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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEAN-FREDERIC PLANTE, DAVID EDMONDSON, and
ERIC G. WIESNER

Appeal 2015-005324
Application 12/869,871
Technology Center 2600

Before KRISTEN L. DROESCH, JAMES W. DEJMEK, and
SCOTT E. BAIN, *Administrative Patent Judges*.

BAIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1, 2, 4, 5, 8–12, 14–17, and 20–26, which constitute all the claims pending in this application. The remaining claims have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

¹ Appellants identify Hewlett-Packard Development Company, LP, Hewlett-Packard Company, and HPQ Holdings, LLC as the real parties in interest. App. Br. 2.

STATEMENT OF THE CASE

Appellants' invention relates to "interactive wall décor" featuring a decorative image printed over an interactive pattern readable by a reader device. Spec. ¶¶ 1–3, 11–12. Claims 1, 8, and 14 are independent. Claims 1 and 26 are illustrative of the invention, and read as follows:

1. An interactive décor comprising:

a substrate;

a plurality of separate *interactive zones*, each of the interactive zones corresponding to a different executable action when addressed by a reader device;

an *interactive pattern in each of the interactive zones*, the interactive pattern printed on the substrate, the interactive pattern addressable using the reader device but substantially indiscernible to a naked eye at a viewing distance;

a decorative image printed over the interactive pattern, the decorative image being predominant to the naked eye, and the interactive pattern covered by the decorative image still addressable using the reader device.

26. The interactive décor of claim 25, wherein the other information is at least one of time and temperature.

App. Br. 12 (emphases added).

PRIOR ART

The Examiner relies upon the following prior art in rejecting the claims:

Goldstein et al.	US 2005/0243369 A1	Nov. 3, 2005
Encrenaz et al.	US 2007/0273917 A1	Nov. 29, 2007

THE REJECTIONS ON APPEAL

Claim 26 stands rejected under pre-AIA 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Appellants regard as the invention. Final Act. 3–5.

Claims 1, 2, 4, 5, 8–12, 14–17, and 20–26 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Goldstein et al. (“Goldstein”) and Encrenaz et al. (“Encrenaz”).² Ans. 5–15.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments presented in this appeal. Arguments Appellants could have made but chose not to make in the Briefs are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). With respect to the indefiniteness rejection of claim 26, and the obviousness rejection of claim 26, we are persuaded by Appellants’ arguments that the Examiner erred. With respect to the remaining rejections, however, we agree with the Examiner’s findings and conclusions and adopt them as our own. We provide the following to highlight and address specific arguments.

² The Final Action appears to contain a typographical error (at 5) in stating this rejection pertains to claims “1–20,” because several of claims 1–20 had already been withdrawn, and the Examiner’s rejection also addresses claims 21–26. Final Act. 14–15. The Examiner also objects to claim 21, Final Act. 3, but the objection is not before us. *See* 37 C.F.R. §§ 1.113(a), 1.181.

Rejection Under 35 U.S.C. § 112, second paragraph

Appellants argue the Examiner erred in rejecting claim 26 under 35 U.S.C. § 112, second paragraph because, according to Appellants, the claim does not recite the elements cited by the Examiner as being indefinite. App. Br. 6. In the Final Action, the Examiner finds “Applicant’s disclosure” refers to examples of “time” and “temperature” (elements of claim 26) but that “it is unclear how these factors relate to printing an interactive pattern using an inkjet printer.” Final Act. 4. As Appellants point out, however, claim 26 and the claims from which it depends do not recite printing using an inkjet printer. App. Br. 6. The Examiner does not withdraw the rejection in the Answer, but also does not contest or address Appellants’ argument, nor does the Answer even acknowledge the rejection. For the reasons stated by Appellants, we do not find sufficient support for the rejection in the record before us.

Accordingly, we do not sustain the rejection of claim 26 under pre-AIA 35 U.S.C. § 112, second paragraph.

*Rejections of Claims 1, 2, 4, 5, 8–12, 14–17, 20, and 22
Under 35 U.S.C. § 103(a)*

Appellants argue the Examiner erred in finding the prior art teaches “an interactive pattern in each of the interactive zones,” as recited in independent claim 1. App. Br. 6–8. Specifically, Appellants argue that the interactive patterns cited by the Examiner all lack the additional “interactive zone” required by the claim. *Id.* We disagree.

The Examiner finds the disputed limitation is taught or suggested by Goldstein. Ans. 15–16. The Examiner cites several examples of device-

readable “interactive patterns” taught in Goldstein, each of which is within (and/or surrounded by) a region. *Id.* at 15. The Examiner finds, “since both the claims and Applicant’s filed Specification fail to further limit the interactive pattern and interactive zones, *any region or area* surrounding a machine readable pattern may be deemed a zone.” *Id.* The record supports the Examiner’s finding.

Goldstein Figure 6 illustrates examples of the “interactive patterns in interactive zones” as found by the Examiner and is reproduced below.

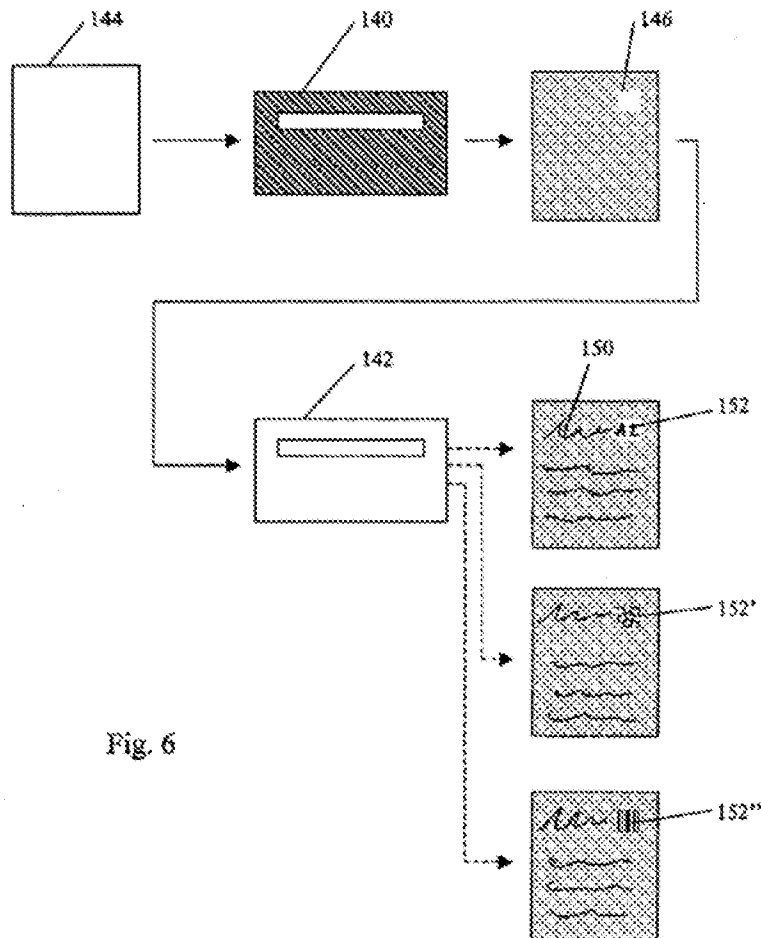


Fig. 6

Figure 6 of Goldstein illustrates documents containing machine-readable digital patterns (“low resolution unique identifiers”) and human

readable content 150. Goldstein ¶ 219. The digital patterns may be “a machine readable alphanumeric character or character string 152, a machine readable dot pattern 152’, a bar code 152,” or any other” patterns that can be recognized by a reader. Goldstein ¶ 273 (emphasis omitted). Goldstein further teaches an “Anoto-type digital pattern . . . is printed on *other* regions of the sheet.” *Id.* (emphasis added).

The Examiner finds, and we agree, the machine readable codes 152, 152’, and 152” teach the claimed “interactive pattern,” and the respective regions in which they are shown teach the claimed “interactive zones.”

Ans. 15. As the Examiner explains, Appellants’ own disclosure (Spec. ¶ 20) describes and illustrates an embodiment virtually identical to the teaching of Goldstein discussed above. That illustration, Figure 3 of the Specification, is reproduced below.

Fig. 3

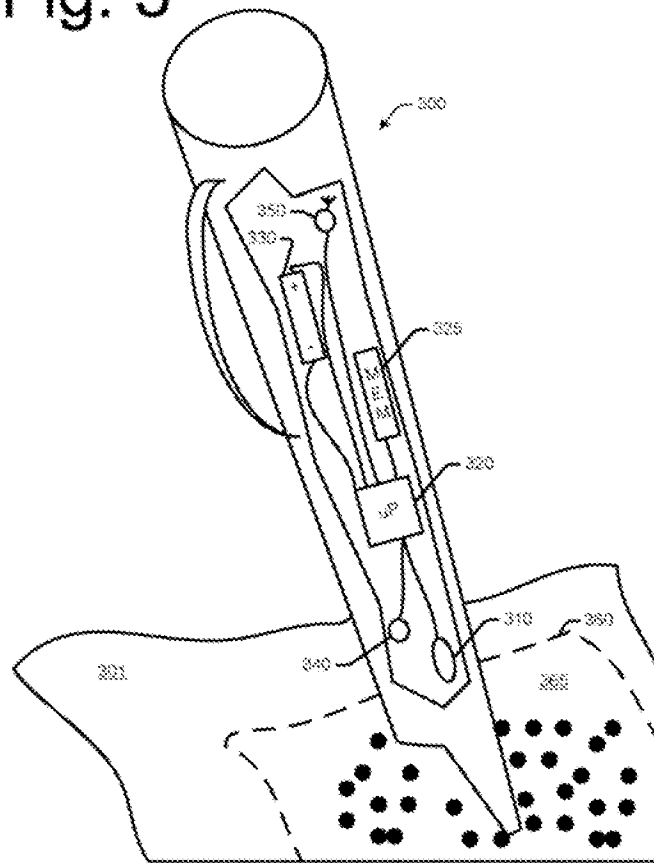


Figure 3 shows an interactive Anoto pattern 365 read by a digital pen 300, and the region 360 surrounding the pattern 365 is referred to by Appellant as the “interactive zone.” *Id.* Appellants’ Figure 3, therefore, illustrates the “interactive pattern in interactive zone” in the same manner as Goldstein Figure 6.

Appellants argue in reply that “the Specification is replete with . . . disclosure on how the interactive patterns are . . . implemented to create the interactive zones.” Reply Br. at 6. The claim, however, does not recite that the interactive patterns “create” the interactive zones, but merely that they are “in” the interactive zones. App. Br. 12.

Appellants further argue that the Examiner improperly combined Goldstein and Encrenaz on the basis of their “being in a related field of search.” App. Br. 7. We disagree. In the Final Action (at 7), the Examiner explains that both Goldstein and Encrenaz “disclose digital printing arrangements which involve pattern area definitions which may be read by a digital pen or reading device.” Thus, the Examiner finds it would have been obvious to one of ordinary skill at the time of the invention “to use the known technique of the device of Enc[renaz] to modify the similar and known device of Gold[stein] for the desirable purpose of avoiding dot-on-dot printing,” for better print “accuracy” and “uniformity,” and for improving image quality and rendering accuracy. *Id.* Appellants do not explain the error in this finding, and we find none. *See, e.g., KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007) (“[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

For the foregoing reasons, we sustain the rejection of claim 1 under 35 U.S.C. § 103(a) as unpatentable over Goldstein and Encrenaz. For the same reasons, we also sustain the rejection of independent claims 8 and 14, and dependent claims 2, 4, 5, 9–12, 15–17, 20, and 22, all of which Appellants assert include “similar recitations as claim 1” and are “allowable for the same reasons,” as claim 1. App. Br. 8.

Rejections of Claims 21 and 23–26 Under 35 U.S.C. § 103(a)

Appellants argue the rejection of dependent claims 21 and 23–26 separately from the rejection of the claims discussed above. We address each argument in turn, below.

Regarding dependent claim 21, Appellants argue the Examiner erred in finding Goldstein teaches “identify[ing] coordinates of the reader device.” App. Br. 8–9. We disagree. Goldstein states that its readable pattern is “position-determining” and is adapted to “enable *the position* of said pen [i.e., the reader device] on said pattern to be determined.” Goldstein ¶ 40; Ans. 17 (citing same); *see also* Goldstein ¶ 282 (referring to the readable dot pattern as “position determining”). As the Examiner finds, Ans. 17, Appellants’ own disclosure equates “coordinates” with “position data.” Spec. ¶ 21 (“The position data may be stored in memory 325 (e.g., as coordinates).”). Accordingly, Appellants’ argument does not persuade us of error.

Regarding dependent claim 23, Appellants argue the Examiner erred in finding Goldstein teaches “the reader device causes another device to execute the action in response to detecting the interactive pattern.” App. Br. 9. As the Examiner finds, however, Goldstein teaches this element in its description of the digital pen (i.e., reader device) “communicating directly” with an “application server” (i.e., another device) which in turn runs “application software” depending upon the position of the dot pattern detected by the digital pen. Ans. 18 (citing Goldstein ¶ 252).³ Accordingly, we find no error in the Examiner’s findings.

³ The Final Action (at 14) cites a different paragraph in Goldstein, but Appellants’ Appeal Brief’s (at 9) mere quotation of the prior art and assertion it does not teach the disputed element are unpersuasive of error. *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding

Regarding dependent claim 24, Appellants argue the Examiner erred in finding Goldstein teaches “the action is executed in response to a combination of the reader device detecting the interactive pattern and the reader device collecting *other information*.” App. Br. 9 (emphasis added). The Examiner finds this limitation is taught or suggested by Goldstein paragraphs 252 and 282–284. Ans. 18–19. We discern no error in this finding. Goldstein teaches the digital pen (reader device) detects a “dot pattern” (the interactive pattern) as well as other information such as “free-hand markings” made by the pen, Goldstein ¶ 284, and/or a “mark made in a box, *id.* ¶¶ 251–52. Goldstein further teaches such detection can “trigger the execution of . . . application software,” *id.* ¶ 252, i.e., the “action” referenced above in relation to claim 23. The record, therefore, supports the Examiner’s findings.

Regarding dependent claim 25, Appellants argue the Examiner erred in finding Goldstein teaches “wherein a different action is executed in a same one of the interactive zones based on the other information.” App. Br. 10. Appellants, however, do not explain the basis of the Examiner’s error. *See supra* n.3. Moreover, as the Examiner explains in the Answer, Goldstein teaches the digital pen is capable of executing different actions. Ans. 19 (citing Goldstein Fig. 7, ¶ 252). On the record before us, Appellants’ argument is insufficient to persuade us of error.

elements were not found in the prior art”); 37 C.F.R. § 41.37(c)(1)(iv) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”). Moreover, Appellants’ Reply Brief does not address the Examiner’s Answer regarding claim 23.

Regarding dependent claim 26, Appellants argue the Examiner erred in finding Goldstein teaches “wherein the other information is at least one of time and temperature.” App. Br. 10. The Examiner finds Goldstein teaches the other information is “temperature,” specifically, the temperature sensitivity of the CCD device embodied in the digital pen. Ans. 19–20. The Examiner finds further it is “well known in the art” that CCD sensing devices “respond to temperature changes.” *Id.* 20.

The foregoing findings, however, are insufficient to render claim 26 obvious even if such findings are supported in the record. Claim 26 requires that the “other information” (temperature change, according to the Examiner) cause execution of the “action” recited in claims 24 and 25 (from which claim 26 depends). App. Br. 14. Neither the Final Action nor the Answer explains how the Examiner’s finding of temperature sensitivity of the reader device relates to the “action executed” in response thereto, recited in the claims. Accordingly, we are persuaded by Appellants’ argument the Examiner erred in rejecting claim 26.

For the foregoing reasons, we sustain the rejection of claims 21 and 23–25, but do not sustain the rejection of claim 26, under 35 U.S.C. § 103(a) as unpatentable over Goldstein and Encrenaz.

DECISION

We affirm the Examiner’s decision rejecting claims 1, 2, 4, 5, 8–12, 14–17, and 20–25 under pre-AIA 35 U.S.C. § 103(a).

We reverse the Examiner’s decision rejecting claim 26 under pre-AIA 35 U.S.C. § 112, second paragraph and pre-AIA 35 U.S.C. § 103(a).

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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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART