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Brooks Kushman 1000 Town Center 22nd Floor Southfield, MI 48075			JELSM, JONATHAN G	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DEREK C. TARRANT

Appeal 2019-004251
Application 14/866,103
Technology Center 1700

Before JEFFREY T. SMITH, KAREN M. HASTINGS, and
MERRELL C. CASHION, JR., *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is in response to a Request for Rehearing (“Req. Reh’g”), dated May 18, 2020, of our Decision, mailed March 16, 2020 (“Decision”), wherein we affirmed the Examiner’s § 103 rejections of all appealed claims.

We have reconsidered our Decision, in light of Appellant’s comments in the Request for Rehearing, and we find no error in the disposition of the § 103 rejections.

Appellant¹ states that the “Board with clear error however ignores the inferences one of ordinary skill [in the art] would have drawn from Banerjee” (Req. Reh’g 2). Appellant contends that they have explained “the

¹ We use the word “Appellant” to refer to the “[A]pplicant” as defined in 37 C.F.R. § 1.42(a). Appellant is ViZn Energy Systems, Inc., which is also identified as the real party in interest (Appeal Br. 2).

technical underpinnings” regarding why Banerjee’s negative electrode is covered in spite of the fact that Banerjee never discusses any coating or covering (*id.*). Appellant contends that the only evidence to support the Examiner’s position is Banerjee’s absence of explicitly discussing any coating and that such is not a preponderance of the evidence (*id.*).

These arguments are not persuasive of any error in our Decision.

First, as stated in our Decision,

Banerjee never discusses any coating over its nickel plated cathode metal sheets 16 and indeed teaches that it is a “clean” substrate (Ans. 13; Banerjee ¶ 61). Banerjee also discusses that the substrate is completely stripped of zinc (Banerjee ¶ 67). In light of these circumstances, a preponderance of the evidence supports the Examiner’s position that one of ordinary skill in the art would have read Banerjee as not including any further materials over its nickel-plated copper cathode metal sheets.

(Decision 4).

Appellant’s argument fails to properly consider the breadth of the claim language, the applied prior art as a whole, and the inferences and creative steps that one of ordinary skill in the art would have employed as discussed in our Decision (*e.g.*, Decision 6) and in the Examiner’s Answer.

As we stated in our Decision,

Notably, Appellant does not dispute the Examiner’s findings and conclusions with respect to the combination of Banerjee with either of Richardson or Wakizaka, which both teach electroless plating of nickel cobalt phosphorus alloy, noting that Wakizaka specifically teaches its metal coating for a negative electrode active material for a secondary battery (*e.g.*, Wakizaka ¶¶ 1, 50). Thus, Appellant’s arguments do not fully address the Examiner’s rejections on appeal.

(Decision 4).

Appellant has not persuasively shown error in the Examiner's determination that one of ordinary skill in the art would have predictably used a known negative nickel cobalt phosphorus electroless plated electrode as exemplified in Wakizaka, or known electroless plating of nickel cobalt phosphorus coating as exemplified in Richardson in Banerjee (*e.g.*, Ans. 5, 8). Appellant fails to explain why it would not have been within the ordinary level of skill, using no more than ordinary creativity, to modify Banerjee as set out by the Examiner. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007) (“[a] person of ordinary skill is also a person of ordinary creativity, not an automaton”). Furthermore, “if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.” *KSR*, 550 U.S. at 417.

Accordingly, Appellant's arguments in the Request for Rehearing lack persuasive merit.

Thus, we decline to modify our decision to affirm the Examiner's § 103 rejections of the appealed claims.

Outcome of Decision on Rehearing:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Denied	Granted
1, 2, 5-9, 12, 13	103	Banerjee, Richardson	1, 2, 5-9, 12, 13	
1, 2, 5-9, 12, 13	103	Banerjee, Wakizaka	1, 2, 5-9, 12, 13	
3, 4, 10, 11	103	Banerjee, Richardson, Sinha	3, 4, 10, 11	
3, 4, 10, 11	103	Banerjee, Wakizaka, Sinha	3, 4, 10, 11	
Overall Outcome			1-13	

Final Outcome of Appeal after Rehearing:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 5-9, 12, 13	103	Banerjee, Richardson	1, 2, 5-9, 12, 13	
1, 2, 5-9, 12, 13	103	Banerjee, Wakizaka	1, 2, 5-9, 12, 13	
3, 4, 10, 11	103	Banerjee, Richardson, Sinha	3, 4, 10, 11	
3, 4, 10, 11	103	Banerjee, Wakizaka, Sinha	3, 4, 10, 11	
Overall Outcome			1-13	

Appeal 2019-004251
Application 14/866,103

In conclusion, Appellant's Request is denied with respect to making changes to the final disposition of the rejections.

This Decision on the Request for Rehearing incorporates our Decision, mailed March 16, 2020, and is final for the purposes of judicial review. *See* 37 C.F.R. § 41.52 (a)(1).

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).

DENIED