

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte TAKAO KISHINO  
and  
HISASHI NAKATA

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Appeal No. 1998-0923  
Application No. 08/514,718

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ON BRIEF

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Before FLEMING, RUGGIERO, and LALL, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1, 2, and 4-10, all of the claims pending in the present application. Claim 3 has been canceled.

The claimed invention relates to a fluorescent display in which an envelope is formed by integrally attaching an anode substrate and a casing to each other through a sealing layer.

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A cathode substrate is mounted horizontally through a lead frame on support members, the lead frame having lead wires being arranged on top of the cathode substrate for downwardly holding the substrate against the support members. Appellants assert at page 8 of the specification that this structural arrangement permits precise alignment between the anode and cathode substrates.

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

1. A fluorescent display device comprising:

an envelope formed by integrally attaching an anode substrate and a casing to each other through a sealing layer;

an anode formed on said anode substrate in said envelope and having a phosphor layer deposited thereon;

support members fixed on said sealing layer forming a bridge across said envelope;

a cathode substrate placed horizontally on said support members, said cathode substrate being supported in said envelope by means of said support members in a manner to face said anode at a predetermined interval defined therebetween;

a field emission cathode formed on said cathode substrate; and

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a lead frame including lead wires arranged on top of  
said cathode substrate for downwardly holding said  
cathode substrate, said lead wires being arranged so as to  
extend through said sealing layer into said envelope and  
being connected to said cathode substrate.

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The Examiner relies on the following prior art references:<sup>1</sup>

Beatty et al. (Beatty)	4,377,769	Mar. 22, 1983
Morimoto et al. (Morimoto)	4,582,210	Apr. 15, 1986

Claims 1, 2, and 4-10 stand finally rejected under 35 U.S.C. § 103 as being unpatentable over Morimoto in view of Beatty and Appellants' admissions as to the prior art.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs<sup>2</sup> and Answers for the respective details.

#### 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

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<sup>1</sup> The Examiner also relies on Appellants' admissions as to the prior art described at pages 2 and 3 of the specification and illustrated in Figure 6 of Appellants' drawings.

<sup>2</sup> The Appeal Brief was filed March 25, 1997. In response to the Examiner's Answer dated June 23, 1997, a Reply Brief was filed June 30, 1997 to which the Examiner responded with a Supplemental Examiner's Answer dated October 30, 1997. The Examiner submitted a further Supplemental Examiner's Answer dated December 8, 1997 in response to Appellants' Supplemental Reply Brief filed November 14, 1997.

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for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments

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set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answers.

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 not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1, 2, and 4-10. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to

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arrive

at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole

or knowledge generally available to one having ordinary skill in

the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825

(1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.,

776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert.

denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v.

Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed.

Cir. 1984). These showings by the Examiner are an essential part

of complying with the burden of presenting a prima facie case of

obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24

USPQ2d

1443, 1444 (Fed. Cir. 1992).

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With respect to the Examiner's obviousness rejection of independent apparatus claim 1, Appellants have made several arguments in response. The primary argument in the Briefs, however, centers on the lack of disclosure of the claimed lead frame structure, as set forth in the final sub-paragraph of appealed claim 1, in Morimoto, the primary reference relied upon by the Examiner for this feature.

After careful review of the Morimoto reference, as well as the other applied prior art, in light of the arguments of record, we are in agreement with Appellants' position as stated in the Briefs. Our interpretation of the disclosure of Morimoto coincides with that of Appellants, i.e., no disclosure of any lead frame structure is provided, let alone in the specific structural relationship with the cathode substrate as claimed. We are at a loss as to what structure of Morimoto could be construed to correspond to the Appellants' claimed lead frame structure and we find no enlightenment on this issue from the Examiner's reasoning in the Answers.

We do note that the Examiner, at page of 2 of the Supplemental Examiner's Answer (paper no. 28, mailed October

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30, 1997), suggests a possible alternative interpretation of the Figure 3 illustration in Morimoto in which the structure upon which the cathodes 10 are supported could be considered as a lead frame. It is our view, however, that even assuming, arguendo, that this assertion has merit, Morimoto would then lack any disclosure of the separately claimed "support members" upon which Appellants' claimed cathode substrate is horizontally placed.

Accordingly, since all of the claim limitations are not taught or suggested by the applied prior art, it is our opinion that the Examiner has not established a prima facie case of obviousness with respect to appealed independent claim 1. Therefore, we do not sustain the Examiner's 35 U.S.C. § 103 rejection of independent claim 1, nor of claims 2, 4, and 6-10 dependent thereon.

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Turning to a consideration of independent claim 5, drawn to a method of assembling a fluorescent display device, we do not sustain the Examiner's 35 U.S.C. § 103 rejection of this claim as well. Although the disclosure of Morimoto is directed solely to the final fluorescent display device, the Examiner, nevertheless, concludes that the assembling steps in appealed claim 5 would necessarily be present in Morimoto. We find, however, as asserted by Appellants (Brief, page 6), this position of the Examiner to be based on total conjecture and completely devoid of any support on the record. We are not inclined to dispense with proof by evidence when the proposition at issue is not supported by a teaching in a prior art reference, common knowledge or capable of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a prima facie case. In re Knapp-Monarch Co., 296 F.2d 230, 232, 132 USPQ 6, 8 (CCPA 1961); In re Cofer, 354 F.2d 664, 668, 148 USPQ 268, 271-72 (CCPA 1966).

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In conclusion, we have not sustained the Examiner's 35 U.S.C. § 103 rejection of appealed claims 1, 2, and 4-10. Accordingly, the decision of the Examiner rejecting claims 1, 2, and 4-10 is reversed.

REVERSED

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MICHAEL R. FLEMING	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
JOSEPH F. RUGGIERO	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
PARSHOTAM S. LALL	)	
Administrative Patent Judge	)	

JFR:hh

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