

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAEKO KUGA

Appeal No. 1998-2464
Application No. 08/353,278

ON BRIEF

Before KRASS, JERRY SMITH and RUGGIERO, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-3, all of the claims pending in the application.

The invention is directed to a liquid crystal display (LCD) wherein a light emitting layer containing a fluorescent material is caused to emit light, without using any power source for causing a back light to emit light.

Representative independent claim 1 is reproduced as follows:

1. A liquid crystal display apparatus comprising:

a liquid crystal panel; and

a light emitting layer provided on a back surface of said liquid crystal panel, said light emitting layer containing a fluorescent material caused to emit light by external light transmitted by said liquid crystal panel and incident on said light emitting layer.

No references are relied on by the examiner.

Claims 1-3 stand rejected under 35 U.S.C. § 112, first paragraph, as relying on a nonenabling disclosure.

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

In applying a rejection under the enablement clause of 35 U.S.C. § 112, an examiner must establish on the record that he/she has a reasonable basis for questioning the adequacy of the disclosure to enable a person of ordinary skill in the art to make and use the claimed invention without resorting to undue experimentation. Once the examiner has advanced a reasonable basis for questioning the adequacy of the disclosure, the burden shifts and it becomes incumbent on the applicant to factually demonstrate that his/her application is in fact sufficient.

In the instant case, the examiner contends that the skilled artisan would expect the

light emitting layer to be more inefficient than a reflecting layer and therefore not function as a backlight. Therefore, concludes the examiner, the device would not overcome any of the difficulties of reflective displays. Further, the examiner contends that the original disclosure seems to describe a photo-multiplier which does not require any external power sources. “However, it does not describe any detailed examples nor include any test results to convince one of ordinary skill in that art that such a device is possible” [answer-page 4].

We hold that the examiner has not established a reasonable basis for challenging the adequacy of the disclosure. Appellant has not disclosed, nor does he claim, a fluorescent material which emits the same amount, or more, of light incident thereupon. Artisans would understand that the fluorescent layer of the instant invention only emits light for a short period of time since there is no power source and the light emitted is derived only from the ambient light incident on the liquid crystal panel. With regard to the examiner’s argument that there is no disclosure of the fluorescent material emitting light for “a short period,” this is irrelevant since the name of the game is the claim and the instant claims do not recite anything about the period of time in which light is emitted. The claims call only for an LCD which comprises a liquid crystal panel and a light emitting layer which contains a fluorescent material caused to emit light by external light transmitted by the liquid crystal panel. Independent claim 3 adds the limitation that the light emitting layer is “an anisotropic conductive light emitting layer.” This

much is clearly disclosed by the instant specification. Moreover, skilled artisans would have no problem at all making and using the claimed invention. Taking claim 1 as exemplary, the artisan would surely know how to provide for a light emitting layer containing a fluorescent material on the back surface of a liquid crystal panel, as instructed by the subject matter of claim 1.

The claimed subject matter may be very broad in nature and, if possible, may be subject to attack by the examiner through the application of prior art. However, the claimed subject matter does not run afoul of the enablement clause of 35 U.S.C. § 112.

The examiner's decision rejecting claims 1-3 under 35 U.S.C. § 112, first paragraph, is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
)	
)	
JERRY SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
JOSEPH F. RUGGIERO)	
Administrative Patent Judge)	

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