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COLORADO SPRINGS, CO 80910

EXAMINER

CERULLO, LILIANA P

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHARLES LEE LINDSAY, VANCE FRANKLIN BROWN,
GENE GARY DAIGLE, and MIKE ALAN ROSE

Appeal 2010-009763
Application 11/250,273
Technology Center 2600

Before MAHSHID D. SAADAT, MIRIAM L. QUINN, and
BARBARA A. PARVIS *Administrative Patent Judges.*

QUINN, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1-12 and 14-24. Claim 13 has been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

Introduction

Appellants' invention relates generally to the field of outdoor signs and, more particularly, to a system and method for controlling outdoor signs. (Spec. 1, ll. 9-10.) Independent claim 1 is illustrative of the invention and reads as follows:

1. A system for controlling outdoor signs, comprising:
 - an electronic sign having a price that is controllable;
 - a controller sending a price signal that controls the price on the outdoor sign; and
 - an electronic feedback system that determines if the outdoor sign is operative, wherein operative means that the sign is legible and correct after the sign has been updated.

References

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Blowers	US 6,298,474 B1	Oct. 2, 2001
Wells	US 2004/0172372 A1	Sep. 2, 2004
Moss	US 2005/0160014 A1	Jul. 21, 2005

U.S. Energy Information Administration, *A Primer on Gasoline Prices*, (9/30/2004), <http://www.eia.doe.gov/pub>, (currently archived via PURL at <http://purl.access.gpo.gov/GPO/LPS56212> (hereinafter "DoE")).

The Examiner's Rejections

Claims 1-4, 6-11, 14-15, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wells in view of Blowers. (Ans. 4-10.)

Claims 5, 12, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wells in view of Blowers, and in further view of Moss. (Ans. 10-11.)

Claims 18-19 and 22-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wells in view of Blowers and DoE. (Ans. 11-14.)

Claims 20 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wells in view of Blowers and DoE, and in further view of Moss. (Ans. 14-15.)

ISSUES

Appellants challenge all of the Examiner's rejections in this appeal. Based on Appellants' arguments, the dispositive issues on appeal are:

- a) Whether the Examiner erred in rejecting claims 1, 10, and 18 as being obvious over the combination of Wells and Blowers. (App. Br. 8-10, 13-14.) In particular, the issue turns on whether the Examiner's rationale for combining these references is reasonable and adequately supported. (*Id.*)
- b) Whether the Examiner erred in finding that Blowers discloses the step of "when the displayed price contains an error, transmitting an error message," as recited in claim 14. (App. Br. 10.) In particular, the issue turns on whether "a pass/fail decision" in Blowers teaches the claimed step of transmitting an error message. (*Id.*)
- c) Whether the Examiner erred in rejecting claims 5, 16, and 20 based on obviousness grounds. (App. Br. 11-12). In particular, the issue

turns on whether the Examiner's rationale for combining Wells and Moss is reasonable and adequately supported. (*Id.*)

- d) Whether the Examiner erred in rejecting claim 12, because Blowers fails to disclose "transmitting an alert signal including the display price." (App. Br. 11.)

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellants' arguments that the Examiner has erred. We disagree with Appellants' conclusions.

Claims 1, 10, and 18

Appellants contend that the Patent Office has used hindsight in combining Wells and Blowers to reject claim 1, because these references are allegedly directed to solving incongruent problems, and because neither reference discloses an electronic feedback system in the outdoor sign that determines if the sign is operative. (*See App. Br. 8-9.*) Appellants proffer identical arguments concerning claims 10 and 18. (*See App. Br. 10, 13-14.*) Thus, being confronted with an allegation that the Examiner has used hindsight, we look at the stated reasoning for the rejection to assess whether it provides a reasonable and adequately supported rationale.

First, we note that the Examiner's rejection explains that Blowers discloses a machine vision system that *verifies* the text within an image to make sure that the expected text is present and readable. (Ans. 5 (citing Blowers, col. 10, ll. 6-10) (emphasis added).) We do not agree with Appellants' contention that the Examiner mischaracterized Blowers' disclosure. (Reply 1.) We also do not agree with Appellants' contention

that Blowers is not pertinent to the particular problem with which the inventor was concerned. (Reply 2.) As stated by the Examiner, the use of machine vision in point of sale systems is conventional, and such use solves the problem of verifying that displayed text, such as that used in an electronic display, is appropriate. (Ans. 15-16 (stating also that the use of machine vision verification is known in point of sale systems as taught by Welch (U.S. Patent No. 5,883,968)).) Additionally, under the broadest reasonable interpretation in the context of the Specification, *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997), we find that the claim language does not preclude the use of a machine vision system to verify that the text is legible and correct after the text has been updated.

Further, we find no error in the Examiner's determination that a person of ordinary skill in the art at the time of the invention would have looked to available technology to improve the Wells invention. (Ans. 16.) According to the Examiner, the improvement of Wells to include automated and real-time feedback is a predictable result of the automatic verification of the displayed price using the technology disclosed in Blowers. (Ans. 5.) Appellants' argument – that “the only reason the Patent Office would combine a reference for determining a price for fuel with a reference for a machine vision software is hindsight” (App. Br. 9.) – is unpersuasive. That argument does not show error in the Examiner's finding, such as by stating why one of ordinary skill in the art at the time of the invention, motivated to automate verification of displayed text as disclosed in Blowers, *would not* be capable of providing that automated verification after the automatic adjustment of the fuel price signs disclosed in Wells. *See DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d

1356, 1368 (Fed. Cir. 2006) (“[T]he proper question is whether the ordinary artisan possesses knowledge and skills rendering him *capable* of combining the prior art references.”).

Accordingly, we conclude that the Examiner’s rejection of claims 1, 10, and 18 as obvious over the combination of Wells and Bowers is reasonable and well supported by the record.

Claim 14

Appellants contend that the passage of *Blowers* that the Examiner relies on does not discuss a sign or transmission of an error message and that “[a] pass/fail decision is not the transmission of an error message.” (App. Br. 10.) We do not agree with Appellants’ conclusions. Instead, we agree with the Examiner’s finding that *Blowers* teaches transmitting an error message (fail answer), when the displayed text (price) contains an error. (Ans. 16.) Further, we find that *Blowers*’ disclosure of pass/fail folders confirms the Examiner’s finding that the pass/fail answer is transmitted. *See Blowers*, col. 10, ll. 21-22. Accordingly, we conclude that the Examiner did not err in determining that *Blowers* discloses the claimed step of transmitting an error message.

Claims 5, 16, and 20

Appellants contend that *Moss* is directed to a consumer oriented device and that there is no way to combine that device with *Wells*, which is directed to managing prices for a retail outlet. (App. Br. 11-12, 15-16.) We do not agree with Appellants’ conclusion.

The Examiner finds that *Moss* discloses sending alerts of different prices, while *Wells* discloses a method of adjusting prices in a retailer. (Ans. 17.) Appellants do not contest either finding, but nevertheless take

issue with the proffered combination as inappropriate hindsight. (App. Br. 11-12, 15-16.) We find, however, that the Examiner is correct in his determination that Moss and Wells are both related to transmission of retailer prices. (Ans. 17.) We also find reasonable the Examiner's stated rationale for determining that a person of ordinary skill in the art would use "Moss's method of notifying a customer with an alert signal including a displayed price and transmitting the alert to a wireless device (as taught by Moss) because Wells already teaches transmitting different retail site pricing information transmittal to a central office." (Ans. 11.) The motivation is provided by Moss – to provide immediate comparison of different retail site prices. (Ans. 11 (citing Moss, ¶¶ [0004]-[0005]).)

Accordingly, we conclude that the Examiner's obviousness rejection of claims 5, 16, and 20 is reasonable and well supported by the record.

Claim 12

Appellants contend that the Examiner erred in rejecting claim 12 because Blowers makes a pass/fail decision, but does not send an alert signal including a display price as required by the claim. (App. Br. 11.) We do not agree with Appellants' conclusion.

The Examiner's rejection points to Moss, not Blowers, as teaching the transmission of an alert signal or message. (Ans. 10-11.) Therefore, Appellants' argument fails to show error in the Examiner's rejection of the claim over Moss.

CONCLUSIONS

On the record before us, and based on Appellants' arguments concerning claims 1 and 10, we conclude that the Examiner did not err in

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rejecting claims 1 and 10, as well as claims 2-4, 6-9, 11, 14-15, and 17, not argued separately, as being obvious over Wells and Blowers. (*See App. Br. 10.*)

We further conclude that, based on Appellants' arguments concerning claim 18, the Examiner did not err in rejecting claim 18, as well as claims 19 and 22-24 not argued separately, as being obvious over Wells, Blowers and DoE. (*See App. Br. 14.*)

We further conclude that, based on Appellants' arguments concerning claims 5, 12, and 16, the Examiner did not err in rejecting those claims as being obvious over Wells, Blowers, and Moss.

Finally, we conclude that, based on Appellants' arguments concerning claim 20, the Examiner did not err in rejecting claims 20 and 21, not argued separately, as being obvious over Wells, Blowers, Moss, and DoE. (*See App. Br. 16.*)

DECISION

The Examiner's decision rejecting claims 1-12 and 14-24 is affirmed.

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)(iv).

AFFIRMED

ELD