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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARY ROSE RICE, DAMIEN REYNOLDS, and
MARC WEBB

Appeal 2017-007640
Application 14/704,708
Technology Center 2600

Before JEAN R. HOMERE, ADAM J. PYONIN, and
KAMRAN JIVANI, *Administrative Patent Judges*.

JIVANI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ seek our review under 35 U.S.C. § 134(a) of the Examiner's final rejections of claims 1–5, 8–13, and 16–34, which constitute all the claims pending in this application. Claims 6, 7, 14 and 15 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ Appellants identify Behr Process Corporation as the real party in interest. App. Br. 3.

STATEMENT OF THE CASE

The present patent application relates to a distributed system and method for aiding consumers in selecting complementary paint colors.

Spec. ¶ 2.

Claim 1 is reproduced below with formatting and bracketed material added:

1. A system comprising:

a server configured to provide a web site application to a remote computing device over the Internet, the web site application being configured to enable the remote computing device

to receive a starting paint color selected from a plurality of paint colors via an input device,

to display on a display device a color palette including the starting paint color and a plurality of coordinating paint colors for the starting paint color,

to receive a selection of a type of interior room of a house from a plurality of interior room types including at least one of a living room, a dining room, a kitchen, a bathroom, and a bedroom,

[L1] to display a plurality of interior room templates corresponding to the selected type of interior room, each interior room template being preformatted to include a plurality of predetermined separate elements for selection including at least one of a wall, a trim, a door, a floor, and a ceiling,

to receive a selection of an interior room template from the plurality of interior room templates,

to receive a selection of a predetermined separate element from the plurality of predetermined separate elements associated with the selected interior room template,

[L2] to display on the display device a first simulated environment showing the selected interior room template with at least one paint color selected from the starting paint color and the

plurality of coordinating paint colors on a surface of the selected predetermined separate element of the selected interior room template,

to receive a picture of an interior room uploaded to the remote computing device by a user of the remote computing device,

to display on the display device a second simulated environment showing the interior room from the picture with a paint color selected from the plurality of paint colors on at least one surface of the interior room, the at least one surface of the interior room including at least one of a wall surface, a trim surface, a door surface, a floor surface, and a ceiling surface of the interior room, and

to store at least one of the first simulated environment and the second simulated environment on the server.

REFERENCES

Ringland et al.	US 5,751,829	May 12, 1998
Massengill	US 2002/0064302 A1	May 30, 2002
Gordon	US 2002/0099725 A1	July 25, 2002
Turpin et al.	US 2003/0151611 A1	Aug. 14, 2003
Green et al.	US 2005/0091008 A1	Apr. 28, 2005

THE REJECTIONS

1. Claims 1–5, 8–13, 16, 31, and 33 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Turpin, Green, Ringland, and Gordon.
2. Claims 17–30, 32, and 34 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Turpin, Green, Ringland, Gordon, and Massengill.

ANALYSIS

Claims 1–5, 8–13, 16, 31, and 33

Limitations L1 and L2 of independent claim 1 recite, in relevant part, selecting an interior room template, with “each interior room template being preformatted to include a plurality of predetermined separate elements for selection including at least one of a wall, a trim, a door, a floor, and a ceiling,” and displaying a “first simulated environment showing the selected interior room template with at least one paint color selected from the starting paint color and the plurality of coordinating paint colors on a surface of the selected predetermined separate element of the selected interior room template.” Independent claim 9 recites similar limitations.

The Examiner finds Green teaches or suggests the claimed display of the selected paint color on a surface of a separate element, including at least one of a wall, a trim, a door, a floor, and a ceiling. Final Act. 7–8; Ans. 2–3. Appellants contend the Examiner errs because, according to Appellants, “nothing in the Green reference teaches or suggests displaying a selected paint color on a selected predetermined separate element of a wall, a trim, a door, a floor, or a ceiling, as recited by claim 1.” App. Br. 18; *see also* Reply Br. 1–7.

We are not persuaded by Appellants’ arguments. As the Examiner correctly finds, Green teaches the use of “design components” within a “client-defined space, i.e., a room in the client’s home, or a room in the client’s office.” Green ¶ 35. Green’s “design components” include, *inter alia*, “‘structural design components’ that may include, for example, a window, a door, crown molding, or a chair rail[. . .] ‘window treatment design components’ that may include panels, valances, balloons, rods,

finials, and/or tiebacks[, . . .] and another example, a room may include “furniture design components’ that may include tables, chairs, pictures, lamps, couches, and bookshelves.” Thus, Green’s “design components” include doors (as claimed) and “crown molding, or a chair rail” (i.e., the claimed “trim”).

Green teaches that its design components can be altered by the user to reflect design choices. For instance, as the Examiner correctly finds, Green states, “*colors, fabrics and the like may also be selected per furniture piece and accessory component* dropped in the layout view.” Green ¶ 100 (emphasis added). Green further teaches that “*digital pictures showing the various components may be manipulated* so that the user can *compare colors* between, for example, a digital picture of a fabric and *a digital picture of a trim*. *Id.* at 97. Thus, Green teaches displaying selected colors on various design components, including explicitly Appellants’ claimed “separate element, including at least one of a wall, a *trim*, a door, a floor, and a ceiling.” App. Br. 27 (emphasis added).

Accordingly, we agree with the Examiner that the asserted combination meets the limitations of independent claims 1 and 9. Appellants advance no further arguments in support of dependent claims 2–5, 8, 10–13, 16, 31, and 33. For the same reasons discussed above in the context of claims 1 and 9, we sustain the Examiner’s rejections of dependent claims 2–5, 8, 10–13, 16, 31, and 33.

Claims 17–30, 32, and 34

Each of claims 32 and 34 recites, in relevant part, “display a tutorial option that includes at least one video demonstration with how-to instructions for a painting project, to receive a selection for a video

demonstration from the at least one video demonstration, and to play the selected video demonstration on the display device.” App. Br. 36.

Independent claims 17 and 24 recite commensurate limitations. *Id.* at 31–32 and 34.

Appellants contend the Examiner errs because, “[t]he Examiner has provided no rationale or ‘clear articulation’ of any basis for how or why one skilled in the art would combine the Massengill method and apparatus for performing virtual cosmetic surgery with the color selection and visualization system of Turpin et al, the interior design system and method of Green et al., the spectrally coordinated pattern search-imaging system and method of Ringland et al., or the automation of construction and decoration projects of Gordon.” App. Br. 21–22.

We agree with Appellants that the Examiner’s analysis of the cited references is facially deficient in the presentation of the obviousness analysis. *See, e.g., Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17 (1966) (“Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.”). The Examiner makes no finding that Massengill is analogous art (*see generally* Final Act.) and we are unable to discern on this record how Massengill, which is directed to a “method and apparatus for performing virtual cosmetic surgery” (Massengill Abst.) might be analogous either because it is within the field of the instant application or reasonably pertinent to the particular problem with which the inventor is involved. *See In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011). As to the former test, we are persuaded that Massengill is not within the same field of endeavor,

namely distributed systems and methods for selecting complementary paint colors. *See* Spec. ¶ 2. As to the latter test, rather than articulate the particular problem with which the inventor is involved, the Examiner states: “[t]he claimed subject is to provide a demo or tutorial video for how to use the product. . . . For the patentability of the claim, the consideration is only given to the action of providing a demo or tutorial video.” Ans. 4. This statement is insufficient to carry the Examiner’s burden to set forth “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” by relying on findings within analogous art. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

Accordingly, on the record before us, we reverse the Examiner’s obviousness rejection of claims 17–30, 32, and 34, over Turpin, Green, Ringland, and Massengill.

DECISION

We affirm the Examiner’s rejection of claims 1–5, 8–13, 16, 31, and 33.

We reverse the Examiner’s rejection of claims 17–30, 32, and 34.

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-IN-PART