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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT LEE MARTIN JR., ZACHARY THOMAS MARTIN,
MATTHEW LESTER DANNENFELDT, JEREMY HECTOR,
DUSTIN JOSEPH DePANFILIS, and JOE DELANEY

Appeal 2015-008004
Application 13/109,603
Technology Center 2100

Before ALLEN R. MacDONALD, IRVIN E. BRANCH, and
JON M. JURGOVAN, *Administrative Patent Judges*.

JURGOVAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ seek review under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–16 and 18–23. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.²

¹ Appellants identify REHRIG PACIFIC COMPANY as the real party in interest. (App. Br. 1.)

² Our Decision refers to the Specification filed May 17, 2011 (“Spec.”), the Final Office Action mailed June 6, 2014 (“Final Act.”), the Appeal Brief filed Jan. 6, 2015 (“App. Br.”), the Examiner’s Answer mailed June 30, 2015 (“Ans.”), and the Reply Brief filed Aug. 31, 2015 (“Reply Br.”).

CLAIMED INVENTION

The claims are directed to a cart tracking system. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for distributing carts along a route including the steps of:
 - a) displaying a list of addresses along a selected route in response to a user input selecting the selected route from a plurality of available routes;
 - b) displaying information about a selected address from the list of addresses in response to a user input selecting the selected address, the information including a requested cart type; and
 - c) receiving a serial number of a cart to be delivered to the selected address and associating the serial number with the selected address.

(App. Br. 8 – Claims App’x.)

REJECTIONS

Claims 1, 6–8, and 13–15 stand rejected under 35 U.S.C. § 103(a) based on Norgrove (GB 2 404 064 A, pub. Jan. 19, 2005), Stringham (US 6,856,860 B2, iss. Feb. 15, 2005) and Rehrig Pacific Company, *Container and Service Tracking: Leveraging Data to Efficiently Manage Your Assets*; © 2008) (“RPC”). (Final Act. 2–7.)

Claim 2 stands rejected under 35 U.S.C. § 103(a) based on Norgrove, Stringham, RPC, and Chaudhuri (US 2006/0265247 A1, pub. Nov. 23, 2006). (Final Act. 7–8.)

Claim 3 stands rejected under 35 U.S.C. § 103(a) based on Norgrove, Stringham, RPC, Chaudhuri, and Jouvin (US 2008/0290153 A1, pub. Nov. 27, 2008). (Final Act. 8–9.)

Claim 4 stands rejected under 35 U.S.C. § 103(a) based on Norgrove, RPC, Stringham, and Scott (US 8,260,647 B2, iss. Sept. 4, 2012). (Final Act. 9–10.)

Claim 5 stands rejected under 35 U.S.C. § 103(a) based on Norgrove, RPC, Stringham, and Dearing (US 2007/0094155 A1, pub. Apr. 26, 2007). (Final Act. 10–12.)

Claim 9 stands rejected under 35 U.S.C. § 103(a) based on Norgrove, Stringham, and Scott. (Final Act. 12–13.)

Claims 10–12 stands rejected under 35 U.S.C. § 103(a) based on Norgrove, Stringham, Scott, and RPC. (Final Act. 14–15.)

Claims 16 and 21–23 stand rejected under 35 U.S.C. § 103(a) based on Norgrove, Oswald, Stringham, RPC, and Chaudhuri. (Final Act. 16–20.)

Claim 18 stands rejected under 35 U.S.C. § 103(a) based on Norgrove, Oswald (US 2009/0240554 A1, pub. Sept. 24, 2009), Stringham, RPC, Chaudhuri, and Jouvin. (Final Act. 20–21.)

Claim 19 stands rejected under 35 U.S.C. § 103(a) based on Norgrove, Oswald, Stringham, RPC, Chaudhuri, and Scott. (Final Act. 21–22.)

Claim 20 stands rejected under 35 U.S.C. § 103(a) based on Norgrove, Oswald, Stringham, RPC, Chaudhuri, and Dearing (US 2007/0094155 A1, pub. Apr. 26, 2007). (Final Act. 22–24.)

ANALYSIS

We address Appellants' arguments in the order presented in their Appeal Brief in the following sections of this Decision.

Claim 1

A. “Teaching Away” Argument

Appellants argue that Stringham’s distributing mail to houses is not similar to distributing recycling containers to houses because mail is addressed to houses whereas recycling containers are fungible (i.e., it does not matter which container is delivered to which house). (App. Br. 4.) Appellants also note that a person may get many pieces or no mail on a particular day in Stringham, whereas everyone gets one recycling container in Norgrove. (*Id.*) According to Appellants, mail is delivered almost every day in Stringham, but people may go years between receiving recycling containers. Also, Appellants argue the point of Stringham is to create a route so mail can be sorted for easy delivery (Stringham 7:29–31) but there is no “sorting” of recycling containers in Norgrove.

Appellants do not specifically mention the legal basis for their argument, which is unpersuasive for this reason alone. As near as we can determine, the argument appears to be based on the principle that references cannot be combined where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743 (Fed. Cir. 1983). “A reference may be said to teach away when a person of ordinary skill, upon [examining] the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *Para-Ordnance Mfg., Inc. v. SGS Importers Int’l, Inc.*, 73 F.3d 1085, 1090 (Fed. Cir. 1995) (citing *In re Gurley*, 27 F.3d 551 (Fed.Cir.1994)). As the Examiner correctly notes, Appellants have not shown that anything in Norgrove or Stringham explicitly excludes or negates their combination. (Ans. 3–4.) Merely

pointing out differences in the references does not amount to discouraging their combination.

Turning to Appellants' specific arguments, we find them flawed for several reasons. Norgrove teaches that the containers are provided with unique container identities electronically assigned to household addresses. (Norgrove 2:414, 26–30.) Thus, Norgrove's containers are not "fungible" as Appellants assert, but instead are assigned uniquely to each household address. Although Stringham's mail may be addressed at the sender's location whereas Norgrove's containers are assigned at household addresses, we do not agree this distinction forms a basis for the references teaching away from one another. This is particularly true where Appellants do not show what bearing "fungible" has to any finding the Examiner made in connection with the prior art teachings, the stated reason to combine the references, or how it relates to any feature of the claim.

Furthermore, Appellants have not demonstrated how distributing mail on a daily basis versus recycling containers less frequently would have discouraged a person of ordinary skill from combining the references as indicated by the Examiner. (Final Act. 2–4.) The mere fact that mail may be distributed daily, and containers less frequently, even if true, does not amount to discouraging the combination. Moreover, a person of ordinary skill would have recognized that some kinds of mail, such as periodicals, catalogs, directories, etc., may be distributed less frequently. A person of ordinary skill would have understood that such mailings may be replaced when they become out-of-date or wear out, the same as recycling containers. We also note that distribution frequency bears no relationship to any teaching or reason the Examiner relies on to combine the references, nor do

the claims recite any such feature. For all of these reasons, we do not find Appellants' argument persuasive.

We further disagree with Appellants' argument that Stringham creates a route so mail can be sorted for easy delivery, whereas Norgrove discloses no "sorting" of recycling containers. The Examiner neither relies on Stringham's mail sorting to teach any claimed feature, nor do the teachings relied on by the Examiner or the reason to combine the references bear any connection to sorting. Thus, Appellants' argument does not establish the references teach away from one another, particularly not as concerns the claimed invention. Accordingly, we are not persuaded by Appellants' arguments.

B. Argument Concerning Information about a Selected Address

Appellants argue that the Examiner errs by relying on Stringham's teaching of a signature required for mail delivery as the claimed "information about a selected address." (App. Br. 5, Reply Br. 1–2.) Appellants argue Stringham's requiring a signature for delivery of a recycling cart is not applicable to Norgrove's cart delivery system, and does not have anything to do with delivering a large number of inexpensive, fungible items. (*Id.*) Appellants argue the Examiner is simply looking in the prior art for "information about a selected address" without regard for whether it makes any sense in Norgrove. (*Id.*)

The Examiner finds that Stringham provides information about addresses as they are selected or approached by a delivery vehicle. (Final Act. 3, Ans. 3 citing Stringham Fig. 6, 6:1–7:67.) Specifically, Stringham discloses a wireless device that can be used to capture signatures on electronic signature slips for mail recipients to accept delivery of mail items

at selected addresses. (Stringham 7:8–12; 7:53–63.) We agree with the Examiner that under broadest reasonable interpretation the claimed “information about a selected address” is taught by Stringham’s signature that is required to accept a mail delivery at a selected address. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). Furthermore, we see no reason why Stringham’s electronic signature capability could not be combined with Norgrove to accept delivery of a recycling container. “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 415–416 (2007). We previously addressed Appellants’ argument concerning Norgrove’s recycling container being “fungible” whereas Stringham’s mail is addressed to a recipient. We do not find this argument persuasive for the reasons explained.

Claim 13

Appellants argue, for reasons previously discussed, it would not make sense to modify Norgrove in light of Stringham and the RPC brochure. (App. Br. 5.) For the reasons explained, we are not persuaded the Examiner errs in the rejection of claim 13.

Claim 2

Appellants state Chaudhuri discloses a prescription delivery system. (App. Br. 6, Reply Br. 2.) Appellants argue prescriptions must be delivered to a specific address and only that specific address, which, Appellants argue, is even more important than Stringham’s mail delivery system. Appellants argue this is the opposite of Norgrove. (*Id.*)

Appellants’ argument concerning claim 2 is a reiteration of the “fungible” argument previously addressed, extended to Chaudhuri. As

explained, we do not find this argument persuasive. Whether an item is addressed at a sender's location or assigned at a delivery address is not such a distinction as would have precluded a person of ordinary skill in the art from combining the references as done by the Examiner. This is particularly true where this supposed distinction is unrelated to any limitation of the claim or any finding made by the Examiner.

Furthermore, many recipients receive the same types of prescriptions (e.g., pain killers, statins for high cholesterol, etc.), just as recipients may receive the same mail items (newspapers, coupon books, catalogs, periodicals, etc.) or recycling containers. We are not persuaded a person of ordinary skill in the art would have been discouraged from combining the teachings concerning delivery of the items mentioned in these references on the basis of the "fungible" nature of the items delivered. We find no error in the Examiner's findings or conclusion of obviousness based on Appellants' arguments. (Final Act. 7–8, Ans. 4 citing Chaudhuri ¶ 53.)

Claim 3

Appellants extend their "fungible" argument to Jouvin, contending that this reference deals with specifically-directed deliveries and tracking those deliveries. (App. Br. 6, Reply Br. 2.) Again, the urged distinction that some of the references address items for delivery at the senders' location whereas Norgrove assigns containers at the delivery address is not such that a person of ordinary skill in the art would be discouraged from making the combination, particularly where the distinction has no bearing on the claim limitations or the Examiner's findings. (Final Act. 8–9 citing Jouvin ¶ 48.)

Appellants also argue claim 3 recites "receiving a user input indicating the cart was associated with a wrong address." (App. Br. 6, Reply

Br. 2.) Appellants argue there are no “wrong addresses” in Norgrove. To the contrary, the Examiner finds this limitation taught by Jouvin. (Final Act. 8–9, Ans. 4–5 citing Jouvin ¶ 48.) Specifically, the Examiner states that Jouvin’s delivery failure would trigger Norgrove’s corrective action (3:5–10, 20–24.) We find no error in the Examiner’s findings. Thus, we sustain the rejection.

Claims 16 and 21–23

Appellants argue that it would not be obvious to modify Norgrove and Chaudhuri for the reasons explained. (App. Br. 6–7.) We are not persuaded of Examiner error for the reasons previously stated.

Claim 18

Appellants again argue there are no “wrong addresses” in Norgrove because the carts are fungible. (App. Br. 7, Reply Br. 3.) For the reasons explained, we sustain the Examiner’s rejection.

Remaining Claims

No separate arguments are presented for the remaining claims, and accordingly, we sustain their rejection. 37 C.F.R. § 41.37(c)(1)(iv); *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986); *In re Sernaker*, 702 F.2d 989, 991 (Fed. Cir. 1983).

DECISION

We affirm the rejections of claims 1–16 and 18–23 under 35 U.S.C. § 103(a).

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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).

AFFIRMED