

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2006-1771
Application No. 10/407,247

ON BRIEF

Before THOMAS, HAIRSTON, and MACDONALD, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 26 through 36.

The disclosed invention relates to the structure of a reflective LCD device.

Claim 26 is the only independent claim on appeal, and it reads as follows:

26. The reflective LCD device, comprising:

first and second substrates facing and spaced apart from each other;

a half wave plate and a polarizer that are formed in series on the second substrate;

a liquid crystal layer interposed between the first and second substrates;

a common electrode on a surface of the second substrate facing the first substrate, the common electrode is formed of a transparent conductive material;

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a pixel electrode formed on the first substrate and corresponding to each pixel, the pixel electrode is formed of a reflective conductive material; and

wherein a slow axis of the half wave plate is disposed at an angle “ θ ” from a transmissive axis of the polarizer.

The reference relied on by the examiner is:

Okamoto et al. (Okamoto)	6,281,952	Aug. 28, 2001 (filed Dec. 22, 1998)
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Claims 26 through 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Okamoto.

Reference is made to an amendment filed March 2, 2004, the briefs and the answer for the respective positions of the appellant and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse the obviousness rejection of claims 26 through 36.

In the March 2, 2004 amendment, the appellant changed the claim 26 limitation “a retardation film and a second polarizer that are formed in series on the second substrate” to “a half wave plate and a second polarizer that are formed in series on the second substrate.” In the remarks section of the amendment, appellant stated that the amendment was made “to correct a minor informality,” and that the amendment is “unrelated to patentability” (page 7).

In the statement of the rejection, the examiner has made findings (answer, pages 3 through 5) that Okamoto describes all of the LCD device structure set forth in claim 1 with the

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exception of the half wave plate and the slow axis thereof. With respect to the half wave plate, the examiner made the following additional findings (answer, page 5):

Since Applicant admits the amendment to claim 26 is unrelated to patentability Okamoto is evidence that ordinary workers in the art of liquid crystals would find the reason, suggestion, or motivation to add a phase plate or half wave plate to provide satisfactory phase plate performance for improved display performance.

Therefore, it would have been obvious to one having ordinary skill in the art of liquid crystals at the time the invention was made to modify the LCD of Okamoto with the half wave plate of Okamoto to provide satisfactory phase plate performance for improved display performance.

In response, appellant argues (reply brief, pages 2 and 3):

Appellant is mystified at how the Examiner can read so much into Appellant's statements made in the Response filed on March 2, 2004. Furthermore, Appellant respectfully asserts that the Examiner's interpretations of Appellant's statements and allegations are clearly a distortion of the record. For example, at no time has Appellant ever made any admissions with regard to the equivalency of a half wave plate to a retardation film, or that a half wave plate somehow anticipates a retardation film. Therefore, the Examiner's allegations that Appellant has made "admissions" and that these alleged "admissions" are somehow motivation with which to modify Okamoto et al. are simply untrue and not supported by the record.

With regard to Okamoto et al., Appellant respectfully asserts that the Examiner has yet to provide any proper motivation with which to modify Okamoto et al. Specifically, Appellant respectfully asserts that neither Appellant's statements made in the Response filed on March 2, 2004, nor the reasoning provided by the Examiner, both in the Office Actions and Examiner's Answer, provide proper motivation with which to modify Okamoto et al. to arrive at Appellant's claimed invention. Although the Examiner continues to rely upon Appellant's statements made in the Response filed on March 2, 2004 for allegedly providing motivation for modifying Okamoto et al., the simple irrefutable fact remains that Okamoto et al. is completely silent with regard to adding a half wave plate to provide "satisfactory phase plate performance for improved display performance," as alleged by the Examiner.

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We agree with the appellant's arguments. The record before us simply does not support any of the examiner's conclusions concerning the amendment dated March 2, 2004. The so-called admission by the appellant is nothing more than a statement by the appellant that the amendment to claim 26 should not be treated as being related to patentability of the claim. In any event, nothing in the brief statement made by the appellant in the amendment supports the examiner's proposed wholesale modification of Okamoto "to add a phase plate or half wave plate to provide satisfactory phase plate performance for improved display performance." Since Okamoto neither teaches nor would have suggested to the skilled artisan the addition of a half wave plate with the specifically claimed slow axis to a LCD, the obviousness rejection of claims 26 through 36 is reversed.

DECISION

The decision of the examiner rejecting claims 26 through 36 under 35 U.S.C. § 103(a) is reversed.

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REVERSED

JAMES D. THOMAS
Administrative Patent Judge

KENNETH W. HAIRSTON
Administrative Patent Judge

ALLEN R. MACDONALD
Administrative Patent Judge

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