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EXAMINER
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SONG, HOON K

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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

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* SHAKIL AHMED AWAN  
and ADRIAN MAXWELL SMITH<sup>1</sup>

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Appeal 2015-003763  
Application 12/362,664  
Technology Center 2800

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Before BRADLEY R. GARRIS, MICHAEL P. COLAIANNI, and  
CHRISTOPHER C. KENNEDY, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134, Appellants appeal from the Examiner's rejection under 35 U.S.C. § 103(a) of claims 1–19, 25, and 26 as unpatentable over Brown (EP 0314231 A2, published May 3, 1989) in view of Palanker (US 2005/0090875 A1, published April 28, 2005). We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

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<sup>1</sup> Elekta AB is identified as the real party in interest. Br. 3.

Appellants claim a plurality of leaves (100, 102) for a multi-leaf collimator (independent claim 1) as well as the collimator itself (remaining independent claim 2) wherein each leaf comprises a leaf structure having a fluorescent marker (118) secured thereto (Fig. 2).

A copy of representative claim 1, taken from the Claims Appendix of the Appeal Brief, appears below.

1. A plurality of leaves for a multi-leaf collimator for radiotherapeutic apparatus, each leaf comprising a leaf structure having a shape suitable for use as a leaf in a multi-leaf collimator and a fluorescent marker secured to the leaf structure, and each leaf being movable with respect to a frame of the multi-leaf collimator for limiting or extending a radiation field.

Appellants do not present separate arguments specifically directed to dependent claims 3–19, 25, and 26 (Br. 9–14). As a consequence, these dependent claims will stand or fall with their parent independent claims of which claim 1 is representative.

The Examiner concludes that it would have been obvious to replace the retro-reflector of Brown's collimator with a fluorescent material in view of Palanker's teaching to use a retro-reflector or preferably a fluorescent material for tracking the position of a retinal prosthesis (Final Action 2–3).

Appellants contest this obviousness conclusion by arguing “[t]he use of the fluorescent markers, rather than a retro reflective type marker as is common in the prior art, requires a modified illumination source and camera” (Br. 9) and that “[t]he illumination source and camera of Brown would not function for position detection in the apparatus of the claimed invention, nor would the apparatus disclosed in Brown function as does the

present invention with the fluorescent markers in place of the retroreflective markers” (*id.*).

Appellants’ argument is not persuasive because it is premised on an incorrect test for obviousness. “The test for obviousness is not whether the features of the secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. 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). Appellants fail to explain why the combined teachings of Brown and Palanker would not have suggested modifying Brown as necessary for effecting use of Palanker’s fluorescent material.

Appellants also argue that the rejection is improper on the ground that Palanker is non-analogous art because it is not within their field of endeavor and is not reasonably pertinent to the particular problem with which they are involved (Br. 10).

We agree that Palanker is not within Appellants’ field of endeavor. However, for the reasons detailed in the Answer, we fully share the Examiner’s determination that Palanker is reasonably pertinent to the problem addressed by Appellants (Ans. ¶ bridging 3–4). The following comments are added for emphasis and completeness.

“A reference is reasonably pertinent if . . . it is one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his problem.” *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992).

According to Appellants, “the problem with which the applicant is concerned is the accuracy of leaf position tracking in a multi-leaf collimator

during the delivery of radiation for therapeutic treatment” (Br. 12). However, such a narrow description confines the problem to Appellants’ multi-field collimator field of endeavor, thereby essentially eliminating the reasonably-pertinent test. Furthermore, this narrow description is inconsistent with the Specification which characterizes Appellants’ invention as providing “a solution to problems that arise in machine vision applications in hostile or otherwise difficult environments, such as the interior of a radiotherapeutic apparatus” (Spec. 1:11–14 (emphasis added)).

Rather, we agree with the Examiner that Appellants’ problem relates to system confusion caused by stray light and/or stray reflections in prior art systems using reflectors (Ans. 3 (citing Spec. 3:21–23)) which Appellants solve by using a fluorescing marker to obtain increased contrast compared to simple reflection or retro-reflection arrangements (*id.* (citing Spec. 4:15–16)). Similarly, there is persuasive merit in the Examiner’s determination that Palanker is reasonably pertinent to this problem because Palanker teaches using a retro-reflector or fluorescent material (*id.* (citing Palanker ¶ 33)) and, like Appellants, teaches a preference for fluorescent material in order to improve contrast (*id.* (citing Palanker ¶ 34)). For these reasons, Palanker logically would have commended itself to an inventor’s attention in considering the problem of increasing the contrast of simple reflection or retro-reflection arrangements.

In summary, Palanker is analogous art because it is reasonably pertinent to the particular problem with which Appellants are involved.

The decision of the Examiner is affirmed.

TIME PERIOD

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).

AFFIRMED