

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENJI TAJIMA

Appeal No. 2004-2124
Application No. 09/795,197

HEARD: March 8, 2005

Before JERRY SMITH, BLANKENSHIP and NAPPI, **Administrative Patent Judges**.
NAPPI, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 1 through 6. For the reasons stated *infra*, we will not sustain the examiner's rejection of these claims. In accordance with 37 CFR § 41.50(b), we have entered a new rejection of claim 1 under 35 U.S.C. § 103.

Invention

The invention relates to a radiation image information reading apparatus for reading radiation image information using a stimuable phosphor sheet. (See page 1 of appellant's specification). The apparatus is divided into two units: an image bed and the control unit, and a cable connects the two units. (See page 3 of appellant's specification).

Claim 1 is representative of the invention and is reproduced below:

1. A radiation image information reading apparatus for repeatedly recording and reading radiation image information of a subject using a stimuable phosphor sheet housed therein, comprising:

an apparatus housing accommodating therein a reading unit for applying stimulating light to the stimuable phosphor sheet with radiation image information recorded thereon to photoelectrically read the radiation image information, and an erasing assembly for erasing remaining radiation image information from the stimuable phosphor sheet after the recorded radiation image information is read from the stimuable phosphor sheet; and

a controller connected to said apparatus housing by a cable, for controlling at least said reading unit and said erasing assembly in said apparatus housing;

said apparatus housing having at least two cable ports, said cable being extended selectively through said cable ports.

References

The references relied upon by the examiner are:

Saotome et al. (Saotome)	4,762,999	Aug. 9, 1988
Nakajima	4,820,922	Apr. 11, 1989
Liebl et al. (Liebl)	5,297,539	Mar. 29, 1994
Bell et al.	5,664,270	Sep. 9, 1997

The Board relies upon the following reference in the rejection of claims on appeal:

Michaelis et al. (Michaelis)	5,241,136	Aug. 31, 1993
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Rejections at Issue

Claims 1, 2, 5 and 6 stand rejected under 35 U.S.C. § 103 as being obvious over Nakajima and Bell. Claim 3 stands rejected under 35 U.S.C. § 103 as being obvious over Nakajima, Bell and Saotome. Claim 4 stands rejected under 35 U.S.C. § 103 as being obvious over Nakajima, Bell, Saotome and Liebl. Throughout the opinion we make reference to the briefs and the answer for the respective details thereof.

Opinion

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the

examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejections and the arguments of appellant and the examiner, and for the reasons stated *infra*, we will not sustain the examiner's rejection of claims 1 through 6 under 35 U.S.C. § 103.

Appellant argues, on page 5 of the brief, that the combination of Bell and Nakajima do not render the claimed invention obvious as the combination of the references do not disclose that a cable is extended selectively through the cable ports as recited in claim 1. Appellant argues, on page 6 of the brief, that Bell, the reference the examiner cites as teaching the limitation of the cable ports, does not teach a "housing having at least two cable ports through which the cable is extended selectively". Rather, Bell et al. simply discloses a connection port at the sockets." On page 1 of the reply brief, appellant argues that the examiner's interpretation of the claim limitation of ports is improper, stating: "[t]he Examiner's proffered definition would appear to be out of context to the extent it requires a cable to pass selectively through a connecting point. In any event, the references do not teach a cable running through

any port.” Further, appellant argues, on page 3 of the reply brief, that there is no motivation to combine the references as “the plurality of universal ports in Bell et al. are universal transducer ports, not controller ports, and there is no teaching or suggestion in either of the references of using the universal transducer ports of Bell et al. for the purpose of a controller port for Nakajima.”

In response, the examiner states, on page 8 of the answer:

Bell *et al.* was cited as an example that cable ports are well known in the art. Further[,] as discussed above, Bell *et al.* disclose that a plurality of universal ports positioned along opposite sides and/or at opposite ends of the patient support surface allow electrical connection with optimal convenience and minimal interference. Therefore[,] it would be [sic, have been] obvious to one of ordinary skill to provide a plurality of universal ports in the apparatus of Nakajima, in order to attach the remote external controller (90) of Nakajima with optimal convenience and minimal interference as taught by Bell *et al.*

We disagree with the examiner’s claim interpretation and find that the combination of the references does not teach the claimed ports. Claims will be given their broadest reasonable interpretation consistent with the specification, limitations appearing in the specification will not be read into the claims. *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985). In analyzing the scope of the claim, office personnel must rely on the appellant’s disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995). “[T]he terms used in the claims bear a “heavy presumption” that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art.” *Texas Digital Sys, Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002). “Moreover, the intrinsic record also must be examined in every case to

determine whether the presumption of ordinary and customary meaning is rebutted.” (citation omitted). “Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected.” ***Texas Digital Systems, Inc. v. Telegenix, Inc.***, 308 F.3d at 1204, 64 USPQ2d at 1819 (Fed. Cir. 2002). (“[A] common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty.”); ***Id.*** (citing ***Liebscher v. Boothroyd***, 258 F.2d 948, 951, 119 USPQ 133, 135 (CCPA 1958) (“Indiscriminate reliance on definitions found in dictionaries can often produce absurd results.”)). “In short, the presumption in favor of a dictionary definition will be overcome where the patentee, acting as his or her own lexicographer, has clearly set forth an explicit definition of the term different from its ordinary meaning.” ***Id.***

Claim 1 includes the limitation “said apparatus housing having at least two cable ports, said cable being extended selectively through said cable ports.” The examiner, on page 3 of the answer, defines the limitation “port” as “a connection point for a peripheral device” citing the **American Heritage Dictionary** (3d. ed., Houghton Mifflin Co. 1992). We agree this is one of the many meanings of the term “port.” However, we find that this meaning is inconsistent with the use of the term in claim 1 and appellant’s specification. Claim 1 and appellant’s specification describe a port as something through which a cable extends and not a point of connection as in the examiner’s definition.

The examiner's rejection relies upon the definition of a port as "a connection point." The examiner asserts that Bell teaches connection point type ports. We concur; however, we do not find that Bell teaches a port through which a cable extends, as is claimed. Accordingly, we will not sustain the examiner's rejection of claims 1, 2, 5 and 6 under 35 U.S.C. § 103.

In the rejection of claim 3 and the rejection of claim 4, the examiner includes the teachings of Saotome and Liebl to teach the limitations of the dependent claims. The examiner does not assert, nor do we find, that Saotome and Liebl teach or suggest a cable port through which the cable extends. Accordingly, we will not sustain the examiner's rejection of claims 3 and 4 under 35 U.S.C. § 103.

New grounds of rejection under accordancy with 37 CFR § 41.50(b).

At the outset, we note that we are only treating the independent claim and we leave it to the examiner and the appellant to determine the obviousness or non-obviousness of the limitations found in dependent claims 2 through 6. Should appellant submit further amendments or further facts in accordance with 37 CFR 41.50(b)(1), the examiner should consider the submission as it applies to this new grounds of rejection.

We find that appellant's claim 1 is obvious over Nakajima and Michaelis et al. (Michaelis) U.S. Patent 5,241,136 (a newly cited reference which is attached to this decision). Thus, we now reject claim 1 under 35 U.S.C. § 103.

Appellant states on page 4 of the brief:

Nakajima relates to a radiation image recording and read-out apparatus. As shown in FIG.1, the apparatus includes a circulation and conveyance means for conveying stimuable phosphor sheets 30, an image recording section 40, an image readout-section 50, an erasing

section 70, a shutter 101 provided above the stimuable phosphor sheet in the image recording section and movable to a position for shielding a part of the stimuable phosphor sheet from radiation during sectored image recording, a shutter operating means 80, 81, 102, and 103 for controlling the movement of said shutter, and a sectored image recording operation control means 90 for, upon receipt of a sectored image recording command, moving the shutter to the shielding position and controlling said circulation and conveyance means so as to convey the stimuable phosphor sheet in said image recording section by sectors.

We concur, and further find that Nakajima teaches that controller 90 may be mounted separate from the housing, as shown in figure 2. We find that figure 2 of Nakajima suggests that at least two cables enter the housing (item 1) of the radiation image recording and readout apparatus, one cable from the controller (item 90) and another from the radiation source (item 42). However, we find that Nakajima is silent as to how the cables traverse the housing to connect with the equipment therein. We find that the skilled artisan would look to methods used for connecting cables to enclosures for electrical equipment.

Michaelis teaches an enclosure for electrical equipment where there are a plurality of ports (knockouts, items 31) through which cable enters the enclosure to connect with equipment therein. (See Michaelis, column 2, lines 55 –59 and figure 4). These ports incorporate clamps to provide strain relief to prevent disconnection. (See Michaelis, column 4, lines 9-12 and column 2 lines 39-40). While we recognize that Michaelis is directed to cables associated with power distribution and does specify use on a housing for a radiation image recording device, we find that the nature of problem to be solved, connection of an electrical cable, provides the motivation to combine teachings. The motivation, suggestion or teaching may come explicitly from statements

in the prior art, *the knowledge of one of ordinary skill in the art*, or, in some cases the nature of the problem to be solved." *In re Huston*, 308 F.3d 1267, 1280, 64 USPQ2d 1801, 1810 (Fed. Cir. 2002, citing *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ 1313, 1317 (Fed. Cir. 2000) (emphasis added). Thus, we find that the skilled artisan would be motivated to use Michaelis' port, through which a cable extends, in the radiation image recording device of Nakajima to allow the cable from controller (item 90) to enter the housing. Regarding the limitation of "extending selectively," we note that Nakajima suggests that at least two cables enter housing (item 1) and that Michaelis teaches numerous ports. Neither of the references teaches that the cables should be arranged in any particular order, thus, we find that the combination teaches that the cables can be selectively extend through the ports.

Conclusion

In summary, we do not sustain the examiner's rejection of claims 1 through 6 under 35 U.S.C. § 103 and in accordance with 37 CFR § 41.50(b), we enter a new rejection of claim 1 under 35 U.S.C. § 103.

This decision contains a new ground of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 CFR § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 CFR § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options

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with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

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

REVERSED - 37 CFR § 41.50(b)

JERRY SMITH)	
Administrative Patent Judge)	
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HOWARD B. BLANKENSHIP)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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