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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* PAUL L. DREW

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Appeal 2010-011920  
Application 10/963,871  
Technology Center 3600

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Before: STEFAN STAICOVICI, ANNETTE R. REIMERS, and  
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 1, 10, 11, and 30-39. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

## CLAIMED SUBJECT MATTER

Claims 1 and 34 are independent. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A mounting mechanism adapted to be placed between a flat panel display and a VESA-compliant mounting plate of a display stand, the mounting mechanism comprising:

a body having opposed first and second sides, the first side including a recess that is sized and configured to receive the VESA-compliant mounting plate of the display stand;

a plurality of VESA-compliant mounting holes formed within the recess and extending through the body from the first side to the second side, the mounting holes being sized and configured to permit passage of fasteners for threading into associated VESA-compliant mounting holes of the flat panel display to securely attach the mounting mechanism to the flat panel display;

a retractable mounting tab that is extendable into the recess, the retractable mounting tab being sized and configured to grip a first edge of the mounting plate when the mounting mechanism is used to secure the flat panel display to the display stand; and

a second mounting tab positioned opposite to the retractable mounting tab and adapted to grip a second edge of the mounting plate;

wherein the mounting mechanism is adapted to grip the mounting plate between the two mounting tabs.

## REJECTIONS

1. Claims 1, 10, 11, and 30-33 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

2. Claims 1, 10, 11, and 30-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mooney (US 3,429,543; iss. Feb. 25, 1969);

3. Claims 34-39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen (US 5,704,581; iss. Jan. 6, 1998) and Mooney.

## OPINION

### *Indefiniteness – Claims 1, 10, 11, and 30-33*

Claims 1, 10, 11, and 30-33 include features recited as being “VESA-compliant.” The Examiner considers the claims to be indefinite because “the [VESA] standard could change and therefore leaves the claims indefinite and unclear.” Ans. 4. Appellant contends that “the VESA standard and its history are readily available, and would be clearly understood by the skilled artisan.” App. Br. 8.

Compliance with the provisions of 35 U.S.C. § 112 is determined as of the filing date of the application. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1556 (Fed. Cir. 1983). There does not appear to be any dispute regarding the clarity of the VESA standard existing at the time of Appellant’s filing date. Thus, one skilled in the art would be able to determine the metes and bounds of VESA compliance as recited in the claims based on the standard in effect at the time of Appellant’s filing date. Accordingly, we cannot sustain the rejection of claims 1, 10, 11, and 30-33 under 35 U.S.C. § 112, second paragraph, as being indefinite.

*Obviousness – Claims 1, 10, 11, and 30-33 – Mooney*

The Examiner finds that Mooney discloses each of the features recited in claim 1 “except for the holes being VESA-compliant holes.” Ans. 5. The Examiner cites “[t]he applicant’s own specification [as] teach[ing] that the VESA-compliant mounting holes are admitted prior art” and reasons that “it would have been obvious . . . to have modified Mooney to have the mounting holes as VESA-compliant holes . . . since [] Mooney meets all of the structural limitations of the applicant’s invention and the spacing as required by the applicant is conventional and well known.” Ans. 5-6.

Appellant contends that Mooney does not teach a flat panel display, a display stand for the flat panel display, or a mounting mechanism that is used to secure the flat panel display to the display stand. App. Br. 12-13. Appellant further contends that “while Mooney discloses mounting holes 34 adapted to receive fasteners, the fasteners *secure the mount to a support, not the instrument to be supported*, as claimed.” App. Br. 13. The Examiner explains that the flat panel display, the display stand, and the VESA-compliant mounting plate are not positively recited and are only used to define the function of the mounting mechanism. Ans. 14. The Examiner further explains that Mooney only needs to be capable of performing the recited function (i.e., supporting a VESA-compliant mounting plate or a flat panel display). *Id.* We agree.

The mounting mechanism in Mooney is capable of being mounted to a flat panel display (e.g., by replacing the surface (15) with a flat panel display). Appellant argues that “[c]ontrary to the Examiner’s contention, the Mooney camera mounting assembly could not function as the recited

mounting mechanism.” Reply Br. 4. However, Appellant has failed to persuasively explain *why* the mounting mechanism of Mooney is not capable of being mounted to a flat panel display. Therefore, we are not convinced of Examiner error.

Appellant contends that Mooney also does not disclose VESA compliance of any components. App. Br. 13. Appellant argues that the mounting mechanism disclosed in Mooney does not have a body configured to receive a VESA-compliant mounting plate and that the mounting holes in Mooney are not VESA-compliant. App. Br. 13-14. However, these arguments do not apprise us of Examiner error because the Examiner does not rely on Mooney as disclosing any type of VESA compliance.

Appellant further contends that “[t]he Examiner gave no explanation as to how the mounting assembly for the Mooney camera 13 could be modified to be VESA®-compliant” and argues that “the complex mounting assembly for the camera in Mooney could not feasibly be modified to be VESA®-compliant.” Reply Br. 3. The VESA compliance required by Appellant’s claim 1 is simply a recess in the mounting mechanism that is capable of receiving a “VESA-compliant mounting plate” and “VESA-compliant mounting holes formed within the recess.”

The Examiner explains that because “the spacing as required by the applicant is conventional and well known,” Mooney could be modified to comply with VESA standards. Ans. 5-6. Based on the VESA standards, the size of the recess and the spacing between the holes in the recess would be modified in Mooney (i.e., the size of the body (14) and the recess (26) would be modified to provide spacing between the retractable mounting tab (42) and the second mounting tab (45) in compliance with VESA standards and

the spacing between the mounting holes (34a-d) would be modified in compliance with VESA standards). The Examiner has explained how the mounting assembly for Mooney could be modified for VESA compliance. However, Appellant has not explained *why* Mooney could not feasibly be modified to be VESA-compliant. For these reasons, we are not apprised of Examiner error.

Appellant alleges that “there would be no need to provide Mooney’s mount with a recess sized and configured to receive a VESA-compliant mounting plate” and, therefore, “[i]mproper hindsight to Appellant’s own disclosure is the only possible source of such a teaching.” App. Br. 14. Similarly, Appellant also alleges that “[i]mpermissible hindsight is the only reason a person having ordinary skill in the art would think of providing VESA-compliant holes in Mooney’s mount.” App. Br. 16.

The Examiner relies on the VESA standard being conventional and well known when modifying Mooney. Changing the size of the recess and the spacing between holes is simply rearranging elements without changing their function. “[W]hen a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 417 (2007) (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)). This does not amount to impermissible hindsight.

Appellant contends that Mooney also fails to disclose a retractable mounting tab that is extendable into the recess of the mounting mechanism body. App. Br. 14. Appellant argues that in Mooney, “block 42 cannot be extended from outside of the relieved portion 26 in[to] the

relieved portion 26.” App. Br. 14; Reply Br. 4. However, claim 1 simply requires that the “retractable tab is extendable into the recess” and does not require the retractable tab to be extended “from outside” the recess (relieved area (26)). As noted by Appellant, “block 42 resides in the relieved area 26, whether in an engaged or disengaged position.” App. Br. 14. Therefore, the block (42) is “extendable into the recess” (e.g., extendable *further* into the recess when in the engaged position relative to the disengaged position).

Appellant further contends that “the surface 45 (or the U-shaped flange/border 28) cannot be reasonably characterized as a mounting *tab*.” Reply Br. 4. Because Appellant has failed to provide any explanation as to *why* surface (45) cannot reasonably be characterized as a mounting tab, we are not apprised of Examiner error.

For the reasons set forth above, we sustain the rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Mooney. Claims 10, 11, and 31-33 depend from claim 1 and have not been argued separately. Therefore, claims 10, 11, and 31-33 fall with claim 1 and we sustain the rejection of these claims under 35 U.S.C. § 103(a) as being unpatentable over Mooney.

Claim 30 depends from claim 1 and further recites “a lever that is used to retract the retractable mounting tab from the recess.” In response to the rejection of claim 30, Appellant again argues that “the Mooney block 42 permanently resides in the relieved portion 26 and is never retracted from the relieved portion 26.” App. Br. 17. We do not find this argument persuasive for the reasons set forth above. Accordingly, we sustain the rejection of claim 30 under 35 U.S.C. § 103(a) as being unpatentable over Mooney.

*Obviousness – Claims 34-39 – Chen/Mooney*

The Examiner finds that Chen discloses a flat panel display and a mounting mechanism and that Mooney discloses a mounting mechanism having the features discussed above relative to claim 1. Ans. 6-7. The Examiner reasons that

It would have been obvious to one having ordinary skill in the art to have modified Chen to have substituted/used the mounting mechanism and mounting plate as taught by Mooney instead of the mounting mechanism and mounting plate of Chen for the purpose of providing a better means of attachment which is quick and easy to attach and detach the flat panel display to a support without the possibility of accidental detachment.

Ans. 8. Appellant argues that Chen and Mooney each fail to disclose a number of the features recited in claim 34 and that the combination of Chen and Mooney is improper.

With regard to the missing features, Appellant contends that the back wall (31) of Chen's instrument panel (30) is part of the instrument panel (30) and does not have holes requiring fasteners. App. Br. 18-19. Appellant further contends that the hook (36) in Chen is not a retractable tab. App. Br. 19. Appellant argues that Mooney is inapplicable to the present claims, noting that "Mooney[] does not even disclose a flat panel display" (App. Br. 18) and that "neither Chen nor Mooney disclose a mounting plate of a display stand for a flat panel display, or a body to receive such a mounting plate" (App. Br. 19). These arguments attack the references individually rather than the combination proposed by the Examiner. "Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references." *In re*

*Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)).

The Examiner explains that “[t]he modified version [of Chen] results in the back of the flat panel display . . . of Chen consisting [of] the mounting means (26, 45, 34a-34d, 46, 12, 48 of Mooney) with the angle adjustment device (of Chen) on the mounting plate (13 of Mooney).” Ans. 20. The Examiner does not rely on Chen individually disclosing the elements of the mounting mechanism. The Examiner reasons that

[B]ecause these two quick release attachment mounting mechanisms were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to change the mounting mechanism/plate of Chen to the mounting mechanism/plate of Mooney without destroying the invention and **for the purpose of providing a better means of attachment which is quick and easy to attach and detach the flat panel display to a support without the possibility of accidental detachment.**

*Id.* Appellant attacks the Examiner’s rationale, arguing that based on the Examiner’s combination, “there would be no ‘plurality of mounting holes that align with the mounting holes of the flat panel display’ provided in the ‘body’ (i.e., base 14) of Mooney’s camera mounting assembly.” App. Br. 20. However, the Examiner’s modification to Chen would include mounting holes in Chen as part of the mounting mechanism from Mooney being substituted into Chen.

Appellant argues that “it is not feasible to modify Chen in such a way” and that “there is no reason or need to modify Chen as such . . . [because] the Chen instrument panel 30 is already quick and easy to attach and detach (without any undue possibility of accidental detachment).” Reply Br. 5.

Appellant argues that the only reason for the Examiner's proposed modifications is impermissible hindsight. App. Br. 20.

However, the Examiner's proposed modifications include a substitution of one known mounting mechanism for another. "[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result." *KSR Int'l Co.*, 550 U.S. at 416. Chen and Mooney each disclose a mounting mechanism including a release mechanism providing quick and easy removal of a device (an instrument panel in Chen and a camera in Mooney). Therefore, the Examiner has a reasonable basis for finding that the mounting mechanism of Mooney would have been a suitable substitute for the mounting mechanism of Chen and has not based the proposed modifications on impermissible hindsight. Appellant provides no persuasive reason why a person of ordinary skill in the art could not have implemented such a substitution or why the results of the substitution would have been unpredictable.

For the reasons set forth above, we sustain the rejection of claim 34 under 35 U.S.C. § 103(a) as being unpatentable over Chen and Mooney. Claims 35 and 36 depend from claim 34 and have not been argued separately. Therefore, claims 35 and 36 fall with claim 34 and we sustain the rejection of these claims under 35 U.S.C. § 103(a) as being unpatentable over Chen and Mooney.

Claims 37-39 depend from claim 34. Claim 37 recites "a lever that is used to retract the retractable mounting tab from the recess." Claim 38 recites that "the mounting holes of the flat panel display and the mounting mechanism are VESA-compliant" and claim 39 recites that "the recess of the

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mounting mechanism is sized and configured to receive a VESA-compliant mounting plate.” Appellant’s arguments regarding claim 37 are similar to those discussed above regarding claim 30. Appellant’s arguments regarding claims 38 and 39 are similar to those discussed above regarding the VESA-compliant features of claim 1. We do not find Appellant’s arguments persuasive for the reasons set forth above regarding claims 1 and 30. Accordingly, we sustain the rejection of claims 37-39 under 35 U.S.C. § 103(a) as being unpatentable over Chen and Mooney.

#### DECISION

We REVERSE the Examiner’s decision to reject claims 1, 10, 11, and 30-33 under 35 U.S.C. § 112, second paragraph.

We AFFIRM the Examiner’s decision to reject claims 1, 10, 11, and 30-39 under 35 U.S.C. § 103(a).

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

AFFIRMED

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