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BALLY GAMING INC. 6601 S. BERMUDA ROAD LAS VEGAS, NV 89119			DUFFY, DAVID W	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte VERNON BERNARD and KARL WUDKE

Appeal 2014-008144
Application 13/401,346
Technology Center 3700

Before MICHAEL L. HOELTER, JILL D. HILL, and ERIC C. JESCHKE,
Administrative Patent Judges.

JESCHKE, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Vernon Bernard and Karl Wudke (“Appellants”) seek review under 35 U.S.C. § 134(a) of the Examiner’s decision, as set forth in the Final Office Action dated September 6, 2013 (“Final Act.”), rejecting claims 1, 3, 4, 9, 12, 13, and 15–19.¹ Claims 2, 8, and 14 have been canceled and claims 5–7, 10, and 11 have been withdrawn. Br. 2, 15, 16. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellants identify Bally Gaming, Inc. as the real party in interest. Br. 1.

BACKGROUND

The disclosed subject matter “relates to displays, gaming devices including displays and methods where a video display is provided” and “[m]ore particularly . . . to such displays and methods where the display has an interior opening to provide for the operation of a mechanical device or for viewing of another display.” Spec. ¶ 2. Claims 1, 13, 18, and 19 are independent. Claim 1 is reproduced below, with emphasis added:

1. A gaming device comprising:
 - a cabinet;
 - an electronic, video, first display device on said cabinet, said *first display including two L-shaped liquid crystal sub-displays configured to be mated together to cooperatively define said first display having a rectangular opening there through*, each sub-display including an mxn matrix of thin film transistor switching devices;
 - a second display device on said cabinet having a component extending through said opening; and
 - a controller to control said first and second displays to cooperate to display graphics in connection with a game.

REJECTIONS

1. Claims 1, 3, 4, 9, 13 and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Hein (US 2007/0072668 A1, published Mar. 29, 2007), Luciano (US 7,335,101 B1, issued Feb. 26, 2008), and Gagner (US 2010/0291993 A1, published Nov. 18, 2010).

2. Claims 1, 13, and 17 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Luciano and Gagner.

3. Claims 12 and 15 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Luciano, Gagner, and Durham (US 2008/0004104 A1, published Jan. 3, 2008).

4. Claim 18 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Luciano, Gagner, and Durham.

5. Claim 19 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Luciano and Kun (US 4,535,341, issued Aug. 13, 1985).

DISCUSSION

Rejection 1 – The rejection of claims 1, 3, 4, 9, 13 and 16 under 35 U.S.C. § 103(a) based on Hein, Luciano, and Gagner

Independent claim 1 recites, among other limitations, a “first display including two L-shaped liquid crystal sub-displays configured to be mated together to cooperatively define said first display having a rectangular opening there through.” Br. 15 (Claims App.). To address claim 1 in this Rejection, the Examiner relied on Hein for various limitations, but stated that “Hein does not explicitly disclose the first display is made of L-shaped components that make a rectangular opening.” Final Act. 5. The Examiner found, however, that “Luciano discloses a gaming machine where a display element is made of sub displays that may be assembled in L shapes to create and surround rectangular openings (fig 5)” and that “[o]ne of ordinary skill in the art would have recognized the advantages of assembling displays out of smaller, rectangular sub displays to allow for the creation of larger displays from commodity displays rather than expensive custom shaped displays.” *Id.* According to the Examiner, it would have been obvious “to have modified Hein in view of Luciano to have made the first display made

of sub displays that may be L-shaped in order to create large complex displays out of smaller, simpler and less expensive displays with rectangular openings.” *Id.* at 6.

Rejections based on obviousness must be supported by “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), *cited with approval in KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Here, the Examiner has not provided adequate articulated reasoning to have modified Hein in view of Luciano such that the “first display” would include “two L-shaped liquid crystal sub-displays” as recited in claim 1. The reasoning provided by the Examiner—“to create large complex displays out of smaller, simpler and less expensive displays with rectangular openings” (Final Act. 6)—does not support the conclusion of obviousness because it does not show why a person of ordinary skill in the art at the time of the invention would have selected the *specific shape* recited: an L shape.

The Examiner takes the position that “merely using two L shaped panel sections instead of four I or some combination of C and I shaped panels together, does not result in a patentable difference” because “the assembled display would appear the same to the user.” Ans. 4. We determine, however, that this position does not provide adequate findings and reasoning regarding the limitation at issue to remedy the deficiencies discussed above. Thus, we do not sustain the rejection of claim 1, or the rejection of claims 3, 4, and 9, which depend from claim 1.

Independent claim 13 recites, among other limitations, “first and second *L-shaped* liquid crystal video sub-displays arranged to define a substantially continuous first video display having an interior opening there

through.” Br. 16 (Claims App.) (emphasis added). For claim 13 (and claim 16, which depends from claim 13), the Examiner relies on the same findings and deficient reasoning discussed above. *See* Final Act. 5–6; Ans. 3–4.

Thus, we also do not sustain the rejection of claims 13 and 16.

*Rejection 2 – The rejection of claims 1, 13, and 17 under
35 U.S.C. § 103(a) based on Luciano and Gagner*

To address claim 1 in this Rejection, the Examiner relied on Luciano for various limitations, but stated that “Luciano does not explicitly disclose the sub-displays are L-shaped.” Final Act. 7. The Examiner found, however, that “Luciano discloses the displays are rectangular or C shaped and may include other variations.” *Id.* (citing Luciano, col. 4, ll. 58–65). The Examiner also “contend[ed] that L-shaped panels would have been an obvious modification of rectangular panels as L shaped is just two rectangular panels together which Luciano already discloses (fig 5).” *Id.*

Here, the Examiner has not provided adequate articulated reasoning to have modified Luciano so that the “first display” would include “two L-shaped liquid crystal sub-displays” as recited. *See Kahn*, 441 F.3d at 988. Instead, the Examiner concludes that arriving at the recited shape would have been an “obvious modification” based on its alleged simplicity. *See* Final Act. 7. Even assuming this to be correct, however, “[s]implicity is not inimical to patentability.” *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992). For these reasons, we do not sustain the rejection of claim 1.

For claim 13 (and claim 17, which depends from claim 13), the Examiner relies on the same findings and deficient reasoning discussed above with regard to claim 1. *Compare* Final Act. 8–9 (claim 13), *with id.* at 6–7 (claim 1). Thus, we do not sustain the rejection of claims 13 and 17.

*Rejection 3 – The rejection of claims 12
and 15 under 35 U.S.C. § 103(a)*

Claim 12 depends from claim 1, and claim 15 depends from claim 13. Br. 16 (Claims App.). The Examiner’s reliance on Durham does not remedy the deficiencies discussed above (*see supra* Rejection 2). Thus, for the same reasons discussed above, we do not sustain the rejection of claims 12 and 15.

*Rejections 4 and 5 – The rejection of claims
18 and 19 under 35 U.S.C. § 103(a)*

Independent claim 18 recites, among other limitations, “a pair of L-shaped, liquid crystal video sub-displays.” Br. 17 (Claims App.). Independent claim 19 recites, among other limitations, “securing a pair of L-shaped video sub-display elements in a mated arrangement.” *Id.*

To address these limitations, the Examiner set forth the same findings and conclusions relied on to address the limitation at issue in claim 1 (*see supra* Rejection 2). *Compare* Final Act. 11–12 (claim 18), 12–13 (claim 19), *with id.* at 6–7 (claim 1). Moreover, the Examiner’s reliance on Durham (Rejection 4) and Kun (Rejection 5) does not remedy the deficiencies discussed above. Thus, for the same reasons discussed above, we do not sustain the rejection of claims 18 and 19.

DECISION

We REVERSE the decision to reject claims 1, 3, 4, 9, 12, 13, and 15–19 under 35 U.S.C. § 103(a).

REVERSED