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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAUL WIDERMAN and DOUGLAS LENARD

Appeal 2010-010905
Application 10/852,321
Technology Center 3700

Before: LINDA E. HORNER, BENJAMIN D. M. WOOD, and
MICHELLE R. OSINSKI, *Administrative Patent Judges*.

WOOD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 19-20 and 27-29. Claims 1-18, 21-26 and 30-31 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

THE INVENTION

The claims are directed to a computer monitor adapted to accommodate an exercise device, and the combination thereof. Claim 19, reproduced below, is illustrative of the claimed subject matter:

19. The combination of a monitor and an exercise device, comprising:

a monitor capable of displaying a moving image, the monitor having a housing,

an exercise device suitable for weight training and/or aerobic activity, and

a well integrally formed as one piece within the monitor housing for accommodating the exercise device and shaped to conform to a contour of the exercise device and such that the exercise device is flush with the monitor.

REFERENCES

Kim	US 6,104,445	Aug. 15, 2000
Shifferaw	US 6,682,464 B2	Jan. 27, 2004
Neil	US 6,793,607 B2	Sep. 21, 2004
Brown	US 6,902,517 B1	Jun. 7, 2005

REJECTIONS

Claims 19 and 20 stand rejected under 35 U.S.C § 103(a) as unpatentable over Kim and Shifferaw. Ans. 3.

Claim 27 stands rejected under 35 U.S.C § 103(a) as unpatentable over Kim, Shifferaw, and Neil. Ans. 4.

Claims 28 and 29 stand rejected under 35 U.S.C § 103(a) as unpatentable over Kim, Shifferaw, Neil, and Brown. Ans. 5.

ANALYSIS

Claims 19 and 20 – Obviousness – Kim and Shifferaw

Appellants argue claims 19 and 20 as a group. Br. 4. We select claim 19 as representative, with claim 20 standing or falling with claim 19. 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner found that Kim discloses a computer monitor with a well, integrally formed as one piece within the monitor housing, designed for storing digital storage media. Ans. 3-4 (citing Kim fig. 1); *see* Kim fig. 3. The Examiner further found that Shifferaw discloses an exercise device – a dumbbell with generally square plates – suitable for weight training and/or aerobic activity. Ans. 4 (citing Shifferaw fig. 2, item 13). The Examiner observed that Shifferaw also discloses a tray for storing the dumbbell, and that the shape of Shifferaw’s exercise device and storage tray is “virtually identical” to the shape of Kim’s well.¹ Ans. 6. Therefore, the Examiner reasoned, Kim’s monitor well does not need to be modified to accommodate Shifferaw’s exercise device. Ans. 7. The Examiner determined that “it would [have been] obvious to one of ordinary skill in the art to store Shifferaw’s weights in Kim’s rack, as Kim’s rack is designed for storage and Shifferaw’s weights are stored in a rack.” Ans. 9.²

¹ Shifferaw depicts the dumbbell sitting in a tray divided into pockets that are sized and shaped to hold individual dumbbell plates. Shifferaw, col. 2. ll. 27-30; figs. 1, 2, 6.

² The Examiner also found that the recording media that Kim’s well is meant to store could be considered exercise devices, because they can be picked up and set down and can be thrown like a Frisbee, and the claims do

Appellants first argue that Kim and Shifferaw are “not concerned with [and do not] suggest[]” combining Kim’s well with Shifferaw’s exercise device. Br. 4-5; *see also* Br. 7-8 (Kim’s media rack “is not disclosed as adapted for incorporating or supporting an exercise device,” and Shifferaw’s dumbbell “is not disclosed as adapted for being incorporated into a monitor housing.”). Further, according to Appellants, “absent Appellants’ discovery and solution to the problems noted above, it would not make common sense to one of ordinary skill in the art to modify the monitor of Kim for accommodating the adjustable dumbbell/barbell of Shifferaw.” Br. 5.

We do not find these arguments persuasive. First, Kim and Shifferaw need not be “concerned with” or “suggest” the combination that forms the basis of the Examiner’s prima facie case of obviousness. The Supreme Court has rejected the rigid requirement of demonstrating a teaching, suggestion, or motivation to combine the references in order to show obviousness. *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 419 (2007). Rather, rejections based on obviousness must be supported by “some articulated reasoning with some rational underpinning” to combine known elements in the manner required by the claim. *Id.* at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Appellants do not directly address the Examiner’s rationale for the obviousness rejection or show why that rationale is erroneous or lacking a rational underpinning. The Examiner reasoned that (1) Kim taught that its well was designed for storage; (2) Shifferaw’s dumbbell is designed to be stored in a tray having virtually the

not recite any particular design features. Ans. 8. Because we affirm this rejection on the basis of the Examiner’s primary case for obviousness, the combination of Kim and Shifferaw, we do not address this alternative reasoning.

same shape as Kim's well, indicating that the well would need little if any modification to accommodate the dumbbell;³ and therefore (3) it would have been obvious to a person of ordinary skill to store Shifferaw's dumbbell in Kim's well. *See, e.g.*, Ans. 6-7. We believe that the Examiner's articulated reasoning has a rational underpinning and therefore adequately supports the prima facie case of obviousness. In that regard we find unsupported and conclusory, and thus deserving of little weight, Appellants' statement that "it would not make common sense" to combine Kim and Shifferaw as the Examiner suggests. Br. 4; *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997).

Appellants next argue that Shifferaw's dumbbell would not be flush with Kim's well. Br. 7. The Examiner responds that "the combination of Kim's monitor (see fig. 4), [and] Shifferaw's similar shaped dumbbell (see fig. 2) would leave the exercise device of Shifferaw flush with the front of Kim's monitor which reads on the claimed feature." Ans. 8. Appellants do not show why this finding is incorrect, or dispute that the claim is satisfied when the exercise device is flush with the front of the monitor.

For the above reasons, we sustain the Examiner's rejection of claims 19 and 20.

Claim 27 – Obviousness – Kim, Shifferaw, and Neil

The Examiner found that Neil discloses a prerecorded medium for providing a moving image, for display on the monitor, demonstrating an exercise routine using the exercise device. Ans. 4 (citing Neil, col. 5,

³ Appellants assert that "although the well of Kim and the dumbbell/barbell of Shifferaw are rectangular in shape, the proportions are totally different." Br. 7. Appellants, however, do not provide any support for this assertion and thus we are unable to accord it any weight. *Geisler*, 116 F.3d at 1470.

ll. 16-29). The Examiner further found that it would have been obvious to use a prerecorded video of an exercise routine to demonstrate proper techniques for using the device. Ans. 5. Appellants argue that Neil “is not concerned with or suggests providing a monitor housing with a well for accommodating an exercise device.” Br. 9. This argument is not persuasive because it fails to address the rejection as articulated by the Examiner which relies on Kim and Shifferaw for teaching these elements. Appellants also argue that “Neil fails to cure the noted deficiencies in Kim and Shifferaw.” As discussed above, Appellants have not persuaded us of any deficiencies with respect to the Examiner’s rejection of claims 19 and 20. Accordingly, we sustain this rejection.

Claims 28 and 29 – Obviousness – Kim, Shifferaw, Neil, and Brown

Claims 28 and 29 depend from claim 27 and additionally require that the exercise device be “an elliptically-shaped weight.” Br. 13 (Clms. Appx.). The Examiner found that Brown discloses an elliptically shaped weight. Ans. 5, 11 (citing Brown fig. 3, item 12). Brown, however, describes the weight as only “semi-elliptical,” which is also evident from Brown figure 1. Because we disagree with the Examiner’s finding that Brown discloses an elliptical weight and because the Examiner does not articulate any reason to modify the references to provide an elliptically-shaped weight, we do not sustain this rejection.

DECISION

For the above reasons, the Examiner’s rejection of claims 19, 20, and 27 is affirmed. The Examiner’s rejection of claims 28 and 29 is reversed.

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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)(iv).

AFFIRMED-IN-PART

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