The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT F. KWASNICK and MARY E. SWALLOW

Appeal No. 2003-1940
Application No. 09/954,882

ON BRIEF

Before KIMLIN, WALTZ and LIEBERMAN, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-25. Claim 1 is illustrative:

1. A method comprising:

forming an organic light emitting material on a substrate;

covering said material with a first inorganic layer that reduces moisture access to said material;

covering said first inorganic layer with an organic layer;

covering said organic layer with a second inorganic layer; and

forming a contact through said first and second inorganic and organic layers.

The examiner relies upon the following references as evidence of obviousness:

Aoyama et al. (Aoyama)	4,618,878	Oct. 21, 1986
Matthies et al. (Matthies)	6,370,019	Apr. 09, 2002
Arai et al. (Arai)	6,404,126	Jun. 11, 2002

Appellants' claimed invention is directed to a method of forming a light emitting device display, as well as the display itself, comprising covering the light emitting material with a first inorganic layer, which is covered by an organic layer, which in turn is covered with a second inorganic layer.

Appealed claims 1-25 stand rejected under 35 U.S.C. § 103 as being unpatentable over Mathhies in view of Aoyama, considered alone, or in further view of Arai.

We have thoroughly reviewed the respective positions advanced by appellants and the examiner. In so doing, we find ourselves in agreement with appellants that the examiner has failed to establish a prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the examiner's rejections.

While we are both cognizant and appreciative of the effort put forth by the examiner in fashioning a rationale in support of the rejections, we must concur with appellants that the motivation

for combining the teachings of Matthies and Aoyama is absent. This is so because whereas the examiner concludes that it would have been obvious for one of ordinary skill in the art to employ the three-layer insulation layer of Aoyama for the insulation layer of Matthies, appellants correctly point out in the Reply Brief that the third aluminum layer 8 of Aoyama would not satisfy the requirement of Matthies for an insulating layer. As stated by appellants, "[c]learly Aoyama's film, including a composite that includes aluminum, cannot be an insulating film that would do anything but short out Matthies" (page 2 of Reply Brief, fourth paragraph). While it is true, as urged by the examiner, that the appealed claims do not define the second inorganic layer as an insulating layer, this is irrelevant to the examiner's motivation for combining the teachings of Matthies and Aoyama. The claims on appeal require a first inorganic layer, an organic layer and a second inorganic layer over inorganic light emitting material, and the examiner's rejection is based upon using the three-layer structure of Aoyama as the insulating layer in Matthies. However, the examiner has not explained how the aluminum layer 8 of Aoyama would have served Matthies' need for an insulating layer over the light emitting material. Although the examiner reasons that the lack of disclosure in Matthies "does not preclude the possibility

that such a three-layer compound interlayer insulating structure may be used" (page 9 of Answer, second paragraph), it is still incumbent upon the examiner to establish that it would have been obvious for one of ordinary skill in the art to employ such a three-layer insulating structure in light emitting devices of the type disclosed by Matthies.

The examiner's additional citation of Arai does not remedy the deficiency of the combined teachings of Matthies and Aoyama outlined above.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

EDWARD C. KIMLIN Administrative Patent Judge	)	
THOMAS A. WALTZ Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
PAUL LIEBERMAN Administrative Patent Judge	)	

ECK:clm

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