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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* WESLEY A. STOLLER

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Appeal 2019-000372  
Application 14/923,429  
Technology Center 1700

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Before MICHAEL P. COLAIANNI, GEORGE C. BEST, and  
DEBRA L. DENNETT, *Administrative Patent Judges*.

DENNETT, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

STATEMENT OF THE CASE

Appellant<sup>2</sup> appeals under 35 U.S.C. § 134(a) from the final rejections of claims 13 and 15–22. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

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<sup>1</sup> In this Decision, we refer to the Specification filed October 26, 2015 (“Spec.”); the Final Office Action dated January 22, 2018 (“Final Act.”); the Advisory Action dated May 17, 2018 (“Adv. Act.”); the Appeal Brief filed July 18, 2018 (“Appeal Br.”); the Examiner’s Answer dated August 16, 2018 (“Ans.”); and the Reply Brief filed October 16, 2018 (“Reply Br.”).

<sup>2</sup> 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.

The claims are directed to an electronic device having a durable display screen interface and a shatterproof display lens. Independent claim 13 and dependent claim 21, reproduced below from the Claims Appendix of the Appeal Brief, illustrate the claimed subject matter with disputed terms emphasized:

13. An electronic device comprising:

**a display screen**, wherein the display screen comprises a clear plastic material;

**a shatterproof display lens adjacent to the display screen; and**

**a rigid structure underlying the display screen.**

21. The electronic device of claim 13, further comprising a replaceable screen protector positioned on a side of the shatterproof display lens opposite **the durable display screen.**

#### REFERENCES

The Examiner relies on the following prior art in rejecting the claims on appeal:

O'Donnell	US 2013/0045371 A1	Feb. 21, 2013
Han et al. ("Han")	US 2013/0108806 A1	May 2, 2013
Ka et al. ("Ka")	US 2014/0002385 A1	Jan. 2, 2014

## REJECTIONS

The Examiner maintains<sup>3</sup> the following rejections:

1. Claims 21 and 22 under 35 U.S.C. § 112(b),<sup>4</sup> as indefinite.<sup>5</sup>  
Final Act. 4, 5; Ans. 3.
2. Claims 13, 15, and 16 under 35 U.S.C. § 103 as unpatentable over Ka. Final Act. 6; Ans. 3.
3. Claims 17–20 under 35 U.S.C. § 103 as unpatentable over Ka in view of Han. Final Act. 6; Ans. 5.
4. Claims 21 and 22 under 35 U.S.C. § 103 as unpatentable over Ka in view of O’Donnell. Final Act. 8; Ans. 6.

## OPINION

### Rejection under 35 U.S.C. § 112 as indefinite

The Examiner finds that claims 21 and 22 are indefinite under 35 U.S.C § 112(b) for inclusion of the term “durable display screen.” Ans. 3. The Examiner finds the term lacks antecedent basis as independent claim 13, which claims 21 and 22 ultimately depend on, only recites “a display screen.” *Id.* The Examiner finds that “it is not clear if ‘the *durable* display

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<sup>3</sup> The Examiner has withdrawn the rejection of claims 13–22 under 35 U.S.C. § 112(a), as failing to comply with the written description requirement. Ans. 8.

<sup>4</sup> Because this application was filed after the March 16, 2013, effective date of the America Invents Act, we refer to the AIA version of the statute.

<sup>5</sup> The Examiner has withdrawn the rejection of claims 13–19 under 35 U.S.C. § 112(b), as indefinite. Ans. 8. Although the Examiner’s statement of the withdrawn indefiniteness rejection includes claims 21 and 22, we view this inclusion as a clerical error. *Compare id.* at 3 with 8; *see also id.* at 9 (the Examiner responds to Appellant’s arguments for reversal of the indefiniteness rejection of claims 21 and 22).

screen’ refers to . . . a display screen made durable versus a non-durable display screen.” *Id.* at 9.

Appellant argues that “the durable display screen” recited in claim 21 “is obviously the same ‘display screen’ recited in independent claim 13, and indeed, the two were recognized as the same element by the Examiner.”

Appeal Br. 8 (citing Final Act. 5). Appellant contends in the Appeal Brief that because there is only one recitation of a display screen in claim 13, it is clear that this “is the same display screen prefaced by ‘the’ in claim 21.” *Id.*

We are not persuaded by these arguments because the Examiner recognized that the two recitations referred to the same element *only* “[f]or the purposes of examination” during compact prosecution. Final Act. 5; *see* MPEP § 2103.I (requiring that “each claim should be reviewed for compliance with every statutory requirement . . . in the initial review of the application, even if one or more claims are found to be deficient with respect to some statutory requirement.”). As the Examiner finds, the recitation “durable display screen” is susceptible to multiple interpretations because the disputed claim term does not have an antecedent basis. *See* Ans. 9.

Where, as here, the Examiner issued

a well-grounded rejection that identifies ways in which language in a claim is ambiguous, vague, incoherent, opaque, or otherwise unclear in describing and defining the claimed invention, and thereafter the applicant fails to provide a satisfactory response, the USPTO can properly reject the claim as failing to meet the statutory requirements of § 112(b).

*In re Packard*, 751 F.3d 1307, 1311 (Fed. Cir. 2014); *see also Ex parte McAward*, Appeal No. 2015-006416, 2017 WL 3669566, at \*5–6 (PTAB Aug. 25, 2017) (precedential).

Appellant, therefore, fails to show that the Examiner reversibly errs in finding claims 21 and 22 to be indefinite.

Prior art rejections

*Rejection of claims 13, 15, and 16 over Ka*

Appellant argues, *inter alia*, that Ka fails to render independent claim 13 obvious because Ka fails to teach each and every limitation recited therein. *See, e.g.*, Appeal Br. 8. Appellant does not make separate patentability arguments for the dependent claims, which will stand or fall with claim 13. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Ka teaches each component of the electronic device recited in claim 13. Final Act. 6.

Ka's Figure 25 is reproduced below:

**FIG. 25**

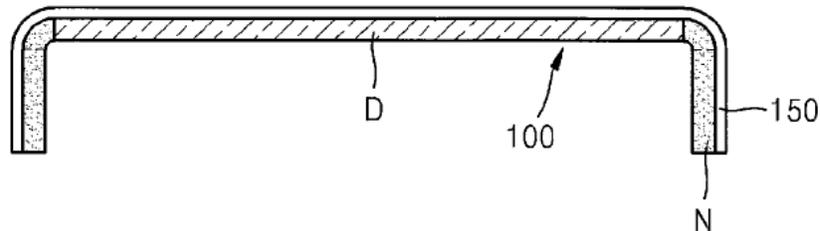


Figure 25 is a schematic cross-sectional view of a flexible display panel having a support member. *See* Ka ¶ 55. The elements shown in Figure 25 are transparent protection window 150, flexible display panel 100, display region D, and non-display region N. *Id.* ¶ 118.

Ka's Figure 26 is reproduced below:

**FIG. 26**

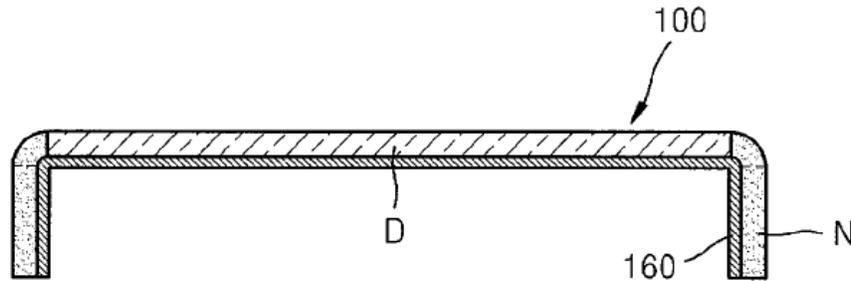


Figure 26 is a schematic cross-sectional view of a flexible display panel having a support member. *See id.* ¶ 55. The elements shown in Figure 26 are flexible display panel 100, support member 160, display region D, and non-display region N. *Id.* ¶¶ 118, 120.

The Examiner finds that Ka's flexible display panel 100 teaches the requisite display screen because the Specification describes the claimed display screen as flexible. Final Act. 6 (citing Ka ¶ 118; Spec. ¶ 10).

The Examiner finds that Ka teaches two alternative support members. Final Act. 6. First, the Examiner finds that Ka's transparent protective window 150 protects the adjacent flexible display panel 100 and thereby teaches the requisite shatterproof display lens. *Id.* (citing Ka ¶ 118; Fig. 25). Second, the Examiner finds that Ka's support member 160 suggests the claimed rigid structure because member 160 is "underlying the display screen 100 . . . , for the purpose of further strengthening or preventing the display screen 100 from being deformed due to a bending force on or a restoring force of the display screen 100." *Id.* (citing Ka ¶ 120; Fig. 26).

The Examiner concludes that it would have been obvious that Ka's alternative support member embodiments may be combined because "Ka

expressly states . . . that various changes in form and details may be made.” Adv. Act. 3–4 (citing Ka ¶ 125).

Appellant argues that Ka “teaches that[,] in the completed display assembly, a structure may overlay *or* underlay the flexible display, *but not both*.” Appeal Br. 8. Appellant further argues that Ka illustrates that “the flexible screen[] is supported by *one* rigid piece; that rigid piece is *either* an overlying rigid window [150] . . . or an underlying rigid support member [160].” *Id.* at 9 (citing Ka Figs. 25, 26). According to Appellant, the Examiner’s assertion that Ka’s “alternative embodiments should be combined merely because they appear in the same specification” would have been illogical, inefficient, and redundant. *Id.* at 10. Appellant contends that one of ordinary skill in the art would have had no reason or motivation to “needlessly add redundant elements simply to provide a function that an existing element already provides.” *Id.* at 11.

In response, the Examiner finds that Ka’s protective window 150 “protects the display screen [100] from external shock or scratches on the viewer surface.” Ans. 10 (citing Ka ¶ 118). The Examiner further finds that Ka’s support member 160 prevents deformations “on the internal surface of the display screen.” *Id.* (citing Ka ¶ 120). The Examiner thus concludes that “it would have been . . . obvious to one of ordinary skill in the art at the time, that the shatterproof display lens 150 and the rigid structure 160, when combined, provide protection for both the viewer surface *and the internal surface* of the flexible display screen 100 of Ka.” *Id.* at 11 (emphasis added).

On this record, we find that Ka fails to teach or suggest that the structure underlying the display screen is sufficiently *rigid* within the

meaning of claim 13. *See* Spec. ¶ 24 (describing that “core structure 401 . . . may be made of a wide variety of rigid, durable materials, such as high strength aluminum.”); *compare with* Ka’s support member 160 comprising undisclosed materials and flexible substrate 111 “formed of various flexible materials.” Ka ¶ 66. Even assuming that Ka’s support member 160 teaches or suggests a *rigid* structure underlying the display screen, the Examiner has not made any findings that Ka teaches or suggests that the proposed modification would have been beneficial. *See In re NuVasive, Inc.*, 842 F.3d 1376, 1382 (Fed. Cir. 2016) (“[T]he [PTO] must make the necessary findings and have an adequate ‘evidentiary basis for its findings.’”) (citing *In re Lee*, 277 F.3d 1338, 1344 (Fed. Cir. 2002)). Our review of the Examiner’s relied upon passage, i.e., Ka’s ¶ 120, finds no disclosure that support member 160 is directed to protecting flexible display screen 100’s internal surface.

Appellant, moreover, persuasively argues that the Examiner reversibly errs in concluding that one of ordinary skill in the art would have modified Ka to comprise shatterproof display lens 150 *and* a redundant support member 160 on each side of flexible display screen 100. *See* Final Act. 6; Adv. Act. 3–4; Appeal Br. 8–11; Ans. 10–11; and Reply Br. 1–2.

Appellant has identified reversible error in the Examiner’s *prima facie* case of obviousness with respect to claim 13. For the reasons set forth above, we do not sustain the Examiner’s rejection of claims 13, 15, and 16.

#### *Rejection of claims 17–20 over Ka and Han*

Appellant argues that claims 17–20 are patentable for the same reasons claim 13 is patentable. Appeal Br. 11. We agree with Appellant, and do not sustain the rejection of claims 17–20.

*Rejection of claims 21 and 22 over Ka and O'Donnell*

Appellant argues that claims 21 and 22 are patentable for the same reasons claim 13 is patentable. *Id.* We *pro forma* reverse the § 103 rejection of claims 21 and 22 over Ka in view of O'Donnell because we find that the Examiner's rejection is based on speculative meaning as to the scope of claims 21 and 22. *In re Steele*, 305 F.2d 859, 862-63 (CCPA 1962). Our reversal of the obviousness rejection is not based on the merits of that rejection in the context of § 103.

CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
21 and 22	§ 112(b)	21 and 22	
13, 15, and 16	§ 103 Ka		13, 15, and 16
17-20	§ 103 Ka Han		17-20
21 and 22	§ 103 Ka O'Donnell		21 and 22
<b>Overall Outcome</b>		21 and 22	13 and 15-20

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 IN PART