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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* WITTICH KAULE and MICHAEL RAHM

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Appeal 2018-002322
Application 14/102,223
Technology Center 3600

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Before JOHN C. KERINS, CHARLES N. GREENHUT, and FREDERICK C. LANEY, *Administrative Patent Judges*.

KERINS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the Examiner's decision to reject claims 39–49. [1] We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

[1] The term "Appellant" is used herein to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Giesecke+Devrient Currency Technology GmbH. Appeal Br. 3.

## THE CLAIMED SUBJECT MATTER

Appellant's invention relates to a security element for security papers, and a method for manufacturing a security element. Claim 39 is illustrative, and is reproduced below:

> 39. A security element for security papers, value documents and the like, having a microoptical moiré-type magnification arrangement for the non-overlapping depiction of a specified moiré image having multiple moiré image elements, having
>
> > a motif image that includes a periodic or at least locally periodic arrangement of a plurality of lattice cells having micromotif elements, each micromotif element corresponding to one of the moiré image elements,
> >
> > for the moiré-magnified viewing of the motif image, a focusing element grid that is arranged spaced apart from the motif image and that includes a periodic or at least locally periodic arrangement of a plurality of lattice cells having one microfocusing element each,
>
> wherein the motif image is broken down into areal regions that are each allocated to one of the moiré image elements and correspond in position and size to the allocated moiré image element, each areal region being allocated to a moiré image element independent from the adjacent areal region;
>
> wherein the micromotif elements corresponding to a moiré image element are each arranged repeatedly in the areal region of the motif image that is allocated to this moiré image element, and wherein each areal region is precisely so large that the motif image therein is not repeated.

## THE REJECTION

The Examiner rejects claims 39–49 as being anticipated by Commander (WO 2005/106601 A2, published Nov. 10, 2005).

ANALYSIS

The Examiner finds that Commander discloses all limitations in claim 39, including that the security element has micromotif elements corresponding to a moiré image element that are each arranged repeatedly in an areal region of a motif image that is allocated to this moiré image element, wherein each areal region is precisely so large that the motif image therein is not repeated. Final Act. 2–3. In particular, the Examiner finds that Figure 41 of Commander discloses a motif image broken down into separate regions displaying a first ambulance, a bicycle, and a second ambulance, generated from areal regions of micromotif elements that are sized such that the motif image produced at each region does not repeat itself. *Id.* at 3. The Examiner maintains that each of the first and second ambulances and the bicycle are single independent images that are not repeated, citing in support a statement in Commander that "the magnified images of the bicycle will move slower than the magnified images of the ambulance." *Id.* (quoting Commander, 34, ll. 29–30). In reply to certain arguments advanced by Appellant, the Examiner explains that the multiple image representations of each of the ambulances and the bicycle "are schematic and show the movement of the projected image. This is clearly delineated by the arrows moving from one image to another. A viewer will only see one image representation, which will move." Ans. 3.

Appellant responds that Commander uses the plural, "magnified images," and, in Figure 41 shows plural images, thus failing to teach motif images in different areal regions that are not repeated. Appeal Br. 8. Appellant argues that Commander "requires areal regions that are large enough so that the motif image (e.g. bicycle and/or ambulance) is repeated.

The repeat causes the bicycle or ambulance to move horizontally." *Id.* (emphasis omitted). Appellant additionally posits that Figures 2 and 41 of Commander only show a portion of the entire micro-lens/micro-image structure, and, as such, they do not teach anything about the size or shape of the entire areal region of micro-motif elements needed to produce the magnified images shown in those figures. *Id.* at 10. Appellant also challenges the Examiner's findings as erroneously being based on Figure 41 and other figures in Commander, in that the Examiner (Ans. 3) refers to Figure 41 as being schematic in form, and elsewhere states, in discussing Figure 2, that, "[t]he schematics are in no way representative of the actual structure, which requires many microlenses in order to produce any discernable and detailed image (such as the ambulance and bicycles shown)." Reply Br. 5 (emphasis omitted).

Initially, we note that we are not persuaded that any repeat of an image is required to "cause[] the bicycle or ambulance to move horizontally," as argued by Appellant.[2] Appeal Br. 8. Commander illustrates, for example, in Figure 31, magnified images in the form of a

[2] Appellant additionally presents arguments directed to the discussion in Commander of a frequency vector for a magnified image array as evidencing, due to the use of the term "frequency," that the magnified image must be repeated, otherwise it would be meaningless to describe the magnified image in terms of a "frequency." Appeal Br. 8. This argument is not persuasive. Even if the term "frequency" in Commander were to connote a "frequency of image appearance" or the like, which does not appear to be the case, we do not see the Commander reference as precluding the possibility that the frequency could be "1," or equivalent, meaning a single image being displayed. Similarly, we find unpersuasive arguments advanced with respect to "pitch mismatch" and an apparent suggestion that the moving of an image is the same as it being "repeated." *Id.* at 8–9.

single letter "C" and a single, slightly larger circle, which each independently moves upon tilting of the article of which they are a part, such that they converge to appear as the copyright symbol "©" and, upon further tilting, diverge again. By the same token, Figure 37 of Commander shows what we understand to be a single image of a bird and a single image of a snail at different, discrete, points in time as the article of which they are a part is tilted, with the bird appearing to move faster than the snail, as each image appears to move from left-to-right.[3]

Notwithstanding, we are unable to conclude, with the degree of certainty necessary to support a rejection based on anticipation, that Figure 41, and the attendant description thereof, in Commander unquestionably (necessarily) disclose single images of two ambulances and a single image of a bicycle that appear to move in the same manner as the bird and snail in Figure 37. First, the text describing Figure 41 refers to both "the magnified images of the bicycle will move," and "the microimage array of the bicycle." Commander, 34:29–30. The reference here to "images" could be a typographical error, or could be an imprecise way of describing the movement of a single image to plural positions across the medium. However, the possibility exists that plural (repeated) images are intended to be produced, possibly in order to aid in the desired appearance that the bicycle(s) move more slowly than the ambulances as the medium is tilted.

[3] The "C" and larger circle images, and the snail and bird, examples appear to be created using techniques different than that set forth and illustrated in Figure 41. They are mentioned mainly to cast doubt on the argument that multiple, repeated, images are needed to create the appearance of movement of a magnified image.

We additionally do not see in Figure 41, as we did with Figure 37, a clear depiction of the positions of first and second ambulance images relative to a single bicycle image at particular points in time. Instead, Figure 41 displays three each of the first and second ambulance(s), and five of the bicycle(s), with seemingly different intervals represented by arrows, presumable connoting movement, extending to each successive rendering of the ambulance or bicycle in the drawing figure.

Finally, the admittedly schematic nature of the microlens array and microimage array in Figure 41 do not allow for a definite finding that only a single magnified image of each of the first and second ambulances and the bicycle will necessarily result or is necessarily intended to result in that embodiment.

Accordingly, the rejection of claim 39 as being anticipated by Commander is not sustained. Independent claim 44 includes essentially the same limitations discussed above that are not adequately disclosed by Commander, and the rejection of that claim is also not sustained. The rejection is further not sustained as to dependent claims 40–43 and 45–49.

## DECISION

The Examiner's rejection of claims 39–49 as being anticipated by Commander is reversed.

## CONCLUSION

In summary:

| Claims Rejected | Basis | Affirmed | Reversed |
|---|---|---|---|
| 39–49 | § 102(b) Commander | | 39–49 |
| **Overall Outcome** | | | 39–49 |

REVERSED