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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TAKETO KUMADA

Appeal 2019-000649
Application 14/881,601
Technology Center 2800

Before BEVERLY A. FRANKLIN, MICHAEL C. COLAIANNI, and
N. WHITNEY WILSON, *Administrative Patent Judges*.

WILSON, *Administrative Patent Judge*.

DECISION ON APPEAL

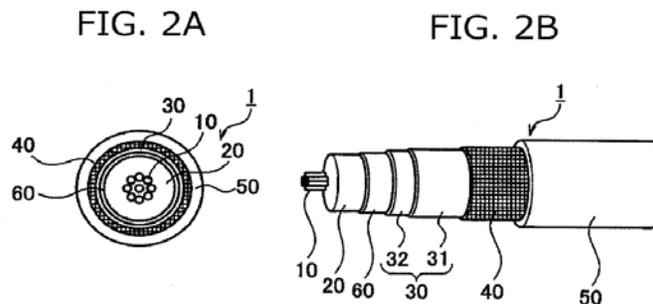
Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's November 14, 2017 decision finally rejecting claims 1–8 (“Final Act.”). We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We reverse.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Yazaki Corporation as the real party in interest (Appeal Br. 4).

CLAIMED SUBJECT MATTER

Appellant's disclosure relates to a coaxial cable 1 with an inner conductor 10, an insulator 20 surrounding the inner conductor 10, a film 30 surrounding the insulator 20, an outer conductor 40 surrounding the film 30, and a sheath 50 surrounding the outer conductor (Abstract), as illustrated in FIGS 2A and 2B:



Figs. 2A and 2B are configuration views illustrating a coaxial cable according to the embodiment of the invention

At least a part of the film 30 is colored in a different color from both colors of the insulator and the outer conductor (*id.*). Details of the claimed method are set forth in claim 1, which is reproduced below from the Claims Appendix to the Appeal Brief:

1. A coaxial cable comprising:
 - an inner conductor;
 - an insulator that is provided on an outer circumference of the inner conductor;
 - a film that abuts an outer circumference of the insulator;
 - an outer conductor that abuts on an outer circumference of the film; and
 - a sheath that is provided on an outer circumference of the outer conductor, wherein

at least a part of the film is colored, over an entire circumferential direction of the insulator, in a different color from both colors of the insulator and the outer conductor.

REJECTIONS

1. Claims 1–7 are rejected under 35 U.S.C. § 103 as unpatentable over Visser² in view of Smith.³
2. Claims 1 and 8 are rejected under 35 U.S.C. § 103 as unpatentable over Miller⁴ in view of Smith.

DISCUSSION

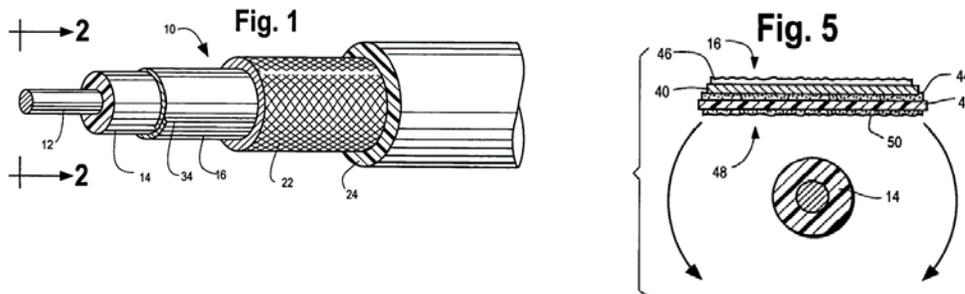
Appellant only makes arguments in connection with claim 1, the only independent claim on appeal (see, e.g. Appeal Br. 14). Accordingly, our analysis will focus on the rejection of claim 1 over Visser in view of Smith and the rejection of claim 1 over Miller in view of Smith. The remaining claims will stand or fall with claim 1.

Rejection 1 – Visser in view of Smith. The Examiner finds that Visser discloses a coaxial cable comprising inner conductor 12, insulator 14 that is provided at an outer circumference of inner conductor 12; film 42 that abuts an outer circumference of insulator 14, outer conductor 40 that abuts on an outer circumference of the film, and sheath 24 that is provided at an outer circumference of the outer conductor, as shown in FIGS. 1 and 5 below (Final Act. 2):

² Visser, US 7,084,343 B1, issued August 1, 2006.

³ Smith et al., US 2009/0114418 A1, published May 7, 2009.

⁴ Miller et al., US 4,987,274, issued January 22, 1991.



The Examiner further finds that Visser does not disclose part of the film being colored in a different color than both the color of insulator 14 and outer conductor 22 (Final Act. 3). The Examiner finds that Smith discloses a cable comprising a conductor surrounded by an insulator, which in turn is surrounded by one or more colored jacket (Final Act. 3, citing Smith ¶¶8, 18).

The Examiner determines that it would have been obvious to color Visser's film 42 to provide an identification means in the cable (*id.*).

Appellant argues, inter alia, that the cited art does not teach or suggest the film abutting the outer circumference of the insulator is colored differently from the insulator or the outer conductor (Appeal Br. 10). Appellant contends that Smith's coloring system is practiced on a non-coaxial cable, and uses its colored portion to permit visual inspection of the exterior surface of its cable (*id.*). Appellant further argues that Smith fails to teach the presence of the colored jacket abutted on its outer surface by an outer conductor (Appeal Br. 11). Therefore, according to Appellant, "Smith

cannot remedy the deficiency in Visser that is acknowledged by the Final Office Action.”⁵

This argument is not persuasive, as it relies on attacks on the references individually, and fails to address the combined teachings of the references. Nonobviousness 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. Inc.*, 800 F.2d 1091, 1097, (Fed. Cir. 1986). The relevant inquiry is whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the combined teachings of those references. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981). In this instance, that Smith does not specifically include an outer conductor abutting the outer circumference of the film layer is not persuasive of reversible error.

Appellant also argues that the Examiner has failed to provide a legally sufficient reason for a person of skill in the art to have combined the teachings of Visser and Smith (Appeal Br. 11). In order to establish obviousness, the Examiner must articulate some “reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir 2006). This reasoning must show that “there was an apparent reason to combine the known elements in the fashion claimed.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007). In this instance, the Examiner determined that the reason a person of skill in the art would have combined the teachings of Smith with those of Visser to arrive

⁵ That deficiency being that Visser does not disclose part of the film being colored in a different color than both the color of insulator 14 and outer conductor 22 (Final Act. 3).

at the claimed invention would have been “to provide an identification means in the cable” (Final Act. 3).

Appellant argues that because Visser’s plastic substrate 42 (corresponding to the claimed film layer) is covered by aluminum foil 40, any color on the plastic substrate would have been covered by the aluminum foil and, therefore, could not have served the function of being an identifier without removing each of Visser’s outer jacket, wire sheath, and aluminum foil layer (Appeal Br. 11). By contrast, according to Appellant, Smith discloses a non-invasive identification system by use of a colored outermost surface of the wire (*id.*). Appellant also notes that Visser discloses that its plastic substrate is adhesively bonded to the aluminum foil (Appeal Br. 12, citing Visser 4:2-4), making it impractical to separate Visser’s aluminum foil from the plastic substrate to identify the substrate by its color.

The Examiner argues that the claimed structure also has the colored film layer covered by several outer layers, but that it can nevertheless be used for identification when the cable is ready for termination, at an end of the cable, when one removes a portion of the outer jacket 24, the wire sheath 22, and the aluminum foil (see, Spec. ¶ 10). However, the Examiner’s explanation of why a person of skill in the art would have sought to combine Smith’s use of a colored identification layer with Visser’s structure does not account for the fact that in Visser’s structure, the plastic substrate is adhesively bonded to an aluminum layer, making it impractical to simply peel back the aluminum layer from the plastic substrate to use the color of the substrate for identification purposes. Thus, the preponderance of the evidence of record does not support the Examiner’s explanation of why a

person of skill in the art would have been motivated to combine Smith with Visser as required by the rejection.

Accordingly, we reverse this rejection.

Rejection 2 – Miller in view of Smith. The Examiner finds that Miller discloses each of the components of the claimed coaxial cable, except that Miller does not disclose a colored film located between the insulator and the outer conductor. The Examiner relies on the teachings of Smith, discussed above, and determines that a person of skill in the art would have “provided a film as taught by Smith[] in the cable of Miller[] to further protect the inner conductor and to provide an identification means in the cable” (Final Act. 5).

Appellant again argues, inter alia, that the cited art does not teach or suggest the film abutting the outer circumference of the insulator is colored differently from the insulator or the outer conductor (Appeal Br. 17). Appellant contends that Smith’s coloring system is practiced on a non-coaxial cable, and uses its colored portion to permit visual inspection of the exterior surface of its cable (*id.*). Appellant further argues that Smith fails to teach the presence of the colored jacket abutted on its outer surface by an outer conductor (Appeal Br. 11). Therefore, according to Appellant, “Smith cannot remedy the deficiency in Miller that is acknowledged by the Final Office Action.”

As was true with respect to Rejection 1, this argument is not persuasive, as it relies on attacks on the references individually, and fails to address the combined teachings of the references. *Merck*, 800 F.2d at 1097; *Keller*, 642 F.2d at 425.

However, Appellant also argues that the Examiner has failed to adequately establish why a person of skill in the art would have modified Miller's structure to include a colored film between the insulator and the outer conductor (Appeal Br. 19). This argument is persuasive of reversible error in the rejection. The Examiner's finding in this regard is simply that the proposed positioning of Smith's film in Miller's cable would "further protect the inner conductor." However, the Examiner does not provide an explanation of (a) how the film would have been expected to protect the inner conductor, or (b) why the goal of protecting the inner conductor would lead one of skill in the art to position Smith's colored film between the insulator and the outer conductor (as opposed, for example, to between the inner conductor and the insulator). Moreover, Appellant provides a detailed explanation of why a person of skill in the art reading Miller would not have believed that further protection of inner conductor was necessary.

Accordingly, even if a person of skill in the art would have been motivated to use Smith's colored jacket in Miller's cable for identification purposes, the Examiner has not adequately established a reason why that film would have been placed in the position specified by the claim. Accordingly, we reverse the rejection.

CONCLUSION

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1-7	§ 103 Visser and Smith		1-7
1 and 8	§ 103 Miller and Smith		1 and 8
Overall Outcome			1-8

REVERSED