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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROYAL O. JENNER, TIMOTHY J. HOUGHTON II,
MASUD BOLOURI-SARANSAR, and RONALD A. NORDIN

Appeal 2018-004673
Application 15/007,432
Technology Center 3700

Before MICHAEL J. FITZPATRICK, MICHELLE R. OSINSKI, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant, Panduit Corp.,¹ appeals under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 1–4, 7–11, and 14. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ Appellant is the “applicant” under 37 C.F.R. § 1.42(b). Appellant identifies itself as the sole real party in interest. Appeal Br. 3.

STATEMENT OF THE CASE

The Specification

The Specification's disclosure relates to communication cables that are configured to reduce alien crosstalk between cables. Spec. ¶¶2–5. In the prior art, “the use of a mosaic tape (i.e., a plastic tape having discontinuous metallic shapes on one or both sides of the plastic tape)” has reduced such alien crosstalk. *Id.* ¶4. “However, . . . when manufactured using conventional processes, gaps between metallic shapes of the mosaic tape are wider than what is generally desired in order to adequately reduce alien crosstalk.” *Id.*

The Claims

Claims 1–14 were rejected. Final Act. 1. Thereafter, Appellant filed an amendment, which the Examiner entered. Amendment After Final (filed Aug. 1, 2017); Advisory Action (dated Aug. 16, 2017).

The amendment incorporated limitations from dependent claims 5 and 6 into claim 1, added the word “layout” to claim 1, and canceled claims 5 and 6. Amendment After Final (filed Aug. 1, 2017). Similarly, the amendment incorporated limitations from dependent claims 12 and 13 into claim 8, added the word “layout” to claim 8, and canceled claims 12 and 13. *Id.*

Accordingly, claims 1–4, 7–11, and 14 are the pending claims, all of which are rejected. Claim 1 is representative and is reproduced below with emphasis added to the limitation dispositive of this appeal.

1. A communication cable comprising:
a first communication connector and a second communication connector;

a plurality of twisted pairs of insulated conductors extending between said first communication connector and said second communication connector; and

a laminated film spanning a length and wrapped around said plurality of twisted pairs, said laminated film including:

an insulating substrate having a first edge extending in a direction of said length; and

at least one layer of metallic shapes formed from a metal layer, *said metallic shapes being arranged in a random or pseudo-random layout*, at least some of said metallic shapes being near to said first edge, and at least some of said metallic shapes that are near to said first edge being nonadjacent with said first edge.

Appeal Br. 12 (emphasis added).

The Examiner's Rejection

The rejection before us is claims 1–4, 7–11, and 14, under 35 U.S.C. §103(a), as unpatentable over WO 2008/157175 A1, published Dec. 24, 2008 (“Nordin”)² and US 6,168,458 B1, issued Jan. 2, 2001 (“Kraft”). Final Act. 2; Appeal Br. 7.

DISCUSSION

The Examiner relies on Nordin as teaching all of the subject matter of the rejected claims save “a first communication connector and a second communication connector.” Final Act. 2–7. For the communication connectors, the rejection relies on Kraft. *Id.* at 3, 5.

At dispute here is a different limitation, namely “said metallic shapes being arranged in a random or pseudo-random layout,” which is recited in

² Two of the named inventors of the instant Application are the named inventors of Nordin. *See* Nordin, [75].

claims 1 and 8 and incorporated by reference into the remaining, dependent claims.

Nordin discloses communication cables having layers of crosstalk-mitigating materials. Nordin ¶1. The Examiner cites paragraph 29 of Nordin as teaching metallic shapes being arranged in a random or pseudo-random layout. Ans. 7; *see also* Final Act. 4, 6 (citing Nordin ¶29 against similar limitations recited in now-canceled claims 5, 6, 12, and 13).

Paragraph 29 of Nordin states:

Crosstalk-mitigating materials similar to the crosstalk-mitigating material 21 shown in FIG. 2 can be made using a variety of different dimensions and shapes for the conductive areas. For example, according to one embodiment of the present invention, conductive areas maybe 0.2 inch x 0.3 inch rectangles, with 0.005 inches between rectangles. According to other embodiments of the present invention, the conductive areas may be made of different shapes such as regular or irregular polygons, other *irregular shapes*, curved closed shapes, isolated regions formed by conductive material cracks, and/or combinations of the above. FIG. 3 shows an alternative crosstalk-mitigating material 28 in which a substrate 22 is overlaid with hexagonal conductive areas 30. Similarly to the crosstalk-mitigating material 21, the hexagonal conductive areas 30 result in eddy currents 26 when acted upon by a magnetic field B.

Nordin ¶29 (emphasis added).

The Examiner finds that “when [these] irregular shapes of conductive areas [are] formed on the substrate [in Nordin], the layout of the conductive areas becomes irregular design, arrangement or layout, which examiner interpret as random layout.” Ans. 8.

Appellant argues that Nordin speaks to the shape of its “conductive areas” but not to the layout or arrangement that they might form. Appeal Br. 8; *see also* Reply Br. 3 (“There is no teaching in paragraph [0029] of

Nordin as to how the conductive areas themselves are laid out along crosstalk-mitigating material 21.”).

Appellant has the better position. That *Nordin* teaches conductive areas may be made of “irregular shapes” does not foreclose the possibility that irregularly-shape conductive areas could be arranged non-randomly, such as in a repeating pattern. Likewise, it does not foreclose the possibility that such shapes could be arranged randomly. However, such a possibility is insufficient to sustain the anticipation rejection before us. *See, e.g., In re Montgomery*, 677 F.3d 1375, 1379–80 (Fed. Cir. 2012) (“A reference may anticipate inherently if a claim limitation that is not expressly disclosed ‘is necessarily present, or inherent, in the single anticipating reference.’ The inherent result must inevitably result from the disclosed steps; ‘[i]nherency . . . may not be established by probabilities or possibilities.’” (citations omitted, alterations in original)).

Accordingly, we reverse the rejection of claims 1–4, 7–11, and 14.

SUMMARY

Claims Rejected	35 U.S.C.	Basis	Affirmed	Reversed
1–4, 7–11, 14	§ 103(a)	<i>Nordin</i> , Kraft		1–4, 7–11, 14

REVERSED