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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID K. LIM, JOSEPH ALLORE, and
MICHAEL J. LOMBARDI

Appeal 2018-008950
Application 14/716,950
Technology Center 2800

Before BRADLEY R. GARRIS, CATHERINE Q. TIMM, and
JAMES C. HOUSEL, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1, 3, 6, 8, 10, and 12. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as MOTOROLA MOBILITY LLC. Appeal Br. 2.

Appellant claims a portable electronic device comprising: a device housing 611; a three-layer adhesive assembly having a top adhesive layer 601, an intermediate layer 605 and a bottom adhesive layer 603; and a lens assembly including a device display 609 and a lens 607; wherein the display is affixed to an underside of the lens, and “wherein the device display is affixed to the top adhesive layer and the lower adhesive layer is affixed to the device housing” (independent claim 1, Fig. 6 (*see also* Figs. 4–5)). Appellant also claims a multilayer screen assembly for a portable electronic device having limitations corresponding to those previously described (remaining independent claim 8).

A copy of representative claim 1, taken from the Claims Appendix, of the Appeal Brief, appears below.

1. A portable electronic device comprising:
 - a device housing;
 - a three-layer adhesive assembly having a top adhesive layer, an intermediate layer and a bottom adhesive layer; and
 - a lens assembly including a device display and a lens;wherein the device display is affixed to an underside of the lens, and wherein the device display is affixed to the top adhesive layer and the lower adhesive layer is affixed to the device housing, the lens including at least one border region wherein the device display does not extend, and wherein the top adhesive layer is affixed to the lens in the at least one border region, the three layer adhesive assembly having a step displacement from the at least one border region to the display.

Appellant does not present separate arguments specifically directed to the dependent claims under rejection (Appeal Br. 10). Therefore, the dependent claims will stand or fall with their parent independent claims, of which claim 1 is representative.

The Examiner rejects claims 1, 3, 6, 8, 10, and 12 under 35 U.S.C. § 102(a)(1) as anticipated by Yamada (U.S. 2015/0062460 A1, Mar. 5, 2015) (Final Office Action (Final) 2–5).

In rejecting representative claim 1, the Examiner finds that Yamada’s Figure 1 discloses the claimed device including a three-layer adhesive assembly having a top adhesive layer (upper element 6), an intermediate layer (element 4) and a lower adhesive layer (lower element 6), and a lens assembly including a device display (element 5) and a lens (element 3) (*id.* at 2). The Examiner additionally finds that Yamada’s display is affixed to the top adhesive layer (i.e., wherein upper element 6 (the top adhesive layer) is affixed to the display 5 through element 4 (the intermediate layer) and lower element 6 (the lower adhesive layer)) (*id.* at 2–3). Moreover, the Examiner finds that Yamada’s lower adhesive layer (lower element 6) is affixed to the device housing (element 2) (i.e., wherein lower element 6 is affixed to the housing 2 through elements 4 and 8) (*id.* at 3).

In responding to Appellant’s arguments submitted prior to the Final Office Action, the Examiner acknowledges that Yamada’s three-layer adhesive assembly is disposed between the lens and the display but points out that “the claim[s] fail[] to specify that the display is directly affixed . . . with no intervening elements” (*id.* at 5). The Examiner also points out that, contrary to Appellant’s arguments, the claims do not require the three-layer adhesive assembly to be below both the lens and the display (*id.* at 6).

In the Appeal Brief, Appellant argues “[c]laim 1 expressly requires that the 3-layer adhesive structure be configured and positioned beneath both the lens and the display and tie that whole assembly to the housing” and then states “Yamada does not teach this expressly required structure” (Appeal Br. 9 (emphasis removed); *see also id.* at 10).

Appellant’s argument is unpersuasive because claim 1 does not contain the argued requirement as the Examiner explains in the Final Office Action (Final 5–6) and reiterates in the Answer (Ans. 3). We emphasize that, in the Appeal Brief, Appellant fails to acknowledge, much less show error in, the Examiner’s explanation.

As indicated above, in the Final Office Action, the Examiner interprets the claim term “affixed” as “fail[ing] to specify . . . directly affixed . . . with no intervening elements” (Final 5; *see also id.* at 6). In the Answer, the Examiner embellishes this claim interpretation by stating “the claim term ‘affixed’ . . . in broad interpretation is taken to mean things which are assembled together so as to move as one” (Ans. 3).

In the Reply Brief, Appellant argues that, “if ‘affixed to’ is rewritten to mean nothing except the parts ‘move as one,’ then an express requirement of claim 1 (‘the top adhesive layer is affixed to the lens in the . . . border region’) is made superfluous and is thus reduced to meaningless excess verbiage” (Reply Br. 3 (emphasis removed)).

Contrary to this argument, the quoted limitation of claim 1 is not made superfluous even if “[the claim phrase] ‘affixed to’ is rewritten to mean nothing except the parts ‘move as one’” (*id.*). This is because, regardless how the term “affixed” is interpreted, the limitation requires the

location where the top adhesive layer is affixed to the lens to be “in the . . . border region” (claim 1).

In summary, the record of this appeal supports the claim interpretation made by the Examiner in the Final Office Action that the claim term “affixed” does not require a directly affixed attachment and therefore encompasses the indirectly affixed attachment disclosed by Yamada.^{2,3} Once again, we emphasize that Appellant does not show error in, or even acknowledge, this claim interpretation.

For the reasons given above and expressed by the Examiner, we sustain the § 102(a)(1) rejection of claims 1, 3, 6, 8, 10, and 12.

We affirm the Examiner’s decision to reject these claims.

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).

CONCLUSION

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1,3,6,8,10,12	§ 102(a)(1) Yamada	1,3,6,8,10,12	
Overall Outcome		1,3,6,8,10,12	

² We observe that a common definition of the term “affix” is “attach” or “fasten” (*see, e.g.,* Concise Oxford American Dictionary 2006).

³ We express no opinion regarding the embellished claim interpretation made by the Examiner in the Answer.

Appeal 2018-008950
Application 14/716,950

AFFIRMED