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EXAMINER

HICKS, CHARLES V

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRETT LORING GROVER,
WILLIAM HENRY OTHICK, and BRENT JEREMY DUERSCH

Appeal 2015-003850
Application 13/196,932
Technology Center 2600

Before JASON V. MORGAN, BRUCE R. WINSOR, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

WINSOR, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1–20, which constitute all the claims pending in this application.

We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ The real party in interest identified by Appellants is The Procter & Gamble Company. Br. 1.

STATEMENT OF THE CASE

Appellants' disclosed "invention relates to a system for displaying large amounts of visual information using multiple displays in multiple areas within a room." Spec. 1:7–8. Claim 1, which is illustrative, reads as follows:

1. A visual display system for use in a room having walls and a floor comprising:
 - a. at least two visual displays, wherein each visual display is upon a wall, and is produced using more than one image displaying device, and wherein at least two of said visual displays are oriented so that they are directed towards each other; and
 - b. [a] CPU;wherein, said visual displays each have a lower edge and said lower edge is elevated at least about 48 inches from the floor.

Br. 11 (Claims App'x).

The Examiner relies on the following prior art in rejecting the claims:

Kulkarni et al. ("Kulkarni")	US 2005/0125488 A1	June 9, 2005
Baloga et al. ("Baloga")	US 2006/0117669 A1	June 8, 2006
Neale et al. ("Neale")	US 2006/0139233 A1	June 29, 2006
Hill et al. ("Hill")	US 2006/0290714 A1	Dec. 28, 2006
Hutchinson et al. ("Hutchinson")	US 2007/0106950 A1	May 10, 2007
Liao	US 2010/0033403 A1	Feb. 11, 2010
Dotson	US 7,808,448 B1	Oct. 5, 2010

The Examiner cites to Theesfeld et al. (US 2010/0213151 A1, published Aug. 26, 2010) (“Theesfeld”) for its evidentiary value, but does not rely on Theesfeld as prior art in rejecting the claims.

Claims 1, 2, 4, 7–9, 11, 15, 19 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Baloga and Kulkarni.² *See* Final Act. 3–9.

Claims 3, 5, 6, 10, 12–14, and 16–18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over various combinations of Baloga and Kulkarni with Liao, Dotson, Hutchinson, Neale, and Hill. *See* Final Act 9–17.

Rather than repeat the arguments here, we refer to the Appeal Brief (“Br.” filed Oct. 21, 2014) and the Specification (“Spec.” filed Aug. 3, 2011) for the positions of Appellants and the Final Office Action (“Final Act.” mailed May 22, 2014) and Examiner’s Answer (“Ans.” mailed Dec. 4, 2014) for the reasoning, findings, and conclusions of the Examiner. Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2014).

ISSUES

Based on Appellants’ arguments, we discuss the appeal by reference to claim 1. The issues presented by Appellants’ contentions are as follows:

Issue 1: Does the Examiner err in finding Baloga teaches “at least two visual displays, wherein each “visual display . . . upon a wall

² All rejections are under the provisions of 35 U.S.C. in effect prior to the effective date of the America Invents Act of 2011. Final Act 2.

. . . wherein, said visual displays each have a lower edge . . . elevated at least about 48 inches from the floor,” as recited in claim 1?

Issue 2: Does the Examiner err in finding Baloga teaches “at least two visual displays, wherein each visual display is upon a wall, . . . and wherein at least two of said visual displays are oriented so that they are directed towards each other,” as recited in claim 1?

Issue 3: Does the Examiner err in concluding it would have been obvious at the time of the invention to utilize Kulkarni’s “visual display . . . produced using more than one image displaying device” (claim 1) as the visual display in the Baloga’s “visual display system” (*id.*)?

ANALYSIS

CLAIM 1

We have reviewed Appellants’ arguments and contentions (Br. 2–3) in light of the Examiner’s findings (Final Act. 3–5), conclusions (*id.*), and explanations (Final Act. 17–18; Ans. 16–18) regarding claim 1. We agree with the Examiner’s findings, conclusions, and explanations, and we adopt them as our own. The following discussion, findings, and conclusions are for emphasis.

Issue 1

Appellants contend that the Examiner’s reliance on Baloga’s paragraph 11, which describes the background of Baloga’s invention, was improperly relied upon to describe a mounting height of Baloga’s display devices. Br. 2. We disagree. A reference is prior art for all that it teaches for the purposes of determining obviousness. *Symbol Techs. Inc. v. Opticon Inc.*, 935 F.2d 1569, 1578 (Fed. Cir. 1991); *see also Beckman Instruments*

Inc. v. LKB Produkter AB, 892 F.2d 1547, 1551 (Fed. Cir. 1989). A person of ordinary skill in the art is a person of ordinary creativity and not an automaton, *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007), whose inferences and creative steps we may consider, *id.* at 418. Such a person would have understood that the same considerations that apply to the mounting height of the prior art wall mounted visual displays would also apply to the wall mounted visual displays 20c and 20d (Baloga Figs. 20, 34) described in Baloga's detailed description.

Appellants further contend as follows:

[T]he cited paragraph [(Baloga ¶ 11)] provides only that the lower edge of the display screen is at least a foot above the table height. Applicant submits that it is an impermissible expansion of this language based upon the claims of the instant application to determine that at least a foot above the table top shall be construed as definitively stating at least 48 inches above the floor of the room.

Br. 2. We disagree. Baloga teaches, *inter alia*, a table top that is 44 inches high, i.e., 44 inches above the floor of the room. Baloga ¶ 113. Baloga further teaches mounting wall mounted displays one foot above the table height. Baloga ¶ 11. Thus, one of ordinary skill in the art would have learned from Baloga to mount a wall mounted display 12 inches above a 44-inch high table top, or 56 inches above the floor, i.e., "at least about 48 inches from the floor" (claim 1).

Appellants have not shown the Examiner errs in finding that Baloga teaches "at least two visual displays, wherein each "visual display . . . upon a wall . . . wherein, said visual displays each have a lower edge . . . elevated at least about 48 inches from the floor," as recited in claim 1.

Issue 2

Appellants contend “[t]he Baloga reference provides that a display may be configured as part of a wall such that it may be selectively used in more than one space, this teaching is not disclosed in a manner suggesting multiple displays, upon walls facing each other and originating from multiple imaging devices.” Br. 2. We disagree.

First of all, the Examiner relies on Kulkarni, not Baloga, to teach “visual display[s] . . . produced using more than one image displaying device” (claim 1). *See* Final Act. 5. “[O]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

Secondly, Baloga teaches, in various places, wall mounted visual displays 20c and 20d “oriented so that they are directed towards each other” (claim 1). *See, e.g.*, Baloga Figs. 11, 20, 21, 34, 35, 41, 42. We note, for emphasis only, that Baloga teaches the following:

[R]eferring . . . to FIG. 11, . . . larger displays 20c and 20d may be mounted or supported at locations spaced from the table edge, Here, when appropriate, information presented on display 20c can be viewed by conference attendees on a side of table assembly 252 opposite display 20c while information presented via display 20d maybe [sic] viewed by attendees on a side of assembly 252 opposite display 20d.

Baloga ¶ 146 (bold facing omitted). This is the same arrangement described by Appellants’ Specification:

This display system produces a comfortable meeting atmosphere where attendees can sit face-to-face, glancing up slightly to view a large amount of displayed information. The visual display system includes at least two visual displays, . . . where at least

two of the visual displays are oriented so that they are directed towards each other.

Spec. 2:10–14; *see also id.* 7:29–32, 8:11–18.

Appellants have not shown the Examiner errs in finding Baloga teaches “at least two visual displays, wherein each visual display is upon a wall, . . . and wherein at least two of said visual displays are oriented so that they are directed towards each other,” as recited in claim 1.

Issue 3

The Examiner concludes as follows:

At the time the invention was made, it would have been obvious to one having ordinary skill in the art to modify the display of Baloga wherein a visual display is produced using more than one image displaying device, as taught by Kulkarni.

As one of ordinary skill in the art would appreciate, the suggestion/motivation for doing so would have been the use of multiple display devices in a single, high resolution and scalable display (Kulkarni, pg. 1, par. 1).

Final Act. 5.

Appellants contend “[n]othing in the Baloga reference suggests that there would be any benefit from the incorporation of the Kulkarni teachings into the table mounted or other displays of the reference. . . . The combination of references, when the references are each taken as whole, is not properly motivated.” Br. 2–3. We are not persuaded of error.

“The obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation, or by overemphasis on the importance of published articles and the explicit content of issued patents.” *KSR*, 550 U.S. at 419 (2007). Nevertheless, here the Examiner has articulated a rationale for combining Baloga and Kulkarni drawing evidence of a motivation to combine the references directly from

Kulkarni, one of the cited references. *See* Final Act. 5. Rather than explaining why the articulated rationale is incorrect, Appellants assert that the rationale constitutes error because it is not based on evidence drawn from Baloga. As such, Appellants argument is not commensurate with the ground of rejection articulated by the Examiner. We conclude the Examiner’s stated rationale is reasonable. For emphasis, we note that the articulated utilization of Kulkarni’s “visual display . . . produced using more than one image displaying device” (claim 1) as the visual display in the Baloga’s “visual display system” (*id.*) is no more than “[t]he combination of familiar elements according to known methods [that] . . . does no more than yield predictable results,” *KSR*, 550 U.S. at 416, that can be implemented by a person of ordinary skill in the art, *id.* at 417, — a predictable variation barred from patentability by § 103.

Appellants do not establish the Examiner errs in concluding it would have been obvious at the time of the invention to utilize Kulkarni’s “visual display . . . produced using more than one image displaying device” (claim 1) as the visual display in Baloga’s “visual display system” (*id.*).

Summary

For the foregoing reasons, we sustain the rejection of claim 1.

CLAIMS 2, 4, 7–9, 11, 15, 19 AND 20

Appellants argue claims 2, 4, 7–9, 11, 15, 19, and 20 together with claim 1. Br. 2. Accordingly, for the reasons discussed *supra* regarding claim 1 we sustain the rejection of claims 2, 4, 7–9, 11, 15, 19, and 20.

CLAIMS 3, 5, 6, 10, 12–14, AND 16–18

In arguing claims 3, 5, 6, 10, 12–14, and 16–18, Appellants repeat the substance of the arguments made for claim 1 regarding the combination of Baloga and Kulkarni. *Compare* Br. 3–9 with Br. 2–3. As discussed *supra* we find these arguments to be unpersuasive. Appellants contend that none of Liao (Br. 4), Dotson (Br. 5), Hutchison (Br. 7), Neale (Br. 8), or Hill (Br. 9) cures the defects in the combination of Baloga and Kulkarni. We find these contentions unpersuasive of error because, as discussed *supra* regarding the rejection of claim 1, Appellants do not identify error in the rejection of claim 1. Accordingly, we sustain the rejections of claims 3, 5, 6, 10, 12–14, and 16–18.

DECISION

The decision of the Examiner to reject claims 1–20 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). *See* 37 C.F.R. §§ 41.50(f), 41.52(b).

AFFIRMED