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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MAARTEN MARINUS JOHANNES WILHELMUS
VAN HERPEN, MARKUS CORNELIUS VERMEULEN,
JOSEPH L. STUYFZAND, ANJALIKA BOSE, THOMAS
SCHAPER, and TIM DEKKER

Appeal 2014-009097
Application 13/126,072
Technology Center 3600

Before ANNETTE R. REIMERS, THOMAS F. SMEGAL, and
GORDON D. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF CASE

Appellants¹ appeal under 35 U.S.C. § 134 from a rejection of claims
2–8 and 10–31. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the real party in interest as Koninklijke Philips
Electronics, N.V., at Groenewoudseweg 1, Eindhoven, The Netherlands, 5621
BA. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to a lighting arrangement comprising a carpet with back lighting for providing dynamic light effects with the carpet.

Appeal Br. IX Claims App. i–iv. Claim 19, reproduced below, illustrates the claimed subject matter:

19. A lighting arrangement comprising a carpet structure and a control unit, said carpet structure comprising:
a carpet back lighting system comprising:
a carpet back lighting unit having a lighting unit front face;
a plurality of light sources for controllably generating light;
a carpet unit including a carpet unit front face and a carpet unit back side;
said carpet back lighting unit front face and said carpet unit back side being adjacent and said carpet unit comprising tufts arranged between the respective front face and back side to allow at least part of said generated light to pass from the carpet unit back side to the carpet unit front face while said individual light sources are made invisible to an observer looking at said front face;
said control unit being adapted to receive an input signal and to generate, in response to the input signal, an output signal to control the light generated by the light sources.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Harrison	US 4,737,764	Apr. 12, 1988
Blum	US 6,982,649 B2	Jan. 3, 2006
Russell	US 2008/0276393 A1	Nov. 13, 2008
Hawkins	US 7,670,026 B1	Mar. 2, 2010

REJECTIONS

The Examiner made the following rejections:

1. Claims 2, 10, 16–23, and 29–31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Harrison and Russell.
2. Claims 3–8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Harrison, Russell, and Hawkins.
3. Claims 3–8, 11–15, and 24–28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Harrison, Russell, and Blum.

OPINION

Appellants argue all the claims together and provide additional arguments for dependent claims 18 and 20. Appeal Br. 4–10. Claims 19 and 29 are independent. We address Appellants’ arguments as they are raised in their Appeal Brief.

In connection with claim 19, Appellants argue first that there is no reason for one of ordinary skill in the art to modify the structure taught by Harrison with the lighting technique taught by Russell. Appeal Br. 4–5. Specifically, Appellants argue that Harrison teaches away from light sources that are made invisible to an observer looking at the carpet’s front face because Harrison teaches light transmissive housings that fit in openings through the carpet. Appeal Br. 5. Appellants reason that “[g]iven [Harrison’s] unequivocal statements about the visibility of Harrison’s lights, it would not have occurred to one of ordinary skill in the art, based on these references alone, to substitute Russell’s arrangement of tufts 236 and light

sources 250 Harrison's arrangement of transmissive housing 47 and tufts 58." *Id.*

We do not agree with Appellants that Harrison teaches away from the proposed combination with Russell. Harrison teaches light *transmissive* housings 47 (Harrison 4:24–25 and *passim*), but Harrison does not say that the housings 47 are transparent. Given Appellants' conventional, broad definition of "transmissive" (Spec. 12:15–18), light transmissive includes translucent, so that individual light sources are invisible to an outside observer, as required by claim 19. Thus, Harrison does not teach away from the combination proposed by the Examiner.

Further, the Examiner responds that combining Russell with Harrison would not alter the primary purpose of Harrison. The Examiner finds that using Russell's light sources underneath carpet tufts to illuminate them would reduce the manufacturing processes and cost of Harrison because the openings and cutouts in the carpet for placement of the light transmissive housings would be eliminated. Ans. 3. Appellants do not apprise us of error in the Examiner's findings.

Appellants also argue that it would not have occurred to one of ordinary skill in the art "to substitute Russell's arrangement of tufts 236 and light sources 250 for Harrison's arrangement of transmissive housing 47 and tufts 58." Appeal Br. 5; Reply 2. This argument does not address the Examiner's position. The Examiner clearly stated that "[t]he combination was only used to teach that the tufts can be illuminated." Final Act. 2. By not addressing the rejection as articulated by the Examiner, Appellants have not demonstrated effectively how the Examiner was in error.

Appellants next challenge the rejection of claim 19 based on Harrison and Russell, charging that Russell is not analogous art and so one of ordinary skill in the art to which the invention relates would not look to Russell for guidance or ideas. Appeal Br. 5–6. Appellants’ Appeal Brief describes the problem they were trying to solve as “a lighting arrangement comprising a carpet with back lighting for providing dynamic lighting effects with the carpet.” Appeal Br. 7. They argue that the problem Russell was trying to solve is so different that Russell’s solution is “not at all pertinent.” *Id.*

The Examiner answers that Russell and Harrison are both classified in the same class and, in addition, “both [] references disclose the similar concept of placing light sources underneath tufts and illuminating them.” Ans. 3. Appellants’ Reply does not respond to the Examiner’s finding on the similarity of Russell’s concept to Harrison’s, namely, the backlighting of tufts.

Prior art is analogous and can be applied in an obviousness combination if it either (1) “is from the same field of endeavor, regardless of the problem addressed” or (2) “is reasonably pertinent to the particular problem with which the inventor is involved.” *In re Clay*, 966 F.2d 656, 658–59 (Fed. Cir. 1992). To determine if art is analogous, we look to “the purposes of both the invention and the prior art.” *Id.* at 659. If a reference disclosure and the claimed invention have a same purpose, the reference relates to the same problem, which supports an obviousness rejection. *Id.*

Unwired Planet, LLC v. Google, Inc., 2016 WL 6694955, Case Nos. 2015-1810, 2015-1811 (Fed. Cir. Nov. 15, 2016), slip op. 4.

We acknowledge that Appellants’ invention and Russell are not from the same field of endeavor. However, we agree with the Examiner that

Russell is reasonably pertinent to the particular problem confronting Appellants. Appellants' Specification describes the invention as "relat[ing] to a lighting arrangement including a carpet unit. The invention further relates to a method for providing light effects or information using such lighting arrangement as well as to the lighting arrangement for specific purposes." Spec. 1:2–4. Significantly, Appellants' Background of the Invention identifies U.S. Published Application 20070037462 as relevant. That application, according to Appellants, "describes a method for manufacturing a distributed optical fibers scrim comprising functional optical fibers." Spec. 1:14–15. Thus, the problem Appellants addressed in their application is broader than the narrow problem they suggest in their Appeal Brief.

The Supreme Court's decision in *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007), directs us to construe the scope of analogous art broadly, stating that "*familiar items may have obvious uses beyond their primary purposes*, and a person of ordinary skill often will be able to fit the teachings of multiple patents together like pieces of a puzzle." *Id.* at 402.

Wyers v. Master Lock Co., 616 F.3d 1231, 1238 (Fed. Cir. 2010). We find that Russell's solution of illuminating tufts of a toothbrush "is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering [the] problem [Appellants' confronted]." *In re Clay*, 966 F. 2d 656, 659 (Fed. Cir. 1992). The problem confronting Appellants of how to backlight a tufted article is the same as that confronting Russell, and Russell's solution is reasonably pertinent to it. Accordingly, we find no error in the Examiner's using Russell in combination with Harrison to reject claim 19.

Appellants make the same arguments in connection with claims 2–8, 14–18, and 20–31. Appeal Br. 8. For the reasons stated above, we are not persuaded the Examiner erred in rejecting these claims.

Additional Arguments Regarding Claim 18

Appellants make additional, separate arguments for allowance of claim 18. Claim 18 includes, in relevant part, the limitation that the control unit illuminates a path from a starting location to an ending location of a path and “said path remains illuminated until said person returns to the starting location.” Appeal Br. IX, ii (Claims App.). Appellants argue that this exact function is not shown in Harrison and that the Examiner must be relying on “Official Notice” to find such a function. Appeal Br. 8. We find no reliance by the Examiner on any disclosure outside the cited references. Harrison discloses manual and automatic switches. The Examiner correctly identifies the subject limitation in claim 18 as an intended use limitation and reasonably found that the control unit shown in Harrison (6:2–9; Fig. 30) would be capable of performing the claimed function. Final Act. 2, Ans. 4. Appellants have not provided sufficient evidence or arguments to establish this finding is in error. *See, e.g., In re Schreiber*, 128 F.3d 1473, 1477-78 (Fed. Cir. 1997) (claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function). Indeed, Appellants have pointed to no structural difference between Harrison and claim 18 in connection with the control unit.

Appellants suggest that

[t]he “output signal” is a structural feature of claim 17 [from which claim 18 depends] that controls the light sources to illuminate another structural feature of claim 17 – a path – from a starting location of a person to an ending location. Claim 18

then modifies this structure, reciting that the “path remains illuminated until said person returns to the starting location.”

Appeal Br. 9–10. We do not agree. The output signal merely describes what the claimed control does, not what it is. “[A]pparatus claims cover what a device *is*, not what a device *does*.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1468 (Fed. Cir. 1990). Claim 18 (including the claims from which it depends) does not positively recite any structure related to the claimed control signal. Accordingly, we are not persuaded the Examiner erred in rejecting claim 18.

Additional Arguments Regarding Claim 20

Appellants argue claim 20 separately. Claim 20 depends from claim 19 and adds that “said carpet unit comprises at least one light transmissive layer disposed between the tufts and the carpet unit back side.” Appeal Br. IX, iii (Claims App.). The Examiner finds this feature is taught by Harrison’s housings 47. Appellants argue that the housings are not described as being between Harrison’s tufts and the carpet unit backside and that the fact that Harrison’s housings 47 extend through openings in the carpet means they cannot be between the tufts and the carpet unit backside. Appeal Br. 10. Appellants urge no special definition of the terms “tufts” or “between,” and we give these terms their ordinary meanings. “Between” in the present context, is defined as “in the time, space, or interval that separates.”² The term “carpet unit back side” is described in the Specification as the “external face” of the carpet backing. Spec. 30:16–17.

² <http://www.merriam-webster.com/dictionary/between>, last viewed Nov. 21, 2016.

Harrison describes its carpet assembly: “Each unit has at least one opening 46 therein which is open to the upper surface of the unit. A light transmissive housing 47 is inset in each opening.” Harrison 4:22–25 (emphasis omitted). Harrison describes another light transmissive housing as

an integrally molded light transmissive member having flange portions 51 which extend outward from the bottom thereof. The flange portions serve to secure the housing into the carpet tile and prevent it from being pulled up through the opening in the modular unit into which the housing is inset (see FIG. 21). The housing has a top or dome portion 52 which is visible when the housing is installed in the floor covering unit (see FIG. 21).

Harrison 4:40–48 (emphasis omitted). Figures 21 and 22 of Harrison are reproduced below:

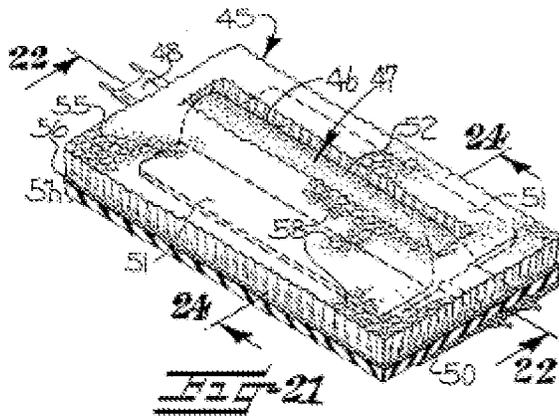


FIG. 21 illustrates the light-emitting means of FIG. 20 in a carpet tile.

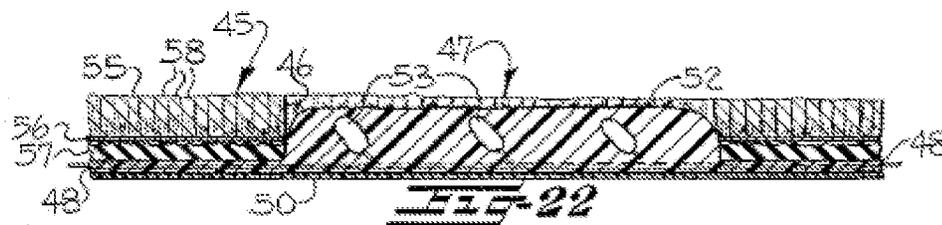


FIG. 22 is a sectional view, taken along line 22-22 of FIG. 21, of a light-transmissive housing inset into a carpet tile.

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These Figures clearly show the light transmissive housing 47, including its dome portion 52, in the interval that separates the tufts 58 and the secondary backing 57. Accordingly, we are not persuaded that the Examiner erred in rejecting claim 20.

DECISION

For the above reasons, the Examiner's rejection of claims 2–8 and 10–31 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)(1)(iv) (2009).

AFFIRMED