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KS - Whitmyer IP Group LLC 600 Summer Street 3rd Floor Stamford, CT 06901			IP, JASON M	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TIMOTHY KING, KLAUS-MARTIN IRION, and WERNER
GOEBEL

Appeal 2018-002459
Application 14/573,457
Technology Center 3700

Before BRETT C. MARTIN, ANNETTE R. REIMERS, and
LEE L. STEPINA, *Administrative Patent Judges*.

MARTIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant,¹ Karl Storz Imaging, Inc.,
appeals from the Examiner's decision to reject claims 1–9 and 19. Final
Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

Oral argument was heard in this matter on September 24, 2019, and a
transcript of the hearing will be entered into the record in due course.

We REVERSE.

¹ We use the word “Appellant” to refer to “Applicant” as defined in 37
C.F.R. § 1.42(a). Appellant identifies the real party in interest as Karl Storz
Imaging, Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed “to diagnostic imaging techniques generally, and more specifically to automatically displaying the last live video image of tissue prior to a switch in the mode of illumination as a reference still image.” Spec. ¶ 1. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An imaging system comprising:
 - an endoscope;
 - a first source providing illumination with a first light;
 - a second source providing illumination with a second light;
 - an imager capturing video from the endoscope;
 - a first display area displaying a live video image;
 - a second display area displaying a still image taken from a frame of the live video image prior to a first change between illumination with the first light and illumination with the second light; and
 - a control module receiving a user-generated light mode change signal for toggling at least between illumination with the first light and illumination with the second light;
 - the first light comprising visible light and the second light comprising an excitation light;
 - wherein, in response to each subsequent change between illumination with the first light and illumination with the second light initiated by the user-generated light mode change signal, both the first display area is updated to display a different live video image that is being captured after the respective subsequent change, and the second display area is updated to display a different still image that is taken from a frame of the live video image prior to the respective subsequent change.

REFERENCES

The prior art relied upon by the Examiner is:

Givol	US 2001/0027475 A1	Oct. 4, 2001
Fulghum	US 6,364,829 B1	Apr. 2, 2002
Fukuyama	US 2006/0173240 A1	Aug. 3, 2006
Iketani	US 2006/0256191 A1	Nov. 16, 2006

REJECTIONS

Claims 1, 3–11, and 19² stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Iketani, Givol, and Fukuyama. Ans. 2.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Iketani, Givol, Fukuyama, and Fulghum. Ans. 6.

OPINION

This case hinges on whether the Examiner has properly interpreted the claim element “a control module receiving a user-generated light-mode change signal for toggling between illumination with the first light and illumination with the second light.” Appellant argues that the proper interpretation

“is that a light change mode signal is transmitted when a user engages a control interface (e.g., button on an endoscope), wherein the light change mode signal toggles between one light mode (first source providing illumination with a first light) and another light mode (second source providing illumination with a second light).

² We note that Appellant has withdrawn claims 10–18 and there is no claim 28, but there is a claim 19. Accordingly, we assume this rejection is intended to be directed to claims 1, 3–9, and 19.

Reply Br. 5. The Examiner alleges that Appellant's interpretation is too narrow and that a proper, broader construction is "that a user, who is at the control interface toggles between imaging modes (i.e. images that are displayed)." Ans. 7-8. The Examiner goes on to explain "that if the user changes from one mode of view to another, he/she is toggling a change [that] manifests itself in the change of the viewed display, *and not necessarily the light source.*" *Id.* at 8 (emphasis added).

The Examiner's own explanation shows error in this construction. Nowhere in the Examiner's explanation/construction is there reference to toggling between light modes. Appellant's claims very specifically recite that a user toggles between light modes that provide first and second illumination and that upon that toggle, an image is captured from the first light source and displayed as a still while a second display shows live video from the target being illuminated by the second light source. Simply switching between display modes, as asserted by the Examiner, does not encompass the claimed toggle between two light sources. Again, the display is specifically tied to the light source and the Examiner does not account for this feature.

The Examiner further asserts that "[t]he claim does not clearly set forth toggling between the sources, but merely "illumination." Ans. 8. This simply is not true. The claim references illumination, but the illumination is specifically tied to each of the two light sources. In the context of the claim, toggling between illumination is toggling between the light sources. Regardless, the Examiner's interpretation simply refers to a toggling of images. Even if a user were to toggle between images having differing light sources, this is not the same as toggling between illumination from two

lights sources that then causes a change in what is displayed on the two monitors. The Examiner does not account for this link between toggling light and changing the two displayed images/videos. Accordingly, we do not sustain the Examiner's rejections, all of which rely on this faulty interpretation of the claims as applied to the references.

DECISION

The Examiner's rejections are REVERSED.

DECISION SUMMARY

Claims Rejected	Basis	Affirmed	Reversed
1, 3-11, and 19	§ 103 over Iketani, Givol, and Fukuyama	All	None
2	§ 103 over Iketani, Givol, Fukuyama and Fulghum	2	None

REVERSED