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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALEXANDER I. POLTORAK and JOSEPH KRASNJANSKI

Appeal 2011-007029
Application 11/740,873
Technology Center 3600

Before: JOSEPH A. FISCHETTI, BIBHU R. MOHANTY, and MICHAEL
W. KIM, *Administrative Patent Judges.*

KIM, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 13-15 and 18-36¹. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6.

The invention relates to creating and public trading fractional units in real properties, to creating and operating a specialized exchange for trading such units and their derivatives, to public trading of real estate-related securities and the securities' derivatives, and to quotation of such securities and derivatives (Spec., para. [0002]).

Claim 13, reproduced below, is further illustrative of the claimed subject matter.

13. A computer-based method of operating an exchange to trade partial interest units, the method comprising:
- listing the partial interest units on the exchange;
 - providing for trading of the partial interest units on the exchange; and
 - providing at least one value metric for the partial interest units;
- wherein:
- the partial interest units were created by forming a real property holding company with a plurality of partial interest units, transferring ownership of a real property to the real property holding company, complying with applicable requirements for making the partial interest units publicly traded, and complying with applicable exchange-imposed requirements for listing the partial interest units on a public exchange;
 - at least one of the partial interest units belongs to an occupant of the real property; and
 - the steps of providing at least one value metric comprises determining a first value estimate of the real

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed November 30, 2010) and Reply Brief ("Reply Br.," filed March 11, 2011), and the Examiner's Answer ("Ans.," mailed February 2, 2011).

property on a first date, and adjusting the first value estimate in accordance with variation in a cash-settled real estate index between the first date and date on which the value metric is provided, thereby obtaining an adjusted value of the real property; and
the steps of providing for trading and providing at least one value metric are performed by at least one computer system.

REFERENCES

Roberts	US 6,292,788 B1	Sep. 18, 2001
Yasuzawa	US 2002/0082903 A1	Jun. 27, 2002
Joye	US 2006/0089895 A1	Apr. 27, 2006

REJECTIONS²

The Examiner rejected:

Claims 13-15 and 18-36 under 35 U.S.C. § 112, second paragraph, as indefinite;

claims 13-15 and 18-28 under 35 U.S.C. § 103(a) as unpatentable over Joye, Roberts, and Yasuzawa; and

claims 29-36 under 35 U.S.C. § 103(a) as unpatentable over Joye, Roberts, Yasuzawa and Official Notice.

We AFFIRM.

² The Examiner withdrew the rejection of claims 13-15 and 18-36 under 35 U.S.C. § 101 as being directed to non-statutory subject matter (Ans. 3).

ISSUES

Did the Examiner err in asserting that a combination of Joye, Roberts, and Yasuzawa discloses or suggests “determining a first value estimate of the real property on a first date, and adjusting the first value estimate in accordance with variation in a cash-settled real estate index between the first date and date on which the value metric is provided, thereby obtaining an adjusted value of the real property,” as recited in independent claim 13?

Did the Examiner err in asserting that a combination of Joye, Roberts, and Yasuzawa renders obvious dependent claim 27?

Did the Examiner err in asserting that a combination of Joye, Roberts, and Yasuzawa discloses or suggests that the single family residence “is sole investment asset of the real property holding company,” as recited in dependent claim 28?

Did the Examiner err in asserting that a combination of Joye, Roberts, and Yasuzawa renders obvious dependent claims 29-36?

Did the Examiner err in asserting that independent claim 13 fails to comply with the definiteness requirement of 35 U.S.C. § 112, second paragraph?

FINDINGS OF FACT

Specification

1. Contracts based on real estate indices may be settled based on the value of the underlying index rather than through delivery of real estate (para. [0098]).

2. A real estate index may be based on a statistical measure, such

as average price (para. [0098]).

3. The estimate of current value is obtained by adjusting the latest appraised value (for example, the appraised value obtained when the real property was transferred to the business entity for listing on the exchange or at the time of the listing) by the percentage change in a real property value index since the latest appraisal (para. [00136]).

4. The index may be a cash-settled index, a nationwide real property index, a regional index, a statewide index, a citywide index, or an index based on a different geographic constraint (para. [00136]).

5. The index may be the National Real Estate Index (NREI), FTSE EPRA/NAREIT Global Real Estate Index, S&P/GRA Commercial Real Estate Indices, Case Shiller Home Price Indexes, Dow Jones Real Estate Index, Move-Up Home Index, Luxury Home Index, Elite Home Index, and Starter Home Index (para. [00228]).

Joye

6. The “idiosyncratic” risk attributable to a single-family home is more than two or three times that which one would impose to a well-diversified portfolio of property (para. [0014]).

Roberts

7. Numerous attempts have been made to provide real estate investments that are transferable and are divisible (col. 2, ll. 41-43).

8. A REIT is a company that buys, sells, manages, and develops real estate or real estate mortgages on behalf of its investors (col. 2, ll. 45-47).

9. The investor contributes the real estate property to a partnership owned by the REIT (col. 2, ll. 57-58).

ANALYSIS

Obviousness Rejection of Independent Claim 13

We are not persuaded the Examiner erred in asserting that a combination of Joye, Roberts, and Yasuzawa discloses or suggests “determining a first value estimate of the real property on a first date, and adjusting the first value estimate in accordance with variation in a cash-settled real estate index between the first date and date on which the value metric is provided, thereby obtaining an adjusted value of the real property,” as recited in independent claim 13 (App. Br. 10-15; Reply Br. 5-9).

Appellants assert that a cash-settled real estate index is a value index, and Figure 6 of Yasuzawa only discloses a rate of return. While the Specification does set forth many examples of indexes based on value/price (paras. [0098], [00136], [00228]), paragraph [0098] of the Specification also discloses that a “real estate index may be based on a statistical measure, such as average price” (emphasis added). Accordingly, as independent claim 13 does not explicitly recite a “value” index, and the Specification makes clear that the index may be a value/price index, we construe “a cash-settled real estate index” as any statistical measure of cash-settled real estate. To that end, Figure 6 of Yasuzawa discloses a rate of return between two dates (statistical measure) of fluctuations in land and building prices (cash-settled real estate).

Obviousness Rejection of Dependent Claim 27

We are not persuaded the Examiner erred in asserting that a combination of Joye, Roberts, and Yasuzawa renders obvious dependent claim 27 (App. Br. 15; Reply Br. 9-10). Regarding dependent claim 27, Appellants assert that the Examiner has merely shown that partial interests are known, single family residences are known, and that the Examiner has combined them without any reasoning to justify it. However, Joye discloses that a well-diversified portfolio is preferable to taking on the risk of a single family home by itself (para. [0014]), and Roberts discloses that dividing real estate investments are preferable (col. 2, ll. 41-43). Accordingly, taken together, one of ordinary skill would have found it desirable to diversify the risk of a single family home by making it divisible.

Obviousness Rejection of Dependent Claim 28

We are not persuaded the Examiner erred in asserting that a combination of Joye, Roberts, and Yasuzawa discloses or suggests that the single family residence “is sole investment asset of the real property holding company,” as recited in dependent claim 28 (App. Br. 15; Reply Br. 10-11). Roberts discloses that an REIT is a company that buys, sells, manages, and develops real estate or real estate mortgages on behalf of its investors (col. 2, ll. 45-47), but does not disclose specific assets. Roberts then discloses that the investor contributes *the* real estate property to a partnership owned by the REIT (col. 2, ll. 57-58). Accordingly, when these portions of Roberts are read together, Roberts at least suggests that *the* real estate property contributed by the investor to the REIT with unknown assets is the sole investment asset of the REIT.

Obviousness Rejection of Dependent Claims 29-36

We are not persuaded the Examiner erred in asserting that a combination of Joye, Roberts, Yasuzawa, and Official Notice renders obvious dependent claims 29-36 (App. Br. 15-17, Reply Br. 11-12). Appellants assert that the Official Notice was timely traversed, and that being required to “point out specific evidence that some facts were not well known contradicts logic. Such requirement would amount to presenting Applicants with ‘the classic difficulty of trying to prove a negative proposition’” (App. Br. 16). Appellants mischaracterize what is required. Our reviewing court has held that an adequate traverse to an Examiner’s finding of Official Notice must “contain adequate information or argument” to create on its face “a reasonable doubt regarding the circumstances justifying the... notice” of what is well known to an ordinarily skilled artisan. *In re Boon*, 439 F.2d 724, 728 (CCPA 1971). “To adequately traverse such a finding [of Official Notice], an applicant must specifically point out the supposed errors in the [E]xaminer’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.” MPEP § 2144.03(C). *See also* 37 CFR 1.111(b); *In re Chevenard*, 139 F.2d 711, 713 (CCPA 1943). “If applicant does not traverse the [E]xaminer’s assertion of [O]fficial [N]otice or applicant’s traverse is not adequate, ... the common knowledge or well-known in the art statement is taken to be admitted prior art” MPEP § 2144.03(C). Accordingly, only adequate information and argument, not proof that some facts were not well-known, is required. Here, Appellants have not set forth any information or arguments as to why the Officially Noticed facts were not well known.

Indefiniteness Rejection of Independent Claim 13

We are not persuaded the Examiner erred in asserting that independent claim 13 fails to comply with the definiteness requirement of 35 U.S.C. § 112, second paragraph (App. Br. 17-19; Reply Br. 13-15). The Examiner asserts that there is no difference between (1) “providing for trading” and “listing,” and (2) “complying with applicable requirements for making the partial interest units publicly traded” and “complying with applicable exchange-imposed requirements for listing the partial interest units on a public exchange” (Ans. 4, 15-16). For (1), “providing for trading” functionally includes “listing,” as something cannot be traded unless it is listed. Accordingly, we agree with the Examiner that the recitation of the additional “listing” is indefinite, as it is unclear whether the “providing for trading” fulfills the recited “listing,” or whether the recited “listing” is separate from “providing for trading.”

For (2), we agree with Appellants that the two aspects may differ in scope because some requirements for “complying with applicable requirements for making the partial interest units publicly traded” may not be required for “complying with applicable exchange-imposed requirements for listing the partial interest units on a public exchange,” and vice versa (emphasis added).

DECISION

The decision of the Examiner to reject claims 13-15 and 18-36 is AFFIRMED.

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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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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