



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/109,197	06/30/2016	Patrick J. Fiori	FIORI-0001-01-US	1095
132414	7590	09/10/2020	EXAMINER	
Indiana University Maurer School of Law Intellectual Property Legal Clinic 211 South Indiana Avenue Bloomington, IN 47405			GARFT, CHRISTOPHER	
			ART UNIT	PAPER NUMBER
			3632	
			MAIL DATE	DELIVERY MODE
			09/10/2020	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PATRICK J. FIORI

Appeal 2019-005404
Application 15/109,197
Technology Center 3600

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

SCHOPFER, *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, 4–11, 14, 18–20, 24, and 25. 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 Patrick J. Fiori. Appeal Br. 4.

BACKGROUND

The Specification discloses that “[t]he present disclosure relates to mounting devices. More particularly, the present disclosure relates to mechanical mounting devices for handheld computers, for example smartphones and tablet computers.” Spec. ¶ 2.

CLAIMS

Claims 1, 14, and 25 are the independent claims on appeal. Claim 1 is illustrative of the appealed claims and recites:

1. A mounting device for supporting a handheld computer, the mounting device including:

a housing that is operationally configured to support the handheld computer, the housing having a top portion, a bottom portion, a first side portion, a second side portion, and a rear portion; and

at least one articulated assembly attached to the housing through a connecting joint, the at least one articulated assembly having a default position and including a plurality of articulated members, a first of the plurality of articulated members being resiliently biased toward the default position, and a second of the plurality of articulated members being positioned distal to the first of the plurality of articulated members relative to the connecting joint, such that the default position of the articulated assembly is flat to span across a region of the rear portion of the housing with the plurality of articulated members positioned collinear to one another.

Response to Notification of Non-Compliant Appeal Br. 2.

REJECTIONS

1. The Examiner rejects claims 1, 4, 7, 9,² 11, 14, 18, 19, 24, and 25 under 35 U.S.C. § 103 as unpatentable over Emsky³ in view of Lee.⁴
2. The Examiner rejects claims 5, 6, and 20 under 35 U.S.C. § 103 as unpatentable over Emsky in view of Lee and Chen.⁵
3. The Examiner rejects claims 8 and 10 under 35 U.S.C. § 103 as unpatentable over Emsky in view of Lee and Schmidt.⁶

DISCUSSION

Claim 1

With respect to claim 1, the Examiner finds that Emsky discloses a mounting device as claimed, except that Emsky does not disclose that the first articulated member is resiliently biased as claimed. Final Act. 2–3, 5–6. However, the Examiner finds that Lee discloses a supporting device for an electronic device that includes an articulated assembly that is resiliently biased and forms a portion of the rear surface of the device. *Id.* at 6. The Examiner determines that

[i]t would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to modify the Emsky device to have the connecting joint be resiliently biased as disclosed by Lee since Lee states that such a

² The Examiner does not list claim 9 in the heading for this rejection, but the Examiner discusses this claim in the body of the rejection. Final Act. 6. Thus, we consider the Examiner's omission of this claim in the rejection heading to be an inadvertent error.

³ Emsky, US 8,016,107 B2, iss. Sept. 13, 2011.

⁴ Lee et al., US 8,695,939 B2, iss. Apr. 15, 2014.

⁵ Chen, US 8,132,670 B1, iss. Mar. 13, 2012.

⁶ Schmidt, US 2012/0083153 A1, pub. Apr. 5, 2012.

modification enables the device to be clipped onto an appropriate article (Col. 5, Lines 40-46).

Id. The Examiner also explains that one of ordinary skill in the art would have recognized that using a resiliently biased articulated member would provide a more secure attachment mechanism for the device such that it may be suitably clipped onto a surface. Ans. 9.

Appellant first argues that the reasoning provided by the Examiner for making the proposed combination is insufficient because Emsky already achieves the purpose for which the Examiner relies on Lee and does not require any modification. Appeal Br. 9. More specifically, Appellant argues that Emsky's device is already "capable of clipping" without modification.

Id. We are not persuaded by this argument. We agree with the Examiner that one of ordinary skill in the art would recognize that the use of a torsion spring, as taught by Lee, to bias the articulated member toward the housing back "would provide a more secure attachment to" a "surface . . . making it less likely that the device unintentionally falls off or is removed from the . . . surface." Ans. 9. Thus, even though Emsky's device may be clipped onto a surface, we disagree that one of ordinary skill in the art would not have had a reason to make the combination proposed by the Examiner. And because the Examiner has set forth an adequate reason to support the proposed combination, we are not persuaded that the motivation relied upon by the Examiner suggests the rejection is based on hindsight, as Appellant contends. *See* Appeal Br. 9.

Next, Appellant argues that the proposed combination "renders Emsky unsatisfactory for its intended purpose" and destroys a stated function of Emsky's device. Appeal Br. 10. Appellant asserts that the purpose of Emsky's "hinged members is to provide for setting 'the angular

position of hinge plate (31) to be ‘modified and held in various angular positions.’” *Id.* (citing Emsky col. 3, ll. 36–38). Appellant also asserts that “the stated purpose of Emsky [is] to provide indexed positions allowing the user to select between the various predefined positions.” *Id.*

We disagree. Emsky discloses that “it would be desirable to provide a device that provides various capabilities, such as carrying, mounting and protective capabilities, that is adaptable to promote the use of portable electronic devices in various environments.” Emsky col. 1, ll. 38–41. Emsky further discloses that the device is designed such that it may be mounted “against a vertical, nearly-vertical or non-horizontal surface.” *Id.* at col. 1, ll. 58–59. To that end, Emsky discloses a hinge plate 31 and an indexed hinge or friction hinge “such that the angular position of hinge plate 31 may be modified and held in various angular positions with respect to tray 12.” *Id.* at col. 3, ll. 34–42. Emsky provides a second hinge member, which is either an indexed or friction hinge, that allows for the second hinge plate 34 to be held at various angular positions with respect to the hinge plate 31. *Id.* Thus, Emsky teaches two hinges and that each may be either an indexed hinge or a friction hinge, and one of ordinary skill in the art would understand that the purpose of these hinges is to hold the device at various angles. Accordingly, although Emsky teaches the use of indexed positions, the device is not limited to such use. Further, Appellant fails to explain adequately how Emsky’s purpose to hold the device at various positions is destroyed or defeated by the modification of the hinges to include tensioned hinges as proposed by the Examiner. One of ordinary skill in the art would recognize that using a biased hinge as the Examiner

proposes would still allow the device to be held at various positions depending on the surface to which it is attached.

Next, Appellant argues that the proposed combination would produce insignificant clipping. Appeal Br. 11; *see also* Reply Br. 4–5. Yet, this argument appears to be premised on the rejection relying on a direct substitution of Lee’s hinges into Emsky’s device without further modification, and from this, Appellant asserts that the resulting product would only provide “resilient biasing [over] a short length” that would provide insignificant clipping. Appeal Br. 11. “The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference. . . . Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.” *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Here, the rejection makes clear that the Examiner is proposing that Emsky be modified to include a connecting joint that is resiliently biased, as taught by Lee. The Examiner does not indicate that such a modification would occur by substituting any specific element of Lee into any specific element of Emsky. Thus, Appellant’s argument, which appears to be based on such a direct substitution, is not persuasive.

Appellant also argues that the rejection is based on impermissible hindsight. Final Act. 12. In support, Appellant asserts that the Examiner has not provided an adequate reason to support the modification of only one of Emsky’s hinges and without modification of others. *Id.* We are not persuaded. It is not clear what relevance this argument has to claim 1, which requires only a single hinge that is resiliently biased and does not indicate whether any other hinges are so biased. We note that the Examiner’s

rejection of claim 1 does not appear to preclude including other biased hinges in the proposed modification of Emsky. *See* Final Act. 2–3, 5–6.

Based on the foregoing, we are not persuaded of error in the rejection of claim 1. Accordingly, we sustain the rejection of claim 1. Appellant relies on the same arguments with respect to the rejection of independent claim 25 and dependent claims 4, 7, 9, 11, and 24. Appellant also does not provide separate arguments regarding the rejections of claims 5, 6, 8, and 10. Accordingly, we also sustain the rejections of claims 4–11, 24, and 25.

Claim 14

With respect to claim 14, Appellant argues that the Examiner erred in finding that replacing only one of Emsky’s hinges with a biased hinge would result in a first biased hinged and a second hinge that is less biased than the first. Appeal Br. 12. In making this argument, Appellant appears to interpret claim 14 to require that the second articulated member is resiliently biased toward a default position. However, the plain language of the claim requires only that the second articulated member is biased less than the first articulated member. The Examiner indicates that this is the broadest reasonable interpretation of the claim. *See* Ans. 14–15.

We agree with the Examiner’s interpretation. We see no indication in the claim that the second articulated member must be resiliently biased. Although Appellant points to a particular embodiment in the Specification that “provides an example of the claimed resilient biasing of the second articulated member,” Appellant does not explain adequately why the use of an articulated member without resilient biasing is precluded by the claim language as it would be interpreted in light of the Specification, and we are

not persuaded that the written disclosure excludes the use of second hinges that are not resiliently biased. Appeal Br. 13.

Under the Examiner's interpretation of the claim, we agree with the Examiner that the proposed modification results in a first articulated member that is resiliently biased and a second member that is not biased. Because the second member is not resiliently biased, it necessarily is less biased than the first member.

Based on the foregoing, we are not persuaded of error in the rejection of claim 14. Accordingly, we sustain the rejection of claim 14. Appellant does not provide separate arguments regarding the rejections of claims 18–20, and thus, we also sustain the rejections of those claims.

Other Arguments

Appellant raises other arguments that are not tied to the rejection of any specific claims. Appellant argues that “the Examiner relies on basic physics, but ignores the same basic physics as ‘opinion.’” Appeal Br. 14. Appellant also argues that “the Examiner impermissibly introduces elements that are not taught in the applied prior art.” *Id.* at 15. Further, Appellant argues that “the Examiner both inconsistently rejected the claims and argued in support of the claims,” which shows that the Examiner is relying on impermissible hindsight. *Id.* at 15–17. To the extent these arguments have been addressed above with respect to the rejection of independent claims 1 and 14, we are not persuaded for the reasons provided. And to the extent these arguments have not been addressed, we are not persuaded of error because they do not specifically address the claims and rejections before us.

CONCLUSION

We AFFIRM the rejections of claims 1, 4–11, 14, 18–20, 24, and 25.

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 4, 7, 9, 11, 14, 18, 19, 24, 25	103	Emsky, Lee	1, 4, 7, 9, 11, 14, 18, 19, 24, 25	
5, 6, 20	103	Emsky, Lee, Chen	5, 6, 20	
8, 10	103	Emsky, Lee, Schmidt	8, 10	
Overall Outcome			1, 4–11, 14, 18,–20, 24, 25	

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) (2017).

AFFIRMED