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pat.verlangieri@technicolor.com
russell.smith@technicolor.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ANA BELEN BENITEZ, DONG-QING ZHANG, and  
JIM ARTHUR FANCHER

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Appeal 2015-006576  
Application 12/514,855  
Technology Center 2600

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Before ST. JOHN COURTENAY III, LINZY T. McCARTNEY, and  
NORMAN H. BEAMER, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–6, 8–13, and 15–25. Claims 7 and 14 are canceled.

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

We affirm.

*Invention*

The invention on appeal “relates to computer graphics processing and display systems, and more particularly, to a system and method for compositing three-dimensional (3D) images.” (Spec. 1, ll. 5–7).

*Representative Claim*

1. A method for compositing three-dimensional images comprising:

acquiring at least two three-dimensional images;

obtaining metadata relating to the at least two three-dimensional images;

[L] *modifying at least one attribute of the metadata of the at least two three-dimensional images;*

mapping the metadata of the at least two three-dimensional images into a single three-dimensional coordinate system; and

compositing a portion of each of the at least two three-dimensional images into a single three-dimensional image.

(Bracketed matter and emphasis added regarding the contested limitation, labeled as “L”).

*Rejection*

Claims 1–6, 8–13, and 15–25 are rejected under 35 U.S.C. § 103(a) over the combined teachings and suggestions of Mashitani et al. (US 2006/0132597 A1; June 22, 2006) in view of Robotham et al. (US 6,084,590 July 4, 2000).

*Grouping of Claims*

Based on Appellants’ arguments, we decide the appeal of claims 1–6, 8–13, and 15–25 on the basis of representative claim 1. To the extent Appellant has not advanced separate, substantive arguments for the remaining claims on appeal, such arguments are considered waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

## ANALYSIS

We have considered all of Appellants' arguments and any evidence presented. We highlight and address specific findings and arguments for emphasis in our analysis below.

*Rejection A of Representative Claim 1 under 35 U.S.C. § 103(a)*

**Issue:** Under 35 U.S.C. § 103(a), did the Examiner err in finding the cited combination of Mashitani and Robotham would have taught or suggested contested limitation L: “*modifying at least one attribute of the metadata of the at least two three-dimensional images,*” within the meaning of independent claim 1? <sup>1</sup> (Emphasis added.)

Appellants contend, inter alia:

The cited passages of Mashitani (i.e., paragraphs [0037]-[0038]) disclose a collision determination process in which “thickness” values are taken into consideration along with “depth” values in order to produce a stereoscopic image. However, such cited passages mention nothing about “modifying” values of “at least two three-dimensional images”, as claimed. Rather, the cited passages of Mashitani appear directed to describing embodiments/advantages related to the above-stated objective of taking “thickness” information into consideration along with “depth” information when generating a stereoscopic image (e.g.,

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<sup>1</sup> We give the contested claim limitations the broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). *See also* e.g., Spec. US 2011/0181591 A1 (¶ 53) (“Having described preferred embodiments for a system and method compositing 3D images (which are *intended to be illustrative and not limiting*), it is noted that modifications and variations can be made by persons skilled in the art in light of the above teachings. It is therefore to be understood that *changes may be made in the particular embodiments of the disclosure disclosed which are within the scope and spirit of the disclosure as outlined by the appended claims.*” (emphases added)).

see last sentence of paragraph [0037] - “It is noted that, in the case that only the depth value is applied, an image in which the ball 105 passes at the rear side of the image 102 of the building is generated.”). . . .

The cited passages of Robotham discuss, among other things, recording the position, motion, relative depth, and other relative attributes of individual actors, cameras, props, and scenery into a common database (see column 11, lines 1-60; column 14, lines 24-36). Such passages also disclose “[a] color correction module 20-4 [that] provides an ability for the user to adjust colors once the image [in a singular sense] is in the output format” (emphasis added) (see column 23, lines 4-6). However, there is no disclosure of “modifying at least one attribute of the metadata of the at least two three-dimensional images” (emphasis added) so as to allow such images to be composited, as recited by the independent claims.

(App. Br. 5–6 (emphasis omitted).)

As found by the Examiner (Final Act. 3), Mashitani (¶ 36) teaches a three-dimensional image: “a three-dimensional image of a ball 105 generated by a computer.” To the extent that Mashitani may contemplate only a *single* three-dimensional image in paragraph 36, we find generating (i.e., acquiring) a *second* three-dimensional image would have merely been a “predictable use of prior art elements according to their established functions.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007).<sup>2</sup>

Thus, claiming a mere plurality of prior art elements is not an unobvious distinction over the prior art of record, because using plural elements would have produced a predictable result under § 103. “A mere

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<sup>2</sup> “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 550 U.S. at 416. “If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.” *Id.* at 417.

duplication of parts is not invention.” *In re Marcum*, 47 F.2d 377, 378 (CCPA 1931) (citing *Topliff v. Topliff*, 145 U.S. 156, 163 (1892)). *See also Dunbar v. Myers*, 94 U.S. 187, 195 (1876) (“for most purposes the machine will operate as well and as successfully with one deflecting plate as with two. Two deflecting plates may be better than one . . . .”); *In re Abrahamsen*, 53 F.2d 893, 894 (CCPA 1931) (“It is true that in the patent cited, there was but one detachable blade. However, the use of two such blades would readily suggest itself to the mechanic. It is a mere duplication of parts, and this has been uniformly held to be not patentable.”) (citations omitted); *In re Harza*, 274 F.2d 669, 671 (CCPA 1960) (“It is well settled that the mere duplication of parts has no patentable significance unless a new and unexpected result is produced.”).<sup>3</sup>

This reasoning is applicable here. Thus, we conclude claiming a mere plurality of three-dimensional images is not an unobvious distinction over the prior art of record, absent some showing of secondary considerations, such as unexpected results.<sup>4</sup>

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<sup>3</sup> *See also* MPEP 2144.04(VI)(B) (“REVERSAL, DUPLICATION, OR REARRANGEMENT OF PARTS”).

<sup>4</sup> “For objective [evidence of secondary considerations] to be accorded substantial weight, its proponent must establish a nexus between the evidence and the merits of the claimed invention.” *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010) (citation and quotations omitted; emphasis omitted).

We broadly but reasonably construe the claimed “metadata” as *data about data*<sup>5</sup> (e.g., color data pertaining to an image), and note Appellants acknowledge Robotham teaches: “[a] color correction module 20-4 [that] provides an ability for the user to adjust colors once the image [in a singular sense] is in the output format’ (emphasis added)(see column 23, lines 4-6).” (App. Br. 6).<sup>6</sup>

We apply here the well-established case law (discussed above) concerning the obviousness of implementing plural elements or steps, and find applying Robotham’s color metadata adjustment<sup>7</sup> to *plural* three-dimensional images would merely have realized a predictable result, and as such, would have been obvious under § 103.

For at least these reasons, we find the Examiner’s cited combination of Mashitani and Robotham teaches or suggests contested limitation L, within the meaning of claim 1: “*modifying at least one attribute of the*

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<sup>5</sup> Because “applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee.” *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) (citation omitted).

<sup>6</sup> “A statement by an applicant in the specification or made during prosecution identifying the work of another as ‘prior art’ is an admission which can be relied upon for both anticipation and obviousness determinations, regardless of whether the admitted prior art would otherwise qualify as prior art under the statutory categories of 35 U.S.C. 102.” MPEP § 2129(I), citing *Riverwood Int’l Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 1354 (Fed. Cir. 2003); *Constant v. Advanced Micro-Devices Inc.*, 848 F.2d 1560, 1570 (Fed. Cir. 1988)(emphasis omitted).

<sup>7</sup> *See* Robotham (col. 23, ll. 4–6)(“A color correction module 20-4 provides an ability for the user to adjust colors once the image is in the output format.”).

*metadata of the at least two three-dimensional images; . . . .”* We additionally observe Appellants have not filed a Reply Brief to rebut the Examiner’s findings and explanations in response to Appellants’ arguments.

Therefore, on this record, and based upon a preponderance of the evidence, we are not persuaded of error regarding the Examiner’s ultimate legal conclusion of obviousness regarding contested limitation L of representative claim 1.

Accordingly, we sustain the Examiner’s rejection of representative claim 1, and the rejection of grouped claims 2–6, 8–13, and 15–25 (not separately argued), which fall with claim 1 (*see* Grouping of Claims, *supra*).

#### *Conclusion*

For at least the aforementioned reasons, on this record, we are not persuaded the Examiner erred. We find a preponderance of the evidence supports the Examiner’s ultimate legal conclusion of obviousness regarding contested limitation L of representative claim 1.

#### DECISION

We affirm the Examiner’s rejection of claims 1–6, 8–13, and 15–25 under 35 U.S.C. § 103(a).

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 41.50(f).

AFFIRMED