The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LUC STRUYE, PAUL LEBLANS, and RUDY VAN DEN BERGH

Appeal No. 2006-1434
Application No. 10/356,621

ON BRIEF

Before WALTZ, RUGGIERO, and BLANKENSHIP, Administrative Patent Judges.

BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-20, which are all the claims in the application.

We affirm.

BACKGROUND

The invention relates to method and apparatus for authenticating an item (e.g., a banknote or a passport) by checking for particular stimulable (storage) phosphors contained in the item. Claim 1 is reproduced below.

1. A method for proving authenticity of an item differing from a storage phosphor screen, wherein said item is provided onto or into at least part thereof, with storage phosphor particles embedded in a flexible binder, said method comprising the steps of:

- checking for presence of said storage (stimulable) phosphor by first irradiating the item with electromagnetic radiation having a wavelength shorter than the wavelength emitted by the stimulable phosphor,

- stimulating the phosphor with electromagnetic radiation having a wavelength longer than the wavelength emitted by the phosphor,

- detecting the stimulated emission of the phosphor and transforming the light signal into a visual and/or an audio signal, wherein said stimulable phosphor is composed of M^{II} $FX:Eu^{2+}$, M^{II} representing Ba or Sr and X representing Br or I.

The examiner relies on the following references:

Papadopoulos et al. (Papadopoulos)	5,670,086	Sep. 23, 1997
Huston et al. (Huston)	US 6,211,526 B1	Apr. 3, 2001
Kimura et al. (Kimura)	US 2002/0097899 A1	Jul. 25, 2002 (filed Nov. 3, 1998)

Claims 1-6, 19, and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Huston and Papadopoulos.

Claims 7-18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Huston, Papadopoulos, and Kimura.

We refer to the Final Rejection (mailed Dec. 28, 2004) and the Examiner's Answer (mailed Jul. 27, 2005) for a statement of the examiner's position and to the Brief (filed May 16, 2005) for appellants' position with respect to the claims which stand rejected.

OPINION

The examiner finds that Huston discloses the subject matter of instant claim 1 except for the composition of the stimulable phosphor. The examiner finds that Papadopoulos describes such stimulable phosphors. The examiner further finds motivation from the prior art to combine the teachings of the references, concluding that the subject matter as a whole would have been obvious to the artisan at the time of invention. (Answer at 3-4.)

Appellants argue in the Brief that the references, taken alone or together, fail to teach a storage phosphor embedded in a flexible binder. Appellants' specification teaches that embedding the phosphors in a flexible binder will reduce the influence of forces made upon the phosphors. (Spec. at 12 final ¶ through 13 first full ¶.)

Appellants do not argue the limitations of any of claims 1-6, 19, and 20 separately. We will thus decide the appeal with respect to the claims on the basis of claim 1. See 37 CFR § 41.37(c)(1)(vii).

The preamble of instant claim 1 purports a method for proving authenticity of an item, wherein the item is provided with "storage phosphor particles embedded in a

flexible binder. . . ." The preamble of a claim does not limit the scope of the claim when it merely states a purpose or intended use of the invention. In re Paulsen, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). We do not find anything in the three process steps set forth in claim 1 that is specific to phosphor particles that are "embedded in a flexible binder." The method of claim 1 is not limited to processing of storage phosphors that are embedded in a flexible binder. Appellants' arguments fail because the relevant preamble recitations merely state a purpose or intended use for the process that is claimed.

We therefore sustain the § 103 rejection of the claims over Huston and Papadopoulos. Further, even if the recitation of "embedded in a flexible binder" were to limit the subject matter of instant claim 1, we would not consider appellants' arguments to be persuasive.

Huston teaches a doped glass matrix (e.g., col. 4, ll. 22-65) that may be incorporated in flexible materials such as fabric, paper, or plastic (e.g., col. 3, ll. 30-35). Appellants allege, but do not show, that incorporation in the flexible materials cannot be considered as being within the meaning of phosphor particles "embedded in a flexible binder."

Further, even if we assume the particles are embedded in a glass matrix and cannot be considered to also be embedded in materials such as fabric, paper, or plastic, appellants' arguments remain unpersuasive. Appellants contend that "flexible" as used in the instant invention means "capable of being flexed." (Appeal Brief at 4-5.)

Appellants allege, without providing or pointing to evidence in support of the position, that the artisan would not consider glass to be flexible. However, as the examiner indicates in the Answer (at 8-9), "flexible" is a relative term. Glass was known to be less flexible than some materials, more flexible than others, and at least "capable of being flexed."

Appellants rely on substantially the same arguments in response to the § 103 rejection of claims 7-18 over Huston, Papadopoulos, and Kimura, adding that Kimura fails to remedy the alleged deficiencies in the combination of Huston and Papadopoulos. Instant claim 7, on the basis of which we will decide the appeal with respect to claims 7-18, is similar to instant claim 1 in that the recitation of "embedded in a flexible binder" does not limit the claimed subject matter. Claim 7 recites, inter alia, a first source emitting electromagnetic radiation, a second source emitting electromagnetic radiation, and an optical filter. A storage phosphor is not claimed, nor any substance in which the phosphor may be embedded. The apparatus that is claimed acts on, and responds to, radiation regardless of whether or not the storage phosphor is embedded in a flexible binder. Moreover, as we have discussed supra, we are not persuaded that the references fail to teach or suggest a storage phosphor embedded in a flexible binder, even if the relevant claim 7 recitations were to represent actual limitations of the claimed subject matter.

For the foregoing reasons we are not convinced that any claim on appeal has been rejected in error. We sustain the rejection of claims 1-20 under 35 U.S.C. § 103.

CONCLUSION

The rejection of claims 1-20 under 35 U.S.C. § 103 is affirmed.

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

AFFIRMED

THOMAS A. WALTZ Administrative Patent Judge	)
JOSEPH F. RUGGIERO Administrative Patent Judge	) BOARD OF PATENT) APPEALS) AND) INTERFERENCES
HOWARD B. BLANKENSHIP Administrative Patent Judge	)

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