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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/573,131	08/25/2012	Joseph Polizzotto	104.11a	8923
66381	7590	07/11/2017	EXAMINER	
GORDON E. GRAY, III 4401 N. ATLANTIC AVE. SUITE 233 LONG BEACH, CA 90807			EDWARDS, ANTHONY Q	
			ART UNIT	PAPER NUMBER
			2835	
			MAIL DATE	DELIVERY MODE
			07/11/2017	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOSEPH POLIZZOTTO, MARC POLIZZOTTO, and
LAWRENCE E. ELBERT

Appeal 2016-005045
Application 13/573,131¹
Technology Center 2800

Before JAMES C. HOUSEL, DONNA M. PRAISS, and
JANE E. INGLESE, *Administrative Patent Judges*.

HOUSEL, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellants appeal from the Examiner's decision rejecting claims 1–6 under 35 U.S.C. § 103(a) as unpatentable over Bethel² in view of Hotelling.³ We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.⁴

¹ According to Appellants, the real party in interest is J.P. Instruments, Inc. Appeal Br. 1.

² US 2008/0094255 A1, published April 24, 2008 (“Bethel”).

³ US 2008/0278899 A1, published November 13, 2008 (“Hotelling”).

⁴ Our decision refers to the Specification (Spec.) filed August 25, 2012, the Examiner's Final Office Action (Final Act.) dated December 8, 2014,

STATEMENT OF THE CASE

Appellants disclose that after-market avionics instruments are often made to fit pre-cut holes in standard instrument panels, but are limited in how they can be positioned in the panels. Spec. 1, Background Art. Appellants' invention, therefore, relates to an avionics instrument display that can be mounted in a variety of positions on an instrument panel. Spec. 2, Summary of the Invention.

Sole independent claim 1, reproduced below from the Claims Appendix to the Appeal Brief, is illustrative of the subject matter on appeal.

1. An avionics instrument comprising:
 - a cylindrical electronics housing with a primary dimension attached to a display panel with a primary dimension where the primary dimension of the display panel exceeds the primary dimension of the cylindrical electronics housing;
 - where the display panel has at least two positional modes of display and an interface for switching between the at least two positional modes of display.

ANALYSIS

The Examiner finds Bethel discloses avionics instrument **30**⁵ comprising cylindrical electronics housing **50** having a primary dimension and attached to a display panel **46** whose primary dimension exceeds the housing's primary dimension. Final Act. 2. The Examiner further finds

Appellants' Appeal Brief (Appeal Br.) filed August 17, 2015, the Examiner's Answer (Ans.) dated February 5, 2016, and Appellants' Reply Brief (Reply Br.) filed April 5, 2016.

⁵ Throughout this Opinion, for clarity, we present labels to elements in figures in bold font, regardless of their presentation in the original document.

Bethel's display panel has at least two positional modes of display, i.e., portrait and landscape, as well as interface **70**, which is used to manipulate the data presented on the display panel, such as toggling between various views, e.g., portrait and landscape views. *Id.* Notwithstanding this latter finding, the Examiner finds Hotelling discloses a portable electronic device that may be manually or automatically switched between multiple orientations, e.g., portrait and landscape modes. *Id.* at 3. The Examiner concludes it would have been obvious "to apply the known technique of switching the viewing mode of the display of Bethel between at least [two] positional modes (e.g., portrait and landscape modes), as taught by Hotelling." *Id.*

Appellants argue that Bethel and Hotelling do not disclose each and every element of the claims. Appeal Br. 5 and 8–9. In particular, Appellants contend that Bethel fails to teach an interface for switching between at least two positional modes of display (*id.* at 8–9) and an instrument having at least two positional modes of display (*id.* at 5). Appellants urge that Bethel discloses two different instruments rather than a single instrument for the portrait and landscape displays. *Id.* Moreover, Appellants assert that Bethel's interface **70** is not used to switch between positional modes of display on the instrument, but for toggling between views of the various instruments that Bethel's device is used to replace. *Id.* at 9.

In response, the Examiner directs attention to Bethel, paragraph 96, as teaching a single embodiment for instrument **30** having at least two positional modes of display. Ans. 2–3. In this regard, we note Bethel refers to the first positioning of a pair of instruments in left/right (portrait)

arrangement as “[i]n this particular embodiment.” Bethel ¶ 96, ll. 4–5. Bethel further refers to the second positioning of a pair of instruments in top/bottom (landscape) arrangement as “[a]lternatively for this particular embodiment.” *Id.*, ll. 9–10. Bethel’s reference in this paragraph to “this particular embodiment” when referring to both positioning arrangements supports the Examiner’s finding that Bethel does in fact teach a single embodiment providing at least two positional modes of display. Although Appellants assert that the Examiner fails to refute Appellants’ argument that Bethel discloses separate embodiments for portrait and landscape displays (Reply Br. 1–2), Appellants do not address the Examiner’s interpretation of Bethel, paragraph 96. Nonetheless, as the Examiner finds, Hotelling teaches a display device configured for at least two positional modes, which is the basis for the Examiner’s proposed modification to Bethel.

Appellants further argue that Bethel and Hotelling teach away from each other. Appeal Br. 6–7. In this regard, Appellants assert that Hotelling is not an avionics instrument and uses an accelerometer as one way to switch between portrait and landscape modes. *Id.* Appellants urge that “an accelerometer-controlled display for an avionics instrument could render the display unreadable in flight just when a pilot needs to read it most urgently.” *Id.* at 7. Appellants assert, on the other hand, that Bethel expressly cautions against such a situation. *Id.* As such, Appellants contend that Bethel and Hotelling teach directly away from each other when considered in the context of aircraft avionics. *Id.*

Appellants’ argument that Bethel and Hotelling teach away from each other is not persuasive. “A reference may be said to teach away when a person of ordinary skill, upon reading 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.” *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). Further, references in a combination may be said to teach away where their combined teachings would produce a “seemingly inoperative device.” *See In re Spinnoble*, 405 F.2d 578, 587 (CCPA 1969). Teaching an alternative or equivalent method, however, does not teach away from the use of a claimed method. *See In re Dunn*, 349 F.2d 433, 438 (CCPA 1965).

Initially, we note that Hotelling’s use of an accelerometer for switching between positional modes is merely one way Hotelling teaches for switching between positional modes. Hotelling ¶ 50 (“The function of adjusting the orientation and mode of the content being displayed may be performed manually as part of a user selection or automatically as the user orients the device.”) It is reasonable to expect that the ordinary artisan would select the manner for switching a device between positional modes appropriate for the circumstances. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007) (“A person of ordinary skill in the art is also a person of ordinary creativity, not an automaton.”) In addition, though Appellants assert that Bethel expressly cautions against unreadable displays during flight, we note that Bethel actually teaches that the electronic display instrument provides dramatically improved situational awareness over its mechanical counterparts. Bethel ¶ 74. This teaching is not a teaching away from Hotelling’s teaching of a multi-positional mode electronic display, generally, because Hotelling teaches multiple ways to switch between positional modes, including manually. *Dunn, supra*. Moreover, Appellants do not direct our attention to any disclosure in either reference that would

have discouraged the Examiner's proposed modification to Bethel based on Hotelling.

Finally, Appellants argue that Bethel and Hotelling are non-analogous prior art. Appeal Br. 6–8. As above, Appellants assert that, because Hotelling is not an avionics instrument such as Bethel, these references are in different fields of endeavor. *Id.* at 7. In addition, Appellants contend that the Examiner fails to show how Hotelling is pertinent to the particular problem in avionics in which Appellants were involved. *Id.* Appellants urge that Hotelling's docking system requires an induction system which would not be appropriate for use in an aircraft cockpit because it is "far too loose for in-flight usage." *Id.* at 8. In contrast, Appellants note that the inventive instrument is preferably held in place in the aircraft panel by a mounting bracket and connected to probes. *Id.* Therefore, Appellants argue one would not have combined Hotelling with Bethel because Hotelling's docking method would not be used in avionics. *Id.*

Appellants' argument fails to persuade us that the Bethel and Hotelling references are non-analogous prior art that would not have been combined by one of ordinary skill in the art. Our reviewing court has stated that

[t]wo separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.

In re Bigio, 381 F.3d 1320, 1325 (Fed. Cir. 2004) (citations and internal quotes omitted). The Examiner finds Hotelling is reasonably pertinent to the

particular problem with which the inventor is involved because Hotelling discloses means for viewing multiple orientations of a display device while docked in a docking system. Ans. 5. Although Appellants contend that the Examiner fails to acknowledge the unique issues that are present in an airplane cockpit (Reply Br. 4), Appellants do not address the Examiner's finding that Bethel teaches at least two positional modes of display discussed above. We further note that the manner of Hotelling's docking or mounting is not relevant because Bethel teaches an avionics instrument and mounting, the rejection does not rely on Hotelling for its mounting, and claim 1 does not recite nor require any particular mounting.

Appellants do not argue dependent claims 4 and 5 separately from claim 1. Accordingly, we sustain the Examiner's rejection of claims 1, 4, and 5.

Appellants argue claims 2 and 3 as a group. Claim 2 depends from claim 1 and further recites that the display panel has four positional modes of display. Claim 3 depends from claim 1 and further recites that the display panel has landscape and portrait positional modes of display. With regard to claim 2, Appellants argue that Bethel fails to disclose an instrument with four positional modes of display. Appeal Br. 9. With regard to claim 3, Appellants argue that Bethel fails to disclose an instrument that has both landscape and portrait positional modes of display. *Id.* at 10. Appellants assert that Bethel's instrument merely has a single positional mode of display, either landscape or portrait. *Id.* at 9–10. Appellants further assert that Bethel does not disclose rotation of the instrument between landscape and portrait modes. *Id.* at 10. Appellants urge that such rotation in Bethel is

in fact impossible because Bethel requires two holes in the avionics panel for installation due to the presence of fan 68. *Id.*

Appellants' arguments are not persuasive of reversible error in the Examiner's rejections of claims 2 and 3. We first note that Appellants' argument that Bethel has only a single positional mode has been addressed above with regard to claim 1. Nevertheless, we note Appellants fail to address the Examiner's finding that the device of Bethel in view of Hotelling would have a display with four positional modes of display with both landscape and portrait modes. Final Act. 3, citing Hotelling, Figs. 2A and 2B, and ¶¶ 48–50. Appellants do not address Hotelling in this regard. Indeed, Hotelling teaches that the display may be in horizontal or landscape positional modes at 0° and at 180° (two positions) and in vertical or portrait positional modes at 90° and at 270° (two positions), thereby providing the display with four positional modes of display. Hotelling ¶ 48. Thus, the Examiner's finding is supported by the record.

In addition, Appellants repeat their argument that Hotelling is non-analogous prior art. Appeal Br. 10. For the same reasons given above with regard to claim 1, this argument is not persuasive of reversible error. Accordingly, we are satisfied that a preponderance of the evidence supports the Examiner's rejection of claims 2 and 3.

Appellants separately argue claim 6. Appeal Br. 10–11. Claim 6 depends from claim 1 and further requires a CPU connected to at least two sensors that detects input from the sensors, where the CPU configures the at least two positional modes of display based on the input. The Examiner finds that the combination of Bethel and Hotelling did not expressly teach the CPU as recited in claim 6. Final Act. 4. However, the Examiner finds it

was “notoriously old and well-known in the art of panel displays to utilize sensors to detect the positional modes of display.” *Id.* As such, the Examiner concludes it would have been obvious to modify Bethel to provide a CPU connected at least to sensors in the display panel to automatically adjust the display based on the position of the device. *Id.*

Appellants argue that the claimed sensors do not detect the positional modes of display, but instead detect information regarding, *inter alia*, the aircraft engine. Appeal Br. 10–11. Appellants assert the CPU uses sensor input to determine what information is shown in the various positional modes of display modes available, such as oil pressure, fuel pressure, tachometer, map, oil temperature, etc. *Id.* at 11. Appellants further argue that Bethel merely discloses the display of different information from various sensors in a single positional mode and Hotelling makes no mention of using aircraft sensor data. *Id.*

Appellants’ arguments are not persuasive of reversible error. We begin, appropriately, with the claim’s words. *See Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1351 (Fed. Cir. 2001) (“Only when a claim is properly understood can a determination be made . . . whether the prior art anticipates and/or renders obvious the claimed invention.”). During examination, claim terms are given their broadest reasonable construction consistent with the specification. *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004). “Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad construction.” *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007).

Here, claim 6 does not recite what input the sensors provide. Nor do Appellants direct our attention to any disclosure that limits via definition what input the sensors provide. Therefore, we determine that the broadest reasonable construction of claim 6 does not limit its scope to a CPU configuring the positional modes of display based on aircraft engine data, but is broad enough to cover CPU use of sensors to detect positional modes of display so as to configure the display of information based on detected mode in accord with the Examiner's finding.

Moreover, we note Appellants do not challenge the Examiner's finding, tantamount to Official Notice, that it was "notoriously old and well-known in the art of panel displays to utilize sensors to detect the positional modes of display." Final Act. 4. According to MPEP § 2144.03(C) (8th ed., Rev. 9, Aug. 2012), "[t]o adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, *which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art*" (emphasis added).

Accordingly, we are not persuaded that the Examiner's finding nor obviousness conclusion with regard to claim 6 is harmful error.

DECISION

Upon consideration of the record, and for the reasons given above and in the Final Office Action and the Answer, the decision of the Examiner rejecting claims 1–6 under 35 U.S.C. § 103(a) as unpatentable over Bethel in view of Hotelling 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).

AFFIRMED