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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WILLIAM F. WRIGHT, DAVID RAY RADLIFF,
WILLIAM JOSEPH CURRY, and GARY W. ADAMS

Appeal 2020-001623
Application 15/349,585¹
Technology Center 3600

Before MURRIEL E. CRAWFORD, BIBHU R. MOHANTY, and
BRUCE T. WIEDER, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner’s final rejection of claims 1–19. 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 CommScope Technologies LLC. (Appeal Br. 3.)

CLAIMED SUBJECT MATTER

Appellant's "invention relates to fiber optics and, more particularly, to fiber optic component holders, which may be employed in enclosures for fiber optic device connections." (Spec. 1, ll. 9–11.)

Claims 1, 8, and 16 are the independent claims on appeal. Claim 1 is illustrative. It recites:

1. A fiber optic component holder for securing a fiber optic component deployed in an optical fiber communications system, the fiber optic component holder comprising:
 - a substrate to support the fiber optic component deployed in the optical fiber communications system; and
 - a holding medium mounted on the substrate, the holding medium having a contacting surface, the contacting surface having a tack,
 - wherein the tack of the contacting surface releasably bonds the fiber optic component to the contacting surface, and
 - wherein upon removal of the fiber optic component from the contacting surface, the contacting surface retains its tack and remains mounted on the substrate to permit re-placement of the same or a different fiber optic component on the contacting surface, wherein the tack of the contacting surface releasably bonds the re-placed same or different fiber optic component to the contacting surface.

REJECTIONS²

Claims 1, 2, and 4–7 are rejected under 35 U.S.C. § 103(a) as unpatentable in view of Sun (US 2004/0161212 A1, pub. Aug. 19, 2004) and Amrhein (US 6,562,214 B1, iss. May 13, 2003).

² The double patenting rejection of claims 1–4, 6, 8, 9, and 14 was withdrawn. (See Answer 3.)

Claim 3 is rejected under 35 U.S.C. § 103(a) as unpatentable in view of Sun, Amrhein, and Achurch (GB 2 238 398 A, pub. May 29, 1991).

Claims 8–19 are rejected under 35 U.S.C. § 103(a) as unpatentable in view of Sun, Amrhein, Braga (US 7,406,242 B1, iss. July 29, 2008), and Achurch.

ANALYSIS

Obviousness is a legal conclusion involving a determination of underlying facts.

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.

KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007) (quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966)).

With regard to the scope and content of the prior art, the Examiner finds that Sun “teaches a fiber optic apparatus and a method of holding a fiber optic component therein, comprising: providing a holding medium,” “placing the fiber optic component . . . in intimate contact with the holding medium,” and “wherein the tack of the holding medium releasably bonds the fiber optic component.” (Final Action 4.) The Examiner also finds that “Sun does not specif[y] whether the releasable adhesive retains its tack upon removal of the fiber optic component to permit re-placement . . . or

placement of a further fiber optic component.” (*Id.* at 5.) However, the Examiner finds that Amrhein teaches

a releasable adhesive that allows for repeated peeling of substrates from each other and rejoining them may be used. (See at least col. 3, line 64 col. 4, line 19) It is obvious certain types, if not all, releasable adhesives retain their tack and can be used repeatedly after “releasing” parts being adhered thereto. Since both Sun and Amrhein are drawn to a common technical problem of bonding parts together using releasable adhesives, one of ordinary skill in the art would have found it obvious to use the reusable and releasable adhesive on the substrate, as suggested by Amrhein, in Sun’s invention, so that when the optical fiber ribbon is “re-positioned” on the substrate 18, the process is simplified and does not require additional adhesive.

(*Id.*)

Amrhein discloses “[a] laminated capillary array assembly having a plurality of capillaries substantially entirely enclosed by a first and a second substrate laminated together.” (Amrhein, Abstract.) Appellant argues that

[t]he releasable adhesive allows for repeated peeling of *plastic film substrates from each other and rejoining them*. Amrhein does not disclose the that [sic] capillary array is removed and replaced on the contacting surface of the plastic film substrate and implies that it would not be possible to retain a *replaced* capillary array on a single one of the plastic film substrate. Rather, a second plastic film substrate must be present to enclose the capillary array *between* the two plastic film substrates. Only when two plastic film substrates are joined, whether the adhesive is on one or both of the substrates, is the capillary array secured therebetween.

(Appeal Br. 12–13.)

The Examiner answers that

Amrhein clearly teaches plastic film substrates having an adhesive (corresponding to “a holding medium”) thereon, wherein the adhesive may be a pressure-sensitive adhesive, so

that, when in use, the substrates are pressed together to bind the capillary array therebetween. (See col. 4, ll. 3-19) The adherent property of the pressure-sensitive adhesive activated by a pressure upon the adhesive is what is known in the art as tack . . . , and this is what allows “*repeated* peeling of substrates from each other and *rejoining* them”. (Col. 4, ll. 15-18) . . . [F]or Amrhein’s invention to function properly, the releasable pressure-sensitive adhesive must remain on at least one of the two plastic film substrates, and the releasable pressure-sensitive adhesive must also retain its tack, so that the two plastic film substrates can adhere to each other repeatedly, via the tack, while bonding the capillary array therebetween repeatedly, on a surface of the releasable pressure-sensitive adhesive.

(Answer 4.)

Appellant replies that

[t]here is no teaching that adhesive on one or the other of the substrates has sufficient tack such that *a substrate without any adhesive* would re-adhere to the substrate containing the adhesive or that an item without adhesive and different from the substrate would adhere to the substrate containing the adhesive.

(Reply Br. 4.) More particularly, Appellant argues

that the tack of the contacting surface within Applicant’s claim is sufficient to releasably bond with a re-placed item *without requiring the re-placed item to be identical to the substrate and without requiring the re-placed item to also have adhesive and be pressed against the substrate as is taught in Amrhein (Amrhein teaches repeated peeling and rejoining of two items, each of which always have [sic] adhesive and each of which are [sic] identical to the other)*. Therefore, it is the Appellant’s position that Sun in view of Amrhein does not teach “the tack of the contacting surface releasably bonds the re-placed same or different fiber optic component to the contacting surface.”

(*Id.*) We do not find Appellant’s arguments persuasive.

“[O]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of

references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). A reference “must be read, not in isolation, but for what it fairly teaches in combination with the prior art as a whole.” *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Moreover, “[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference.” *In re Keller*, 642 F.2d at 425. Rather, the test is “whether the claimed invention[is] rendered obvious by the teachings of the prior art as a whole.” *In re Etter*, 756 F.2d 852, 859 (Fed. Cir. 1985). In other words, obviousness is more than what is specifically disclosed in the cited references. “If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.” *KSR Int’l Co.*, 550 U.S. at 417.

Amrhein discloses an embodiment in which

at least one substrate has an adhesive, such as pressure-sensitive adhesive (PSA), applied to its capillary-facing surface. . . . Alternatively, an adhesive may be applied to both substrates. The substrates are pressed together to bind and to enclose the capillary array therebetween. A permanent or a releasable adhesive may be used. The releasable adhesive allows for repeated peeling of substrates from each other and rejoining them.

(Amrhein, col. 4, ll. 7–16.) In other words, Amrhein discloses use of a releasable pressure-sensitive adhesive on *one of two* substrates that allows for repeated peeling and rejoining of the substrates. The Examiner determines that it would have been “obvious to use the reusable and releasable adhesive on the substrate, as suggested by Amrhein, in Sun’s invention, so that when the optical fiber ribbon is “re-positioned” on the

substrate 18, the process is simplified and does not require additional adhesive,” i.e., the adhesive retains its tack. (Final Action 5.)

By reading Amrhein in isolation, and not for what it fairly teaches in combination with Sun, Appellant does not persuasively argue error in the Examiner’s determination that, in view of Amrhein’s disclosure of use of a releasable adhesive on a substrate that allows repeated releasing and rejoining, i.e., that retains its tack, it would have been obvious to modify the releasable adhesive on the substrate of Sun to use a releasable adhesive that also allows repeated releasing and rejoining, i.e., that retains its tack.

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 1. Appellant presents similar arguments for independent claims 8 and 16,³ and for similar reasons we are not persuaded of error. (*See* Appeal Br. 13–15.) Dependent claims 2–7, 9–15, and 17–19 are not separately argued and fall with their respective independent claims. *See* 37 C.F.R. § 41.37(c)(1)(iv).

³ We note that claim 16 does not recite “wherein the tack of the contacting surface releasably bonds the re-placed same or different fiber optic component to the contacting surface,” as recited in claim 1. Rather claim 16 recites that “the tack of the contacting surface releasably bonds the splice sleeve to the contacting surface.” In arguing the patentability of claim 16, Appellant argues that “Sun does not teach a releasable adhesive.” (Appeal Br. 14.) We disagree. Sun discloses that “the adhesive on substrate **18** should be a releasable adhesive.” (Sun ¶ 22; *see also* Final Action 4–5.) For this reason also, we are not persuaded that the Examiner erred in rejecting claim 16.

CONCLUSION

The Examiner's rejections of claims 1–19 under 35 U.S.C. § 103(a) are affirmed.

Specifically:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 4–7	103(a)	Sun, Amrhein	1, 2, 4–7	
3	103(a)	Sun, Amrhein, Achurch	3	
8–19	103(a)	Sun, Amrhein, Braga, Achurch	8–19	
Overall Outcome			1–19	

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