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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEFFEN BIERMANN, ANDRE MAGI, and
PATRICK SACHSE

Appeal 2019-003192
Application 14/276,921
Technology Center 2800

Before BEVERLY A. FRANKLIN, N. WHITNEY WILSON, and
JANE E. INGLES, *Administrative Patent Judges*.

FRANKLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–19. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

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 Micro-Hybrid Electronic GmbH. Appeal Br. 1.

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of Appellant's subject matter on appeal and is set forth below:

1. A method for producing a hermetically gastight optoelectronic or electro-optical component, the method comprising:
 - a) providing a carrier for at least one optoelectronic or electro-optical converter element, the carrier also serving as a base plate of a housing;
 - b) providing a housing cap having an opening at a bottom surface such that, after the housing cap is placed on the carrier, an interior space for receiving the at least one converter element is formed by the housing cap above the carrier;
 - c) producing at least one orifice in the housing cap for passing through desired radiation through the at least one orifice in the housing cap along a desired beam path oriented substantially orthogonally to the carrier and having an axis that substantially centrally penetrates the at least one orifice and the at least one converter element;
 - d) providing at least one window element transparent to the radiation, the at least one window element having a shape and a size adapted to the orifice of the housing cap and having an edge area with an edge metallization as a contact surface, the edge metallization of the edge area of the window element being made as a layer sequence of at least two layers, wherein the edge area of the window element is coated with a first layer of chromium or titanium and a second layer comprising one of iron-nickel, platinum or palladium, said second layer being deposited on top of the first

layer and said edge metallization including a circumferential seam of fused metallic material;

e) assembling the carrier, the converter element, the housing cap and the at least one window element to form a hermetically sealed gastight connection between the housing cap and the edge area of the at least one window element by fusing a metallic material between the edge metallization of the at least one window element and the housing cap, and to form a hermetically sealed gastight connection between the housing cap and the carrier by fusing a metallic material between the housing cap and the carrier, wherein positioning the housing cap on the carrier comprises aligning the at least one orifice along the beam path opposite the at least one converter element.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Althaus et al.	US 5,127,075	Jun. 30, 1992
Kagawa et al.	US 5,483,095	Jan. 9, 1996
Weyh et al.	US 7,468,293 B2	Dec. 23, 2008
Bugno et al.	US 8,169,684 B2	May 1, 2012
Nakamura et al.	US 2002/0105591 A1	Aug. 8, 2002
Azimi et al.	US 2008/0291426 A1	Nov. 27, 2008
Sorg et al.	US 2,647,218	Jul. 28, 1953
Feitisch et al.	US 2011/0299084 A1	Dec. 8, 2011

REJECTIONS

1. Claims 1 and 3 are rejected under 35 U.S.C. § 103 as being unpatentable over Althaus in view of Kagawa and further in view of Weyh.

2. Claims 6–9, 11 and 13–15 are rejected under 35 U.S.C. § 103 as being unpatentable over Althaus in view of Kagawa and Bugno.

3. Claims 2 and 4 are rejected under 35 U.S.C. § 103 as being unpatentable over Althaus in view of Kagawa, Weyh, and Nakamura.

4. Claim 10 is rejected under 35 U.S.C. § 103 as being unpatentable over Althaus in view of Kagawa, Bugno, and Azimi.

5. Claim 5 is rejected under 35 U.S.C. § 103 as being unpatentable over Althaus in view of Kagawa, Weyh, and Sorg.

6. Claim 12 is rejected under 35 U.S.C. § 103 as being unpatentable over Althaus in view of Kagawa, Bugno, and Sorg.

7. Claims 16–19 are rejected under 35 U.S.C. § 103 as being unpatentable over Althaus in view of Kagawa, Bugno, and Feitisch.

OPINION

For purposes of this appeal, we address separately argued claims, and the remaining claims stand or fall with the argued claims, consistent with 37 C.F.R. § 41.37(c)(1)(iv) (2017).

Upon consideration of the evidence and each of the respective positions set forth in the record, we find that the preponderance of evidence supports the Examiner’s findings and conclusion that the subject matter of Appellants’ claims is unpatentable over the applied art for Rejections 2, 4, 6, and 7. Accordingly, we sustain these rejections on appeal for the reasons set forth in the Final Office Action and in the Answer. However, we reverse Rejections 1, 3, and 5 as discussed, *infra*.

Rejections 1, 3, and 5

We are persuaded by Appellant’s argument that the Examiner misconstrues claim 1 as not requiring that the second layer is deposited on top of the first layer. Appeal Br. 11. Reply Br. 3. The Examiner believes claim 1 allows for other intermediate layers between the first and second layer. Ans. 5. However, the plain meaning of “deposited on top of” is that the first layer is on top of the second layer (and no layer is interposed between them). Appellant’s Specification indicates same. Spec. ¶ 21. We note that to establish a *prima facie* case of obviousness, the Examiner must show that each and every limitation of the claim is described or suggested by the prior art, or would have been obvious based on the knowledge of those of ordinary skill in the art or the inferences and creative steps a person of ordinary skill in the art would have employed. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988); *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). In the instance case, each element of the claim has not been addressed in the rejection because of the flawed claim interpretation.

In view of the above, we thus reverse Rejection 1. We also reverse Rejections 3 and 5 for the same reasons.

Rejection 2

We refer to the Examiner’s position as set forth on pages 5–9 of the Final Office Action which we incorporate herein. We are unpersuaded by Appellant’s arguments regarding the combination of Althaus in view of Kagawa as set forth on pages 8–10 and page 12 of the Appeal Brief for the reasons expressed by the Examiner on pages 4–5 and page 7 of the Answer.

We agree with the Examiner that sufficient motivation has been provided in the record (Ans. 4–5) for combining these 2 references for the reasons stated by the Examiner therein. Applying a known technique to a known device (method or product) ready for improvement to yield predictable results is proper rationale in support of a *prima facie* case. MPEP 2143.

With regard to the additional reference of Bugno, we refer to the Examiner’s findings regarding this reference made on page 7 of the Final Office Action, and to the Examiner’s response to argument made on pages 6–7 of the Answer, and are unpersuaded by Appellant’s arguments for the reasons stated therein by the Examiner. We are also unpersuaded by Appellant’s position as set forth on pages 3–4 of the Reply Brief. The point being made by the Examiner relates to the motivation to combine the references, and it thus appears that Appellant’s reply is misplaced, and therefore unpersuasive.

In view of the above, we affirm Rejection 2.

Rejections 4, 6, and 7

Appellant relies upon the same arguments regarding the combination of Althaus in view of Kagawa and Bugno for these rejections, which are unpersuasive for the reasons discussed, *supra*. Appeal Br. 14–16. We thus affirm these rejections for the same reasons that we affirm Rejection 2.

CONCLUSION

We affirm-in-part the Examiner’s decision.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1 and 3	103	Althaus, Kagawa and Weyh		1 and 3
6–9, 11, and 13–15	103	Althaus, Kagawa and Bugno	6–9, 11, and 13–15	
2 and 4	103	Althaus, Kagawa, Weyh, and Nakamura		2 and 4
10	103	Althaus, Kagawa, Bugno, and Azimi	10	
5	103	Althaus, Kagawa, Weyh, and Sorg		5
12	103	Althaus, Kagawa, Bugno, and Sorg	12	
16–19	103	Althaus, Kagawa, Bugno, and Feitisch	16–19	
Overall Outcome			6–19	1–5

TIME PERIOD FOR RESPONSE

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).

AFFIRMED-IN-PART