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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* JOHN W. SLIWA

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Appeal 2015-000817  
Application 11/960,265  
Technology Center 3700

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Before MICHAEL L. HOELTER, LYNNE H. BROWNE, and  
LISA M. GUIJT, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the rejection of claims 1–6, 8–16, and 18–22 under 35 U.S.C. § 103(a) as unpatentable over Budd (US 5,662,108, iss. Sept. 2, 1997) and Telfair (US 4,911,711, iss. Mar. 27, 1990). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A system for treatment of a tissue in a body, comprising:  
an electronic control unit configured to generate display signals used to generate a graphical user interface in response to a first set of position signals generated by an electrophysiology mapping electrode, said position signals indicative of a position of said electrode relative to said tissue, and in response to a second set of position signals indicative of a position of a treatment device, said treatment device configured to generate and direct a beam of energy towards a selected region in said tissue,

wherein said graphical user interface displays an electrophysiology map of said tissue, said electrophysiology map including a geometry of said tissue generated from said first set of position signals and electrophysiological data associated with said tissue and projected onto said geometry of said tissue, and an image of said beam of energy generated in response to said second set of position signals, said image of said beam of energy superimposed on said electrophysiology map and indicative of the selected region on said tissue where said energy will be deposited.

### DISCUSSION

#### Claims 1–6, 8–10, and 21

Appellant argues claims 1–6, 8–10, and 21 together. *See* Appeal Br. 4–9. We select independent claim 1 as the representative claim, and claims 2–6, 8–10, and 21 stand or fall with claim 1.

The Examiner determines that Budd discloses all of the limitations of claim 1 except for “displaying the beam of energy or that said beam is indicative of selected region of the tissue where the energy will be deposited.” Final Act 6. The Examiner further finds that Telfair “teaches

that it is important to monitor and display the radiation beam profile which can be used to advantageously provide a safety control means.” *Id.* (citation omitted). Based on these findings the Examiner reasons that it would have been obvious “to improve the invention of Budd with the inclusion of a display of the beam of energy as taught by Telfair in order to advantageously improve the safety of the device.” *Id.* at 7–8. In addition, we note that the Examiner identifies the “first set of position signals,” required by claim 1, as corresponding to Budd’s “display signals used to generate a graphical user interface (GUI)” and identifies the “second set of position signals,” also required by claim 1, as “signals indicative of a position of a treatment device.” *Id.* at 3, 4 (citations omitted).

Appellant contends that “[n]either Budd et al. nor Telfair et al. disclose or suggest display of ‘an image of said beam of energy generated in response to said second set of position signals’ as recited in claim 1.” Appeal Br. 5. In support of this contention, Appellant notes that “[t]o the extent that Telfair et al. disclose display of a beam of energy, however, Telfair et al. disclose line of sight capture and display of the beam.” *Id.*; *see also* Reply Br. 2–3 (attacking Budd and Telfair separately).

The Examiner explains that Appellant’s argument “do[es] not properly address the combination,” because Telfair is only relied upon to teach “that one can display the profile of the beam and that it is advantageous to do so” and that “Budd provides the EP map and the second set of position signals required to place a beam on such map.” Ans. 19. The Examiner further explains that

it is well within the level or ordinary skill in the art to understand that the beam comes directly and linearly out from the beam-former such that Budd’s displaying of the position of the beam-former in response to receiving its location data, something

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which the appellant has not argued, leads invariably and inevitably to knowing the position of the beam and thus the ability to display the beam in response to the location data as well.

*Id.* at 22.

The Examiner is correct that “[n]on-obviousness cannot be established by attacking the references individually” when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co.*, 800 F.2d 1091, 1097, (Fed. Cir. 1986). As discussed *supra*, the rejection at issue relies upon Budd’s disclosure of a second set of position signals and Telfair’s teachings pertaining to the advantages of displaying an image of the beam. *See* Final Act. 3–8. The rejection does not suggest incorporating Telfair’s device for generating and displaying an image of the beam. *See id.* Rather, it is the Examiner’s position that the data in Budd’s second set of position signals can be used to generate and display an image of the beam. *See* Ans. 22. Appellant does not explain why Budd’s second set of position signals cannot be used in this manner or why one skilled in the art would not be motivated to display the beam. *See, generally*, Appeal Br. Thus, Appellant does not apprise us of error.

Appellant further argues that “the Examiner is improperly failing to read the invention as a whole and is instead combining piece-meal teachings from Budd et al. and Telfair et al. in a manner that is not disclosed or suggested in either reference” and that the Examiner “is improperly relying on hindsight obtained from Appellant's disclosure to arrive at a teaching or suggestion that is simply not present in either of Budd et al. or Telfair et al.” Appeal Br. 6.

In this case, the Examiner correctly finds that all the limitations of claim 1 are known in the prior art. *See* Final Act. 3–8. Appellant does not

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dispute these findings or provide evidence that the Examiner has taken into account knowledge that was not within the level of ordinary skill at the time of the invention. “[I]n many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 420 (2007). Moreover, Appellant does not identify any knowledge relied upon by the Examiner that was gleaned only from Appellant’s disclosure and that was not otherwise within the level of ordinary skill at the time of the invention, thereby obviating Appellant’s assertion of hindsight. *See In re McLaughlin*, 443 F.2d 1392 (CCPA 1971). Thus, Appellant’s argument is unconvincing.

In addition, Appellant argues that “neither Budd et al. nor Telfair et al. disclose or suggest ‘said image of said beam of energy superimposed on said electrophysiology map’ as recited in claim 1.” Appeal Br. 7. Again, Appellant is attacking the references individually, rather than addressing their combined teachings. The rejection relies upon Telfair’s teachings of an image of a beam on a location map and Budd’s teaching of superimposing an image on an electrophysiology map. *See* Final Act. 4–8. Thus, Appellant’s argument is not responsive to the rejection as articulated by the Examiner. Therefore, Appellant does not apprise us of error.

Appellant further argues that “there is no support in the cited section [of Telfair] for superimposing an image of the beam of energy onto another image.” Appeal Br. 8. As noted *supra*, the rejection relies upon Budd for its teaching of superimposing an image on an electrophysiology map. Final Act. 7 (“Budd teaches superimposing important features in the image such as the treatment device at column 4 lines 3–50 and Figure 15 especially part 23 and column 13 lines 1–7 such that in combination other important features such as the profile of the beam of energy would be superimposed

onto the electrophysiology map.”)(emphasis omitted). As the Examiner explains,

Budd does in fact teach overlaying the beam-former/treatment device in response to the second set of location signals, and given the above it follows that in a combination where a beam is a desirable feature the beam would also be overlaid in the same manner in response to the second set of position signals.

Ans. 23; *see also* Final Act. 5 (citing Fig. 10).

Budd’s Figure 15 is a flowchart showing the steps of “generat[ing] a representation of [the] chamber wall surface and [an] electrode array” and “generat[ing] a dynamic display of [the] movable electrode location relative to [the] chamber wall.” Budd, Fig. 15. Budd describes these steps shown in Figure 15 as follows:

At step 21 a model of the heart 16 chamber wall is generated from the information provided from the WSGP 25. Such a model can be represented on a display 36 in a manner typified in FIG. 6. Once this surface is rendered, within this surface a second figure representing the distal end of the monitoring catheter 14 can be presented. In this way, the full three dimensional geometry of the chamber and the array catheter can be presented.

Budd 12:60–67 (emphasis omitted). Thus, in Budd, the image of the end of monitoring catheter is superimposed on the image of the heart chamber wall. Accordingly, Appellant’s argument is unconvincing.

For these reasons, we sustain the Examiner’s decision rejecting claim 1, and claims 2–6, 8–10, and 21, which fall therewith.

Claims 11–16, 18–20, and 22

Appellant argues claims 11–16, 18–20, and 22 together. *See* Appeal Br. 9–14. We select independent claim 11 as the representative claim, and claims 12–16, 18–20, and 22 stand or fall with claim 11.

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The Examiner's rejection of claim 11 is substantially the same as the rejection of claim 1. *See* Final Act. 8–13. Appellant's arguments regarding claim 11 are also substantially, the same as Appellant's arguments pertaining to claim 1. These arguments are not convincing for the reasons discussed *supra*.

We sustain the Examiner's decision rejection claim 11, and claims 12–16, 18–20, and 22, which depend therefrom.

#### DECISION

The Examiner's rejection of claims 1–6, 8–16, and 18–22 is affirmed.

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

AFFIRMED