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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SHINJI HIROSE,
DAISUKE KUMAZAKI, and TAKAFUMI NISHIDA

Appeal 2019-006747
Application 15/299,791
Technology Center 2800

Before GEORGE C. BEST, BRIAN D. RANGE, and
MICHAEL G. McMANUS, *Administrative Patent Judges*.

RANGE, *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 1–16. 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. Appellant identifies the real party in interest as NINTENDO CO., LTD. Appeal Br. 3.

CLAIMED SUBJECT MATTER²

Appellant describes the invention as relating to a charger and charge system for charging an electronic device placed on a pedestal. Spec. 1:9–10. Claim 1 is illustrative, and we reproduce it below with emphases added to certain key recitations we address on appeal:

1. A charger that charges an electronic device that includes a first electrical connector with a first electrical contact, **a first fitting portion on a first surface**, and a second fitting portion on a second surface that is different from the first surface, the charger comprising:

a placement portion configured so that the electronic device may be placed on the placement portion to be charged;

a third fitting portion configured to be fitted to the first fitting portion;

a fourth fitting portion configured to be fitted to the second fitting portion in a state where the first fitting portion is fitted to the third fitting portion; and

a second electrical connector with a second electrical contact configured to be electrically connected to the first electrical contact in conjunction with the fourth fitting portion being fitted to the second fitting portion, wherein

the third fitting portion and the fourth fitting portion are within the placement portion,

the placement portion is configured to receive the electronic device in a linear direction,

the fourth fitting portion is movable parallel to the linear direction, and

² In this Decision, we refer to the Non-Final Office Action dated December 27, 2018 (“Non-Final Act.”), the Appeal Brief filed May 13, 2019 (“Appeal Br.”), the Examiner’s Answer dated July 16, 2019 (“Ans.”), and the Reply Brief filed September 13, 2019 (“Reply Br.”).

the third fitting portion and the fourth fitting portion are not electrical contacts.

REFERENCES

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

<u>Name</u>	<u>Reference</u>	<u>Date</u>
Liautaud et al. ("Liautaud")	US 4,588,938	May 13, 1986
Holzer et al. ("Holzer")	US 2013/0058036 A1	Mar. 7, 2013
Kim	US 2013/0241470 A1	Sept. 19, 2013
Shindo et al. ("Shindo")	US 2015/0362953 A1	Dec. 17, 2015

REJECTIONS

The Examiner maintains (Ans. 3) the following rejections on appeal:

- A. Claims 1–5, 7–12, 15, and 16 under 35 U.S.C. § 103 as obvious over Shindo in view of Liautaud. Non-Final Act. 3.
- B. Claims 6 and 13 under 35 U.S.C. § 103 as obvious over Shindo in view of Liautaud and Holzer. *Id.* at 12.
- C. Claim 14 under 35 U.S.C. § 103 as obvious over Shindo in view of Liautaud, Holzer, and Kim. *Id.* at 14.

OPINION

The Examiner rejects each independent claim on appeal—claims 1, 15, and 16—as obvious over Shindo in view of Liautaud. Non-Final Act. 3. We first address claims 1 and 16.

The Examiner finds that Shindo teaches most of the recitations of claim 1's charger and claim 16's system. Non-Final Act. 3–5, 9–12 (citing

Shindo). The Examiner finds that Shindo teaches an electronic device with a first fitting portion on a first surface and a charger with a third fitting portion configured to be fitted to the first fitting portion. *Id.* at 3–4, 9–10.

The Examiner finds that Shindo does not explicitly disclose the fourth fitting portion is moveable parallel to the linear direction. *Id.* at 5, 11. The Examiner finds that Liautaud teaches a bottom plate movable parallel to the linear direction. *Id.* at 5, 12 (citing Liautaud). The Examiner determines that it would have been obvious to modify Shindo to include the movable fourth fitting portion taught by Liautaud to maintain electrical contacts in tight mechanical connection. *Id.*

Appellant argues that Shindo does not teach the claims’ recited “third fitting portion configured to be fitted to the first fitting portion.” Appeal Br. 8–10. Appellant’s argument persuades us of Examiner error.

To understand the Examiner’s position and Appellant’s argument, we must first address the “first fitting portion.” The Examiner determines that the lower back portion of Shindo’s electronic device (i.e., the Shindo PC) corresponds to the claims’ recited “first fitting portion.” Ans. 4–7; Reply Br. 2–4. The Examiner illustrates this position by annotating Shindo Figures 3B and 4C. Ans. 6–7. We reproduce those annotated figures below.

FIG. 3B

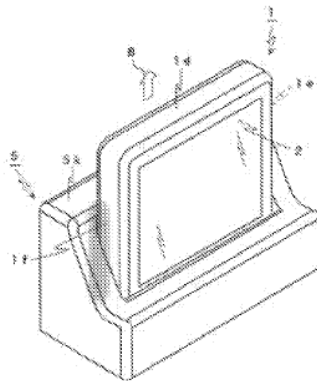
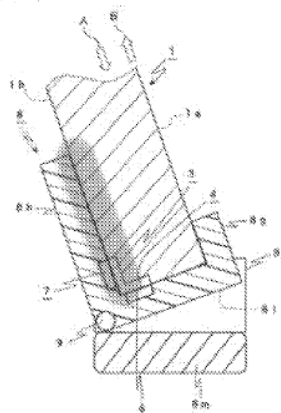


FIG. 4C



Shindo Figure 3B (left) is a perspective view showing a process in which the Shindo PC is mounted on the Shindo expansion unit. Shindo ¶ 14. Shindo Figure 4C (right) is a sectional side view showing the PC mounted on the expansion unit. *Id.* ¶ 17. The Examiner annotated each of Shindo’s figures above with a grey shading on the lower portion of the rear of the Shindo PC to indicate the “first fitting portion.” Ans. at 6–7.

Appellant argues that the shaded structure is not “a first fitting portion on a first surface” as the claims recite. Appeal Br. 8–11. We agree. If the rear of the Shindo PC corresponds to “a first surface,” the structure the Examiner shades is part of, or a portion of, the first surface. The shaded structure, however, is not *on* the first surface as the claims require. The claims use of the word “on” indicates that the recited “fitting portions” constitute some identifiable structure *on* the first surface rather than merely being an arbitrarily defined *portion of* the first surface.

This interpretation of the claims is consistent with the Specification. The Specification never refers to a “fitting portion” as merely being an indistinct portion of a device’s surface. Rather, the Specification describes, for example, second concave portion 102a of the electronic device as fitting to convex portion 1200 of the charger. *See, e.g.*, Spec. Fig. 6, 19:13–22.

The Examiner’s explanation for how Shindo teaches the claims’ “third fitting portion configured to be fitted to the first fitting portion” is based upon Shindo’s charger fitting to the shaded portion of the Shindo electronic device. Ans. 4–7. As we explain above, however, the shading portion is not a “first fitting portion.” Thus, the Examiner also lacks an adequate explanation of how Shindo teaches a “third fitting portion” that meets the claims’ “configured to” recitation.

As an alternative theory, the Examiner finds that Shindo's insulator 3a could be considered a "first fitting portion." Appeal Br. 8. As the Appellant explains, however, claims 1 and 16 also recite that the device has "a first electrical connector with a first electrical contact." Reply Br. 3–4. The insulator 3a surrounding Shindo's electrical contact is part of an "electrical connector." *See* Shindo Fig. 1D (illustrating a front view of an electrical connection terminal with electrodes 3b surrounded by insulator 3a). The Examiner, thus, has not adequately explained how insulator 3a can be the separately recited "first fitting portion." *See Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2010) ("[w]here a claim lists elements separately, 'the clear implication of the claim language' is that those elements are 'distinct component[s]' of the patented invention." (citation omitted)).

Because the Examiner does not adequately explain why the "third fitting portion" of claims 1 and 16 is obvious in view of the cited art, we do not sustain the Examiner's rejection of those claims. We also do not sustain the Examiner's rejections of claims 2–14 because those claims depend from claim 1, and the Examiner's treatment of those claims does not cure the error we address above.

The issue we address above does not apply to independent claim 15. Claim 15 does not recite, for example, any electronic device with a first fitting portion *on* a first surface. Rather, claim 15 recites:

15. A charger that charges an electronic device that has a first fitting portion and a first electrical connector with a first electrical contact, the charger comprising:

a placement portion configured so that the electronic device may be placed on the placement portion to be charged

and the placement portion is configured to receive the electronic device in a linear direction;

a second fitting portion configured to be fitted to the first fitting portion, wherein the second fitting portion is not an electrical contact;

a second electrical connector with a second electrical contact configured to be electrically connected to the first electrical contact; and

a movable member that is movable parallel to the linear direction, that is movable in conjunction with the second fitting portion being fitted to the first fitting portion, and that surrounds of the second electrical connector.

Appeal Br. 18 (Claims App.). The Examiner's rejection of claim 15 is similar to the rejection of claims 1 and 16 in relevant respects. Non-Final Act. 8–9.

Appellant argues, for two reasons, that it would not have been obvious to modify Shindo to include Liautaud's moveable structure. Appeal Br. 12–13. First, Appellant argues that Shindo would not need Liautaud's spring loaded electrical contact mechanism because Shindo already includes spring loaded contacts. *Id.* at 12. Second, Appellant argues that there is no reason to make Shindo's convex parts 6'd (according to the Examiner, the fourth fitting portion) moveable as claim 1 recites and that Liautaud does not disclose a moving fitting portion. *Id.* at 12–13.

Appellant's arguments are unpersuasive. Shindo teaches elastic electrodes 10b that deform by the weight of PC1. Shindo Figs. 6A and 6B, ¶ 70. Shindo states that the purpose of the deformation is so that the electrodes "become electrically connected with more certainty." Shindo ¶ 70. This purpose, however, does not negate the Examiner's determination that Shindo could benefit from Liautaud's spring 74 "serving to maintain . . .

opposing contacts in tight mechanical engagement.” Liautaud 5:24–27; *see also id.* at Fig. 6; Ans. 10. Appellant argues that it would be superfluous to enable motion of Shindo’s wall (Reply Br. 6), but the preponderance of the evidence indicates that Liautaud’s spring would, as Liautaud teaches, help maintain a tight mechanical engagement. Liautaud 5:24–27. Use of Liautaud’s spring in Shindo would be no more than “predictable use of prior art elements according to their established functions.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007).

Because Appellant’s argument does not identify error, we sustain the Examiner’s rejection of claim 15. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential), *cited with approval in In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (“[I]t has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections.”).

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–5, 7–12, 15, 16	103	Shindo, Liautaud	15	1–5, 7–12, 16
6, 13	103	Shindo, Liautaud, Holzer		6, 13
14	103	Shindo, Liautaud, Holzer, Kim		14
Overall Outcome			15	1–14, 16

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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) (2018).

AFFIRMED IN PART