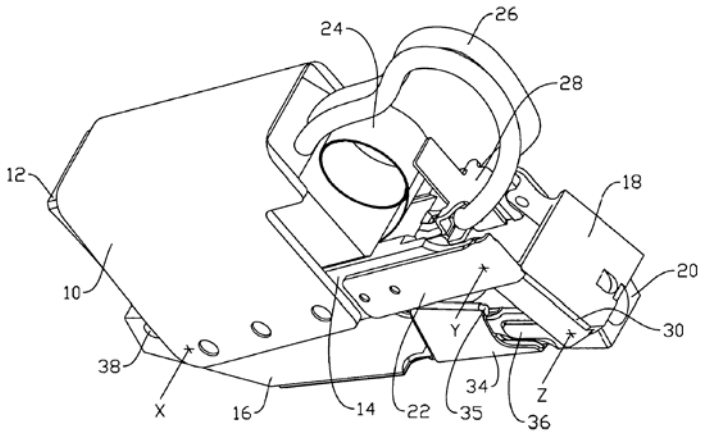

Fig.2

As illustrated in Figure 2 above, a hinging action takes place at certain pivot lines, such as pivot line "X," about which beam 14 moves with respect to lower mounting block 16. *Id.* at col. 6, ll. 44–51. In the disengaged position, conductor

strap 34 breaks contact with terminal 28, thus interrupting the current flow before the brush breaks contact with the conductive surface. *Id.* at col. 10, ll. 43–54.

B. Illustrative Claim

Claims 1 and 11 of the '354 patent are the only independent claims at issue. Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A brush holder assembly for holding an electrical brush in contact with a conductive surface, the brush holder assembly comprising:
>
> a mounting block including first and second outer side surfaces; and
>
> a brush holder component for coupling to the mounting block, the brush holder component defining a channel for receiving a portion of the mounting block, the channel including first and second inner side surfaces;
>
> wherein when the brush holder component is coupled to the mounting block, at least a portion of the mounting block is disposed within the channel such that at least a portion of the first and second outer side surfaces of the mounting block are disposed between the first and second inner side surfaces of the channel; wherein the mounting block includes a mounting aperture extending there through, and wherein when the brush holder component is coupled to the mounting block, at least a portion of the mounting aperture is disposed within the channel.

II. ANALYSIS

A. Claim Interpretation

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012). Claim terms also are given their ordinary and customary meaning as would be understood by one of

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