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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL J. KUHN, and RANDY D. SINES

Appeal 2011-000024
Application 11/591,144
Technology Center 3700

Before: MICHAEL C. ASTORINO, PATRICK R. SCANLON and
BARRY L. GROSSMAN, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 67-75, 81, and 84-86. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

The Claimed Subject Matter

Claims 67, 81, and 85 are the independent claims. Claim 67 is illustrative of the claimed subject matter:

67. A casino table for play by multiple players who attend and participate in a casino game at a live game location about the casino table, comprising:

said casino table having plural playing positions to accommodate plural players;

a plurality of player displays at the playing positions, said player displays showing a plurality of changeable display images for said players;

at least one common display upon which playing information is displayed for viewing by the plurality of players;

wherein the casino table displays at least some of the playing information on the common display as playing instructions text;

wherein the casino table changes the playing instructions text during the casino game to impart the playing information;

wherein the casino table displays the playing instructions text in substantially a same part of the common display while the playing instructions text changes;

wherein the casino table changes the playing instructions text between playing information for a dealer player and playing information for one or more non-dealer players;

wherein when the casino table displays the playing information for the dealer player the

casino table orients the playing instructions text toward a dealer playing position for readability by the dealer player; and

wherein when the casino table displays the playing information for the one or more non-dealer players the casino table orients the playing information text toward one or more non-dealer playing positions for readability by the one or more non-dealer players.

References

The Examiner relied upon the following prior art references:

Tarantino	US 5,669,817	Sept. 23, 1997
Busch	US 3,929,338	Dec. 30, 1975
Dickinson	US 5,951,397	Sept. 14, 1999

Rejections

Appellant seeks review of the following rejections (App. Br. 6)¹:

1. Claims 67-75 rejected under 35 U.S.C. § 103(a) as unpatentable over Tarantino;
2. Claims 85 and 86 rejected under 35 U.S.C. § 103(a) as unpatentable over Tarantino in view of Busch;
3. Claim 81 rejected under 35 U.S.C. § 103(a) as unpatentable over Tarantino in view of Dickinson; and
4. Claim 84 rejected under 35 U.S.C. § 103(a) as unpatentable over Tarantino in view of Dickinson and Busch.

¹ Citations to “App. Br. ____” are to the indicated page of the Appeal Brief filed on May 24, 2010.

ANALYSIS

*Claims 67-75 Rejected Under 35 U.S.C. § 103(a)
As Unpatentable Over Tarantino*

The Examiner found that Tarantino disclosed the claimed elements but did not explicitly disclose the “common display” displaying instruction text orientated to the dealer or player positions. Ans. 4.² Thus, the Examiner found that the prior art and the claimed invention differed only in the content and orientation of the content on a common display. Ans. 10. The Examiner construed the displayed content and its orientation as “printed matter” that did not alter the functionality of the system or provide a new or unobvious relationship with the substrate. Ans. 4, 10.³ As such, the Examiner concluded that the specific content and orientation of the content were obvious matters of design choice. *Id.*

Relevant to our decision in this case, Appellants argue that Tarantino fails to disclose or suggest a “common display” that orients the displayed information toward the intended reader. App. Br. 16.. Appellants also argue

² Citations to “Ans. ___” are to the indicated page of the Examiner’s Answer mailed on July 8, 2010.

³ In the Answer at page 10, the Examiner cited MPEP § 2106.01 for support for his position that “nonfunctional descriptive material is given little to no patentable weight absent a new and unobvious functional relationship between the printed matter and the substrate.” This section of the MPEP deals with subject matter eligibility determinations during examination of process claims in which a law of nature, a natural phenomenon, or a naturally occurring relation or correlation is a limiting element or step. This is not the case with claim 67. It appears that the Examiner may have intended to cite MPEP § 2106, which states that a mere arrangement of printed matter is not statutory. *But see*, MPEP § 2111.05 relating to the patentable weight for “printed matter” when the printed matter and the associated product have a “functional relationship.” *See also*, MPEP § 2112.01(III).

that the Examiner's focus on the content and orientation of the content on a common display as an "obvious design choice" is a "mere conclusory statement" unsupported by the evidence. App. Br. 24. According to Appellants, the "focus of claim 67" is not the content of the video output, but the fact that the claimed casino table can orient a visual output toward an intended recipient. Reply Br. 9.⁴

The "Printed Matter" In Claim 67

The "printed matter" found by the Examiner in claim 67 is (1) the content and (2) the orientation of the content displayed in the "common display". Ans. 4, 10. The Examiner did not cite specifically to the claim language the Examiner considered to be "printed matter." It is clear, however, from the language of claim 67 that the "content printed matter" includes information on the common display which provides playing information for viewing by all players, including a dealer-player and non-dealer players. The "orientation printed matter" includes the casino table changing the orientation of the instructions toward the intended recipient: e.g., player or dealer.⁵ We address here only the "orientation printed matter."

⁴ Citations to "Reply Br. ____" are to the indicated page of the Reply Brief filed on September 8, 2010.

⁵ Regarding the "orientation printed matter", claim 67 states in relevant part (emphasis added):

“. . . wherein when the casino table displays the playing information for the dealer player *the casino table orients the playing instructions text toward a dealer playing position* for readability by the dealer player; and

wherein when the casino table displays the playing information for the one or more non-dealer players *the casino*

“Printed matter” involves the addition of printed material, such as written instructions, to a known product. *King Pharmaceuticals, Inc. v. Eon Labs, Inc.*, 616 F. 3d 1267, 1279 (Fed. Cir. 2010). *See also*, MPEP § 2111.05 and cases cited therein.

Here, the “orientation printed matter” claim limitations (*see* footnote 5) do not involve adding printed information, text, or a diagram to a product. They involve the claimed function of the casino table orienting the direction of the text. Thus, a printed matter analysis has no relevance here. Tarantino does not disclose or suggest orienting any information or text, as recognized by the Examiner. Ans. 4. There is no evidence or adequate rationale to support the Examiner’s conclusion that these claim limitations are “a matter of obvious design choice” as found by the Examiner. Ans. 4. Accordingly, there is no basis for sustaining the Examiner’s rejection that the casino table performing the function of orienting the text toward the dealer player or non-dealer player as called for in claim 67 would have been obvious in view of Tarantino.

For the above reasons, the Examiner fails to establish a prima facie case of obviousness of the subject matter of claim 67 and its dependent claims.

***Claims 85 and 86 Rejected Under 35 U.S.C. § 103(a)
As Unpatentable Over Tarantino In View Of Busch***

Independent claim 85 contains the same “orients” language as claim 67 (“... wherein ... the casino table orients the playing instructions” or

table orients the playing information text toward one or more non-dealer playing positions for readability by the one or more non-dealer players.”

“orients the playing information”). The Examiner applied the same analysis as in claim 67 and construed the displayed content and its orientation as “printed matter.” Ans. 7. As such, the Examiner concluded that the specific content and orientation of the content were obvious matters of design choice. *Id.* Busch was cited for the disclosure of a flat panel display, as was called for in claim 85. Ans. 7. The Examiner’s findings and associated reasoning based on Busch does not cure the deficiencies of the rejection based on the “orientation printed matter” claim limitations being obvious matters of design choice. Accordingly, for the reasons stated above with respect to claim 67, we cannot sustain the rejection of claims 85 and 86.

***Claim 81 Rejected Under 35 U.S.C. § 103(a)
As Unpatentable Over Tarantino In View Of Dickinson***

Independent claim 81 contains the same “orients” language as claim 67 (“... wherein ... the casino table orients the playing instructions” or “orients the playing information”). The Examiner applied the same analysis as in claim 67 and construed the displayed content and its orientation as “printed matter.” Ans. 9. As such, the Examiner concluded that the specific content and orientation of the content were obvious matters of design choice. *Id.* Dickinson was cited for the disclosure of a touch screen display, as called for in claim 85. Ans. 8-9. The Examiner’s findings and associated reasoning based on Dickinson do not cure the deficiencies of the rejection based on the “orientation printed matter” claim limitations being obvious matters of design choice. Accordingly, for the reasons stated above with respect to claim 67, we cannot sustain the rejection of claim 81.

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***Claim 84 Rejected Under 35 U.S.C. § 103(a)
As Unpatentable Over Tarantino In View Of Dickinson And Busch***

Claim 84 depends from claim 81, discussed above. As such, claim 84 contains the same “orients” language as claim 81. As stated above, the Examiner’s findings and associated reasoning based on Dickinson and Busch do not cure the deficiencies of the rejection based on the “orientation printed matter” claim limitations being obvious matters of design choice. Accordingly, for the reasons stated above with respect to claims 67 and 81, we cannot sustain the rejection of claim 84.

DECISION

WE REVERSE the decision of the Examiner to reject claims 67-75, 81, and 84-86.

REVERSED

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