

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RIFAT HIKMET,
RALF RAUE and
THOMAS WELKER

Appeal No. 1997-2682
Application 08/382,937

ON BRIEF

Before HAIRSTON, FLEMING and RUGGIERO, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1, 2, 6, and 9. Claims 3, 5, and 7 have been canceled. Claims 4, 8, and 10 through 14 have been indicated by the Examiner as containing allowable subject matter.

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The claimed invention relates to a light source in which light emitted from a stimulated luminescent layer is guided through an optical filter. More particularly, Appellants indicate at pages 2 and 3 of the specification that the optical filter is a cholesteric filter having at least one cholesteric crystal layer.

Claim 1 is illustrative of the invention and reads as follows:

1. A light source having a luminescent layer, means for stimulating light emission from the layer in a first wavelength range, and an optical filter for filtering the emitted light, characterized in that the optical filter is a cholesteric filter comprising at least one cholesteric crystal layer.

The Examiner relies on the following prior art:

Adams et al. (Adams)	3,697,152	Oct. 10, 1972
Welker et al. (Welker)	5,089,883	Feb. 18, 1992
Shanks	5,193,015	Mar. 09, 1993
		(Filed Oct. 05, 1990)
Barnik et al. (Barnik)	5,235,443	Aug. 10, 1993
		(Filed Feb. 24, 1992)

Claims 1, 2, 6, and 9 stand finally rejected under 35 U.S.C. § 103 as being unpatentable over Welker in view of Adams, Shanks, and Barnik.

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Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Brief and Answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Brief along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1, 2, 6, and 9. Accordingly, we affirm.

Appellant has indicated (Brief, page 4) that, for the purposes of this appeal, claims 1, 2, 6, and 9 will stand or fall together. Consistent with this indication, Appellant has directed his arguments to independent claim 1 but has made no

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separate arguments with respect to any of the dependent claims 2, 6, and 9. Accordingly, claims 1, 2, 6, and 9 will stand or fall together and we will select claim 1 as representative of all of the claims on appeal.

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976).

With respect to representative independent claim 1, the Examiner, as the basis for the obviousness rejection, proposes to modify the light source structure of Welker which filters

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emitted light from a luminescent layer through an interference filter instead of a cholesteric filter as presently claimed. To address this deficiency, the Examiner turns to Adams which discloses the advantages of cholesteric filters as opposed to interference filters (e.g. Adams, column 1, lines 36-63 and column 8, lines 24-47) and Shanks which suggests the interchangeability of interference and cholesteric filters (e.g. Shanks, column 3, lines 38-40). In the Examiner's line of reasoning (Answer, page 4), the skilled artisan would have found it obvious to employ a cholesteric filter in the device of Welker instead of an interference filter to facilitate tuning of the filter over a large range of bandwidths in view of the teachings of Adams and Shanks. Barnik is added to the combination as supplying a teaching of utilizing a $\frac{8}{4}$ element to convert polarized light to linearly polarized light to achieve compatibility with a LCD device.

In making the obviousness rejection, the Examiner, therefore, has pointed out the teachings of Welker, Adams, Shanks, and Barnik, has reasonably indicated the perceived differences between this applied prior art and the claimed invention, and has provided reasons as to how and why this

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prior art would have been modified and/or combined to arrive at the claimed invention (Answer, pages 3 and 4). In our view, the Examiner's analysis is sufficiently reasonable that we find that the Examiner has at least satisfied the burden of presenting a prima facie case of obviousness. The burden is, therefore, upon Appellants to come forward with evidence or arguments which persuasively rebut the Examiner's prima facie case of obviousness. Arguments which Appellants could have made but elected not to make in the Brief have not been considered in this decision (note 37 CFR § 1.192).

In response, Appellants assert (Brief, pages 5 and 6) that no prima facie case of obviousness has been established by the Examiner since proper motivation for making the Examiner's proposed combination has been set forth. In Appellants' view, no teaching exists in any of the references for using a cholesteric filter as part of a light source having a luminescent layer as claimed. However, the Adams, Shanks, and Barnik references, which the Examiner has relied on for a teaching of cholesteric filters, are used in combination with Welker which clearly teaches a light source with a luminescent layer. One cannot show nonobviousness by

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attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F. 2d 413, 425, 208 USPQ 871, 881 (CCPA 1981); In re Merck & Co., Inc., 800 F. 2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986).

Further, Appellants have provided no evidence of record to support their contention that the different light sources used in Adams, Shanks, and Barnik, as opposed to the luminescent layer of Welker, would lead away from any motivation to combine the teachings. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F. 2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F. 3d 1465, 1469, 43 USPQ2d 1362, 1365 (Fed. Cir. 1997). Absent any evidence to the contrary on the record, it is our view that the reasonableness of the proposed combination of Welker, Adams, Shanks, and Barnik which forms the basis of the 35 U.S.C.

§ 103 rejection, remains unrebutted by any convincing arguments of Appellants.

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Accordingly, the rejection of representative independent claim 1 under 35 U.S.C. § 103 is sustained. Since, as noted above, Appellants have grouped claims 1, 2, 6, and 9 as standing or falling together, claims 2, 6, and 9 fall with claim 1 in accordance with 37 CFR § 1.192(c)(7). Thus, it follows that the decision of the examiner to reject claims 2, 6, and 9 under 35 U.S.C. § 103 is also sustained.

In conclusion, we have sustained the Examiner's rejection of all of the appealed claims under 35 U.S.C. § 103. Therefore, the Examiner's decision rejecting claims 1, 2, 6, and 9 is affirmed.

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

AFFIRMED

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KENNETH W. HAIRSTON))
Administrative Patent Judge)	
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)	BOARD OF PATENT
MICHAEL R. FLEMING)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JOSEPH F. RUGGIERO)	
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JFR:hh

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