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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARY ROSE RICE and DAMIEN REYNOLDS

Appeal 2017-010211
Application 15/051,492
Technology Center 2600

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

JIVANI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants[1] seek our review under 35 U.S.C. § 134(a) of the Examiner's final rejections of claims 1–29. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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.

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[1] Appellants identify BEHR PROCESS CORPORATION as the real party in interest. App. Br. 3.

Claim 1 is reproduced below with the disputed limitation emphasized:

1. A system comprising:

a remote computing device having a display device and an input device; and

a database communicatively coupled to the remote computing device, the database including a plurality of paint colors,

wherein the remote computing device is configured to receive a starting paint color selected from the plurality of paint colors via the input device, to determine a first plurality of coordinating paint colors for the starting paint color based on data received from the database, to display on the display device a first color palette including the starting paint color and the first plurality of coordinating paint colors, to receive input, via the input device, for fine-tuning the starting paint color to achieve a second paint color, to determine a second plurality of coordinating paint colors for the second paint color based on data received from the database, and to display a second color palette including the second paint color and the second plurality of coordinating paint colors, wherein the input for fine-tuning the starting paint color includes input for changing at least one of a tint and a shade of the starting paint color, wherein the remote computing device is configured to display on the display device product information for at least one of the starting paint color and the second paint color, wherein the remote computing device is configured to store at least one of the first color palette and the second color palette with user identification information on a server communicatively coupled to the remote computing device for subsequent retrieval using the user identification information, and *wherein the remote computing device is configured to 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*.

ANALYSIS

Like claim 1, each of independent claims 9, 17, and 25 requires displaying a tutorial option that includes at least one video demonstration with how-to instructions for a painting project, receiving a selection for a video demonstration from the at least one video demonstration, playing the selected video demonstration on the display device. App. Br. 21–28.

Each of the Examiner's rejections relies on Massengill (US 2002/0064302 A1; published May 30, 2002) in combination with various other references. Final. Act. 4, 15–17.

Appellants contend the Examiner errs because, "the Examiner has failed to provide any analysis or statements regarding a motivation or proper rationale for making the proposed modification and four-way combination of references. Instead, the Examiner resorts to improper and impermissible hindsight reconstruction and utilizes knowledge of Applicant's disclosure to fill in the gaps in the cited references." App. Br. 17.

We agree with Appellants that the Examiner's analysis of the cited references is facially deficient in supporting the finding of obviousness. *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. 2–3. 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 rejections of claims 1–29.

DECISION

We reverse the Examiner's rejection of claims 1–29.

REVERSED