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13/546,668	07/11/2012	Jan Morovic	82981098	6266
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JAN MOROVIC, PETER MOROVIC,  
JUAN MANUEL GARCIA REYERO VIÑAS,  
ALEJANDRO MANUEL DE PEÑA HEMPEL, and  
UTPAL KUMAR SARKAR

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Appeal 2015-007500  
Application 13/546,668  
Technology Center 2600

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Before JOHN A. EVANS, JOYCE CRAIG, and MATTHEW J. McNEILL,  
*Administrative Patent Judges.*

EVANS, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants<sup>1</sup> seek our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of Claims 1–15. App. Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.<sup>2</sup>

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<sup>1</sup> The Appeal Brief identifies Hewlett-Packard Development Company, LP, as the real party in interest. App. Br. 1.

<sup>2</sup> Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed March 20, 2015, "App. Br."), the Reply Brief (filed August 13, 2015, "Reply Br."), the Examiner's Answer (mailed June 19, 2015, "Ans."), the Final Action (mailed October 20, 2014, "Final Act."), and the Specification (filed July 11, 2012, "Spec.") for their respective

## STATEMENT OF THE CASE

The claims relate to a computer-implemented method and system for color separation for a printer. *See* Abstract.

Claims 1, 8, and 14 are independent. An understanding of the invention can be derived from a reading of exemplary Claim 1, which is reproduced below with some formatting added:

1. A computer implemented method for color separation for a printer, the method comprising:

forming a color gamut for the printer in the form of a hull in a color space, the hull having vertices corresponding to Neugebauer Primaries,

predicting the colorimetry in the color space of at least one Neugebauer Primary lying outside of an ink limit for the printer,

determining the Neugebauer Primary area coverages that can produce a desired color in the color space using at least one Neugebauer Primary lying outside of the ink limit.

### *References and Rejections*

The Examiner relies upon the prior art as follows:

Ito, <i>et al.</i> ,	US 2007/0030505 A1	Feb. 8, 2007
Morovic, <i>et al.</i> ,	US 2011/0096344 A1	Apr. 28, 2011

The claims stand rejected as follows:<sup>3</sup>

1. Claims 1 and 6–9 stand rejected under 35 USC § 102(b) as anticipated

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details.

<sup>3</sup> The Examiner's narrative statement of rejection does not refer to either Claim 10 or Claim 15. Appellants respond as though Claims 10 and 15 were rejected under § 103 over Morovic and Ito. App. Br. 10.

- by Morovic. Final Act. 6–8.
2. Claims 2–5, and 10–15 stand rejected under 35 USC § 103(a) as obvious over Morovic and Ito. Final Act. 8–12.

## ANALYSIS

We have reviewed the rejections of Claims 1–15 in light of Appellants’ arguments that the Examiner erred. We consider Appellants’ arguments *seriatim*, as they are presented in the Appeal Brief, pages 5–16.

### CLAIMS 1, 6, AND 7: ANTICIPATION BY MOROVIC

#### *Plural references.*

Appellants contend the Examiner has made an improper rejection under 35 U.S.C. § 102. Appellants argue the Final Office Action cites US 2005/0036163 (Edge) regarding a Neugebauer model and cites US 2010/0085586 (Tin) regarding use of a colorimeter, even though the Examiner rejects claim 1 as anticipated by Morovic alone. App. Br. 6–7.

The Examiner acknowledges Tin (“the ‘586 publication”) was not part of the § 102 rejection. The Examiner finds the MPEP authorizes the use of supplemental references to explain the meaning of a term used in a §102 rejection. Ans. 10 (citing MPEP 2131.0111). Therefore, the Examiner finds citing Tin is proper to the extent that the reference explains various concepts disclosed by Morovic. *Id.* The Examiner does not acknowledge Edge.

Appellants reply the MPEP permits the use of multiple references in a § 102 rejection to: (A) prove the primary reference contains an “enabled disclosure;” (B) explain the meaning of a term used in the primary reference; or (C) show that a characteristic not disclosed in the reference is inherent. Reply Br. 2 (citing MPEP § 2131.01, at 2100-85). Appellants contend the

Examiner cites Edge as teaching a technique “to account for variable dot gain to model the difference between theoretical halftone dot size and actual dot size reproducible by a halftone printer.” *Id.* (citing Ans. 4). Appellants argue that, because Morovic provides absolutely no reference to variable dot gain or to a difference between theoretical halftone dot size and actual dot size, Edge’s discussion of a purported technique to address the foregoing does not satisfy any permitted exception for allowing use of extra references in a § 102 rejection. Reply Br. 2. We agree.

First, the Examiner cites the MPEP as permitting the supplemental use of the Tin reference. Ans. 10. However, the Examiner does not specify what term(s) used in Morovic the Tin reference explains. *Id.* (“citation [to Tin] is proper to the extent that the reference explained the various concepts of *Morovic*”). *Id.* Second, the Examiner discusses “variable dot gain” in the context of Morovic. *See* Ans. 3. However, “variable dot gain” appears to be a concept raised by the Examiner. The Examiner fails to identify where Morovic discloses such subject matter. Although the MPEP may permit the use of secondary references to explain a term used in a § 102 reference, the MPEP does not permit the use of secondary references to expand upon the disclosure of a § 102 reference. Moreover, the claims do not recite “variable dot gain,” nor does the Examiner relate “variable dot gain” to the claim terms. *See In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998) (citation omitted) (finding “*the name of the game is the claim*”).

Although Appellants’ arguments in the Appeal Brief are directed to the use of Edge and Tin to supplement the §102 rejection over Morovic (*see* App. Br. 6–7), the Examiner’s Answer, for the first time, includes an additional reference, US 6,650,438 (Kress), to supplement the §102

rejection. *See* Reply Br. 3; Ans. 7, n. 26. However, notwithstanding being placed on notice by Appellants, the Examiner does not justify the use of yet another reference to supplement the §102 rejection.

We find the present use of a plurality of references to make a rejection under 35 U.S.C. §102 to be improper.

CLAIMS 2–5 AND 10–15: OBVIOUSNESS OVER MOROVIC AND ITO

The Examiner finds Ito teaches the further subject matter of the dependent claims, but does not apply Ito to the subject matter of the independent claims. Ans. 10–13. Therefore, in view of the foregoing discussion, we do not sustain the rejection of Claims 2–5 and 10–15.

DECISION

The rejection of Claims 1 and 6–9 under 35 U.S.C. § 102 is REVERSED.

The rejection of Claims 2–5, and 10–15 under 35 USC §103 is REVERSED.

REVERSED