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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ERIC JACOB JAN KIRCHNER, SWIE LAN NJO, and JOEROEN HOOGINK

Appeal 2017-011630
Application 14/366,589
Technology Center 2800

Before TERRY J. OWENS, LINDA M. GAUDETTE, and JANE E. INGLESE, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant (Akzo Nobel Coatings International B.V.) appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The claims are to a method for selecting the most probable variant of a matching paint candidate color standard for vehicle repair. Claim 1 is illustrative:

1. A method of selecting the most probable variant of a matching paint candidate color standard for vehicle repair using a mobile device having a color display and an input unit and which is capable of data exchange with a central

computer via an at least partly wireless communication line, the method comprising,

a) entering in the mobile device identification criteria that can be associated with the color of the vehicle,

b) sending the identification criteria via the at least partly wireless communication line to the central computer, wherein the central computer comprises a color database,

c) causing the software on the central computer to select one or more candidate color standards matching the entered identification criteria and sending, via the at least partly wireless communication line, information on the selected candidate color standards to the mobile device,

d) displaying information on the selected candidate color standards on the display of the mobile device, wherein the information includes images of the selected candidate color standards,

e) visually comparing one or more physical chips painted with the candidate color standards with the color of the vehicle to be repaired,

f) selecting a matching candidate color standard, inputting the selection in the mobile device, and transmitting the selection to the central computer via the at least partly wireless communication line,

g) causing the software on the central computer to identify variants of the selected candidate color standard,

h) if at least one variant has been identified, providing verbal or symbolic characterizations describing visual differences between the selected candidate color

standard and each identified variant, and displaying these characterizations on the display of the mobile device,

i) selecting the best matching variant based on (1) visual comparison of the vehicle to be repaired and the selected candidate color standard and (2) the displayed verbal or symbolic characterizations,

j) transmitting via the at least partly wireless communication line the selected variant from the mobile device to the central computer, and

k) transmitting via the at least partly wireless communication line a paint formula or a link to a paint formula corresponding to the selected variant from the central computer to the mobile device.

The References

Hunt	US 2003/0153265 A1	Aug. 14, 2003
Simons	US 2005/0275842 A1	Dec. 15, 2005
McClanahan	US 2007/0035554 A1	Feb. 15, 2007
Rodrigues	US 2008/0291449 A1	Nov. 27, 2008
Craighead	US 2011/0085169 A1	Apr. 14, 2011

The Rejections

The claims stand rejected under 35 U.S.C. § 103(a) as follows: claims 1–10 and 14–18 over Rodrigues in view of Craighead, claims 11 and 19 over Rodrigues in view of Craighead and Simons, claims 12 and 20 over Rodrigues in view of Craighead and Hunt, and claim 13 over Rodrigues in view of Craighead and McClanahan.

OPINION

We reverse the rejections. We need address only the sole independent claim, i.e., claim 1. That claim requires causing software on a central computer to select one or more candidate color standards matching

identification criteria that can be associated with the color of a vehicle, selecting a matching candidate color standard, causing software on the central computer to identify variants of the selected candidate color standard, and selecting the variant that best matches the selected candidate color standard based upon 1) visual comparison of the vehicle and the selected candidate color standard and 2) verbal or symbolic characterizations describing visual differences between the selected candidate color standard and each identified variant. To meet those claim requirements the Examiner relies upon the combined disclosures of Rodrigues and Craighead (Final Act. 3–10).

Rodrigues discloses a method for selecting a paint formula that matches the color and other appearance characteristics of the paint on a vehicle, comprising 1) retrieving, based on vehicle identifying information, one or more preliminary matching formulas from a database containing refinish coating formulas, 2) generating individual images based on the preliminary matching formulas, 3) displaying the individual images on a device such as a handheld display device or a laptop or tablet computer, and 4) comparing the individual images to a target coating and, based on the comparison, selecting a matching formula (¶¶ 70, 72–75, 77, 82).

Craighead determines the variant of a vehicle standard color repair paint which best matches the vehicle's color by 1) visually determining the direction and magnitude of the deviation of the standard color from the vehicle's color based on predetermined visual properties including at least one color property and at least one texture property, and 2) selecting the variant that best matches the vehicle's color from a database which links sets

of standard color predetermined visual property deviations to specific variants of the standard color (¶¶ 7–12, 18, 22, 23).

The Examiner relies upon Rodrigues's preliminary matching formulas (¶ 73) as corresponding to both the Appellant's one or more candidate color standards (claim 1, step c) and the Appellant's variants of a selected candidate color standard (claim 1, step g), and relies upon Rodrigues's step of "selecting one or more matching formulas to match color and appearance of an article" (Abstract) as corresponding to the Appellant's step of selecting a matching candidate color standard (claim 1, step f) (Final Act. 5–8).

The Examiner does not establish that Rodrigues's preliminary matching formulas can be variants of themselves. Nor does the Examiner establish that Rodrigues discloses or would have suggested selecting a matching formula and identifying variants of the selected matching formula.

The Examiner concludes that it would have been prima facie obvious to one of ordinary skill in the art to modify Rodrigues in view of Craighead such that "selecting the best matching variant based on (1) visual comparison of the vehicle to be repaired and the selected candidate color standard, and (2) the displayed verbal or symbolic characterizations are accomplished in order to improve the accuracy of the determination of the best matching variant when the deviation is determined for more visual properties for the advantage of obtaining a predictable result" (Final Act. 10).

The Examiner does not establish that Rodrigues and Craighead would have suggested, to one of ordinary skill in the art, selecting a matching formula and identifying variants of the selected matching formula. Also, the

Examiner does not establish that the Examiner's reason for combining Rodrigues and Craighead would have been apparent to one of ordinary skill in the art in view of those references. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (establishing a prima facie case of obviousness requires an apparent reason to modify the prior art as proposed by the Examiner).

Thus, the record indicates that the Examiner's rejections are based upon impermissible hindsight in view of the Appellant's disclosure. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) ("A rejection based on section 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art."). Accordingly, we reverse the rejections.

DECISION

The rejections under 35 U.S.C. § 103(a) of claims 1–10 and 14–18 over Rodrigues in view of Craighead, claims 11 and 19 over Rodrigues in view of Craighead and Simons, claims 12 and 20 over Rodrigues in view of Craighead and Hunt, and claim 13 over Rodrigues in view of Craighead and McClanahan are reversed.

The Examiner's decision is reversed.

REVERSED