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MAHONE, KRISTIE A

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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GEOFF M. LYON

Appeal 2011-000511
Application 10/769,138
Technology Center 3600

Before MURRIEL E. CRAWFORD, BIBHU R. MOHANTY, and MEREDITH C. PETRAVICK, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Geoff M. Lyon (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-3, 5, 6, 36-39, 41, 42, and 45-47. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.[1]

THE INVENTION

This invention "concerns the use of load sensors working in conjunction with RFID interrogation to determine the number of tagged items stored in a particular locality." Spec., para. [0015].

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

> 1. A method of inventorying products located on a shelf for displaying the products to consumers, said shelf having at least one load sensor and an RFID sensor, and wherein at least one of the products contains an RFID tag containing product type identification, said method comprising:
>
> identifying a product type of the products based upon product type information received from the RFID tag associated with at least one individual unit of the products and provided that each individual unit of the products is a single product type;

[1] Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed Mar. 1, 2010) and Reply Brief ("Reply Br.," filed Jul. 27, 2010), and the Examiner's Answer ("Ans.," mailed May 27, 2010).

> receiving a unit weight for the at least one individual unit of the identified products using a unit weight specification associated with the product type information from the at least one RFID tag;
>
> weighing the products using the at least one load sensor positioned in the shelf to determine a gross weight that reflects an aggregate weight of the products; and
>
> inventorying the products by calculating the quantity of products on the shelf by dividing the gross weight measured with the at least one load sensor by the unit weight specification for one individual unit.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Lare	US 5,193,629	Mar. 16, 1993
Cowe	US 5,671,362	Sep. 23, 1997
Goodwin, III	US 6,547,040 B2	Apr. 15, 2003

The following rejections are before us for review:

1. Claims 1-3, 5, 6, 36-39, 41, 42, and 45-47 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lare, Goodwin, III, and Cowe.

ISSUE

The main issue is whether the combination of Lare, Goodwin, III, and Cowe renders obvious the method of claim 1.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. We adopt the Examiner findings of fact which appear in the Examiner's Answer.
2. Lare states: "In particular, the invention may be applied to the weighing and counting of items other than coins or notes." Col. 13, ll. 39-41.

ANALYSIS

The Appellant argues claims 1-3, 5, 6, 36-39, 41, 42, and 45-47 as a group. App. Br. 9-19. We select claim 1 as the representative claim for this group, and the remaining claims 2-3, 5, 6, 36-39, 41, 42, and 45-47 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

In contesting the Examiner rejection of claims 1 unpatentable over a combination of Lare, Goodwin, III, and Cowe, the Appellant makes several arguments attacking the Examiner's finding of obviousness. *See* App. Br. 9-19 and Reply Br. 5-10. We have carefully considered all of the Appellant's arguments and find them unpersuasive as to error in the Examiner's rejection. We agree with the Examiner (Ans. 7-9) that the combination of Lare, Goodwin, III, and Cowe render the claim 1 obvious.

First, we find the Appellant's arguments unpersuasive because at their crux is a mischaracterization of Lare's teachings. The Appellant seems to imply that Lare's system is limited to only to weighing notes and coins.

However, we find Lare's system is not so limited and can be applied to other products, as Lare states: "In particular, the invention may be applied to the weighing and counting of items other than coins or notes." Col. 13, ll. 39-41. Therefore, we find that the Appellant's arguments based on the notes and coins in Lare unpersuasive.

Second, we find the Appellant's arguments unpersuasive because they are not commensurate with the scope of the claims. For example, the Appellant argues that the claimed product must be the type intended for display on a shelf. *See* App. Br. 12 and Reply Br. 5-10. We see nothing in the claims that so limit the claimed product, and we agree with the Examiner (Ans. 8) that the preamble's recitation of "for displaying the products to consumers" is merely an intended use and does not result in a structure difference between the claimed invention and the prior art.

Third, we find the to the Appellant's arguments unpersuasive as they are directed to the references individually and not to the combination as a whole. For example, the Appellant argues that "both Lare and Goodwin, III fail to disclose a method of inventorying products that are located on a shelf for displaying the products to the customer." App. Br. 14. However, the Examiner provided Cowe to teach this limitation. *See* Ans. 5. "The question in a §103 case is what the references would *collectively suggest* to one of ordinary skill in the art. *In re Simon*, 46` F.2d 1387, 174 USPQ 114." *In re Ehrreich*, 590 F.2d 902, 909 (CCPA 1979). (Emphasis added).

Fourth, we find the Appellant's arguments that Lare and Cowe teach away from the Examiner's combination (App. Br. 15 and App. Br. 17) unpersuasive as we see nothing in the teachings of Lare and Cowe, relied upon by the Appellants, that would discourage one of ordinary skill in the art

from proposed Examiner's proposed combination. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant" *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

Accordingly, the rejection of claims 1-3, 5, 6, 36-39, 41, 42, and 45-47 under 35 U.S.C. § 103(a) as unpatentable over Lare, Goodwin, III, and Cowe is affirmed.

DECISION

The decision of the Examiner to reject claims 1-3, 5, 6, 36-39, 41, 42, and 45-47 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

Klh