

**REMARKS/ARGUMENTS**

After the foregoing Amendment, claims 1 and 4-6 are currently pending in this application. Claims 2-3 are canceled. Claim 1 is amended. No new matter has been added.

**Claim Rejections - 35 U.S.C. §102**

Claims 1, 2 and 6 are rejected under pre-AIA 35 U.S.C. 102(b) as being anticipated by JPU55-107796 (hereinafter the '796 reference).

Claim 1 has been amended to include features of claims 2 and 3. The '796 reference does not disclose the features of claim 1, as amended. For example, the '796 reference does not disclose:

the vibration element is elongated in the second direction,

the vibration member has a rectangular shape elongated in a third direction which is perpendicular to the first and second directions, and

a relationship of  $d1/d2 \geq 1.5$  is maintained, wherein d1 denotes a distance between the vibration element and the first portion in the third direction and d2 denotes a distance between the vibration element and the first portion in the second direction.

Basis for the amendment to claim 1 may be found throughout the published application, and for example, at original claims 2 and 3, FIG. 4 and paragraphs [0024] and [0025] of the published application.

Embodiments disclosed in the present application include a vibration device 15 having a vibration member 12 and a vibration element 14. As shown in the see-through representation in FIG. 4, vibration member 12 includes a first portion 12a and a second portion 12b. The vibration element 14 is elongated (extends) in the second direction (x-axis direction) and is spaced a distance d2 from the first portion 12a in the second direction (x-axis direction). The vibration member 12 is elongated (extends) in the third direction (y-axis direction) and is spaced a distance d1 from the first portion 12a in the third direction (y-axis direction). In this configuration shown in FIG. 4, the vibration device 15 imparts vibration to the vibration member 12 and the relationship of  $d1/d2 \geq 1.5$  is maintained without arranging the vibration element 14 in a central region of the vibration member 12. Accordingly, sound may be produced with sufficient sound pressure from the vibration member 12. As shown in Fig. 11 of this application, when  $d1/d2$  is less than 1.5, the vibration of the vibration member 12 is weakened and the sound pressure produced from the vibration member is rapidly decreased. In an embodiment where the vibration member 12 is a cover of a display of a portable terminal, the display is avoided from being hidden behind the vibration element 14.

As shown at FIG. 1 of the '796 reference, a length direction of a vibration element coincides with a length direction of a vibration member. A calculation based on FIG. 1 of the '796 reference shows that a relationship of  $d1/d2 = 1.4$  is maintained. The vibration device of the '796 reference does not satisfy the

relationship of  $d1/d2 \geq 1.5$ . Furthermore, the '796 reference only describes flattening frequency characteristic of sound pressure. The '796 reference does not describe imparting great vibration to the vibration member and increasing sound pressure produced from the vibration member. Further, the effect produced by the vibration device of claim 1 is not described in the '796 reference, nor is not predictable from '796 reference. The '796 reference does not disclose or suggest the features of claim 1.

In regard to the features of claim 3, now amended to be features of claim 1, the Office Action admits that “the English translation of the portion of '796 fails to explicitly disclose the relationship of  $d1/d2 > 1.5$ . However, the Office action alleges “it would have been obvious to one having ordinary skill in the art at the time the invention was made to design the vibrator with the proposed range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only ordinary skill in the art.” The Office Action is improperly arguing conclusions of law. That is, the Office Action is improperly concluding that a person of ordinary skill would have designed the claimed vibrator because another case (having different facts than the present claim) held that where general conditions of a claim are disclosed, that workable ranges involve ordinary skill in the art. It is also improper for the Office Action to legally conclude that “general conditions” of claim 1 are disclosed. Further, as described in MPEP 2144 III,

The examiner must apply the law consistently to each application after considering all the relevant facts. If the facts in a prior legal decision are sufficiently similar to those in an application under examination, the examiner may use the rationale used by the court. If the applicant has demonstrated the criticality of a specific limitation, it would not be appropriate to rely solely on the rationale used by the court to support an obviousness rejection. “The value of the exceedingly large body of precedent wherein our predecessor courts and this court have applied the law of obviousness to particular facts, is that there has been built a wide spectrum of illustrations and accompanying reasoning, that have been melded into a fairly consistent application of law to a great variety of facts.” *In re Eli Lilly & Co.*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990).

The Examiner’s improper legal conclusions do not provide any consideration of all the relevant facts. There is no indication that the facts of prior holdings are sufficiently similar to those of the present application. Further, the applicant has demonstrated that specific features that  $d1/d2 \geq 1.5$  is maintained are critical and that it would not be appropriate to rely solely on the rationale used by the court to support an obviousness rejection.

The Office Action also alleges that “the claimed limitations are not structural limitations and therefore given little patentable weight.” Applicants disagree. The claimed limitations “a relationship of  $d1/d2 \geq 1.5$  is maintained” is structural. The relationship of  $d1/d2$  is clearly structural and when vibrations are imparted, the structure of the claimed device “ $d1/d2 \geq 1.5$ ” is maintained. Accordingly, claim 1 is in condition for allowance.

The rejection of claim 2 is moot due to the cancelation of this claim.

Claim 6 is allowable at least because of its dependency on claim 1.

Based on the arguments presented above, withdrawal of the §102(b) rejection of claims 1, 2 and 6 is respectfully requested.

**Claim Rejections - 35 U.S.C. §103**

Claims 3-5 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over JP 55-107796.

The rejection of claim 3 is moot due to the cancelation of this claim.

Claims 4 and 5 are allowable for at least their dependency on claim 1.

Based on the arguments presented above, withdrawal of the §103(a) rejection of claims 4-5 are respectfully requested.

**Conclusion**

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephonic interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

**Applicant(s): KYOCERA Corporation**  
**Application No.: 13/993,440**

In view of the foregoing amendment and remarks, Applicant respectfully submits that the present application is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

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