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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRYANT RUSHING

Appeal 2018-002603
Application 14/819,740
Technology Center 3700

Before MICHAEL L. HOELTER, RICHARD H. MARSCHALL, and
FREDERICK C. LANEY, *Administrative Patent Judges*.

LANEY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's decision to reject claims 1–3 and 5–23 (entered Mar. 21, 2017, “Final Act.”).² We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Bryant Rushing as the real parties in interest. Appeal Br. 2.

² Claim 4 has been cancelled. *Id.*

THE CLAIMED SUBJECT MATTER

Appellant's invention "relates to a multi-player combative war strategy game that utilizes specific items and placement to affect the players' outcome." Spec. 1.

Claims 1 and 21 are independent. Claim 1 is reproduced below and is representative of the claimed subject matter.

1. A strategy game system comprising:
 - a plate member;
 - the plate member being generally flat;
 - the plate member comprising a playing surface, a plurality of marked landing regions and at least one raised region;
 - at least one game coin;
 - the at least one game coin being adapted to be placed on the plate member for shooting via a cue stick into one of the plurality of marked landing regions and the at least one raised region;
 - the plate member further comprising a track region and a course region;
 - the course region being located in a center of the plate member;
 - the track region being located on a periphery of the plate member;
 - the plate member further comprising a track rail;
 - the track rail being positioned in between the track region and the course region;
 - the track region and the course region being separate from each other via the track rail;
 - the plate member further comprising at least one passage for the at least one game coin;
 - the at least one passage being formed on the track rail; and
 - the track region and the course region being communicated with each other via the at least one passage such that the at least one game coin being capable of entering the course region from the track region through the at least one passage.

REJECTIONS

References	Basis 35 U.S.C.	Claims Rejected
	§ 112(d)	8–11, 15, 16, 18, 23
	§ 112(b)	9, 10, 16, 17, 18, 21, 22, 23
Chambless ³ , Bakken ⁴	§ 103	1, 2, 5–13, 21, 23
Chambless, Bakken, Guyer ⁵	§ 103	3, 14–16, 18
Chambless, Bakken, Guyer, Weigl ⁶	§ 103	17
Chambless, Bakken, Guyer, Casey ⁷	§ 103	19
Chambless, Bakken, Stromberg ⁸	§ 103	20
Chambless, Bakken, Dunham ⁹	§ 103	22

ANALYSIS

I. Section 112 Rejections

Appellant does not identify any disputed issues with the Examiner’s rejections of claims 8–11, 15, 16, 18 , and 23 under 35 U.S.C. § 112(d) and claims 9, 10, 16, 17, 18, 21, 22, and 23 under 35 U.S.C. § 112(b). *See* Appeal Br. 7–13. Therefore, we summarily affirm these rejections.

³ US 2012/0235353 A1, pub. Sept. 20, 2012 (“Chambless”).

⁴ US 2,684,849, iss. July 27, 1954 (“Bakken”).

⁵ US 8,951,135 B1, iss. Feb. 10, 2015 (“Guyer”).

⁶ US 7,503,564 B2, iss. Mar. 17, 2009 (“Weigl”).

⁷ US 3,871,650, iss. Mar. 18, 1975 (“Casey”).

⁸ US 2005/0275164 A1, pub. Dec. 15, 2005 (“Stromberg”).

⁹ US 2,159,966, iss. May 30, 1939 (“Dunham”).

II. Section 103 Rejections

Regarding the Examiner's rejections of claims 1–3 and 5–23 under 35 U.S.C. § 103 in view of various combinations of Chambless, Bakken, Guyer, Weigl, Casey, Stromberg, and Dunham, Appellant only contests the obviousness rejection of claims 1, 2, 5–13, 21, and 23 in view of Chambless and Bakken. *See* Appeal Br. 7–13. Moreover, Appellant contests that rejection of claims 1, 2, 5–13, 21, and 23 collectively. *See id.* Therefore, we select claim 1 as representative and the remaining claims will stand or fall with representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellant makes two arguments against the Examiner's obviousness rejection of claim 1. Appellant argues first that the Examiner erred in finding Bakken shows a “plate member further comprising a track rail,” and argues second that the Examiner erred in finding Bakken shows “at least one passage being formed on the track rail,” as recited by claim 1. Appeal Br. 7–13. In both arguments, Appellant contends that the Examiner's findings are erroneous because the guiding strip 6 in Bakken is “multi-layered.” *Id.* at 9, 12. Additionally, Appellant's second argument suggests that the Examiner's rejection is improper because Bakken's guiding strip 6 “completely encircl[es] the course region 10.” *Id.* at 12.

The Examiner found Appellant's arguments unpersuasive because all of the limitations that claim 1 recites “have been met and it appears that Appellant is reading limitations into the claims that do not currently exist.” Ans. 17. We agree.

“Limitations not recited in a claim cannot be relied upon to impart patentability to that claim.” *In re Teter*, 158 F.2d 1007, 1010 (CCPA 1947).

In this case, Appellant fails to recognize that “the name of the game is the claim.” *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998). Appellant does not identify any specific claim language that limits “a track rail” to a single layer between the track region and the course region or limits “a passage being formed on the track rail” to a single layer that *does not* completely encircle the course region. Appeal Br. 7–12. Although we are directed to the description of an exemplary embodiment in the Specification that includes the alleged distinguishing attributes, Appellant does not provide any argument or analysis why the Specification’s description of an *exemplary* embodiment properly limits the scope of the claims. *Id.* at 8, 11.

“Just as it is improper to ‘import[] limitations from the specification into the claims,’ *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005), however, a preferred embodiment disclosed in the specification cannot impart structure to a term that otherwise has none.” *MTD Products Inc. v. Iancu*, 933 F.3d 1336, 1342–43 (Fed. Cir. 2019). As with all lexicography, “[i]t is not enough for a patentee to simply disclose a single embodiment.” *Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). Rather, “the patentee must ‘clearly express an intent to redefine [a] term.’” *Id.* (quoting *Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527 F.3d 1379, 1381 (Fed. Cir. 2008)). In addition, because claim 1 recites the transitional term “comprising,” it can include additional structural features. *MagSil Corp. v. Hitachi Global Storage Techs., Inc.*, 687 F.3d 1377, 1383 (Fed. Cir. 2012) (“Open claim language, such as the word ‘comprising’ as a transition from the preamble to the body of a claim, ‘signals that the entire claim is presumptively open-ended.’” (citing *Gillette Co. v. Energizer Holdings, Inc.*, 405 F.3d 1367, 1371 (Fed. Cir. 2005))).

Because both arguments depend on points of distinction that are not supported by the recited elements of the claims, Appellant has not apprised us of an error with the Examiner’s finding that Bakken shows a “plate member further comprising a track rail” and “at least one passage being formed on the track rail,” as recited by claim 1.

Therefore, because Appellant does not challenge any other aspect of the Examiner’s rejections of claims 1–3 and 5–23 under 35 U.S.C. § 103 in view of the various combinations of Chambless, Bakken, Guyer, Weigl, Casey, Stromberg, and Dunham, we sustain all of the Examiner’s obviousness rejections.

DECISION

The Examiner’s rejections of claims 1–3 and 5–23 are affirmed.

Claims Rejected	Basis 35 U.S.C.	Reference(s)/Basis	Affirmed	Reversed
8–11, 15, 16, 18, 23	§ 112(d)	Improper Dependency	8–11, 15, 16, 18, 23	
9, 10, 16, 17, 18, 21, 22, 23	§ 112(b)	Indefiniteness	9, 10, 16, 17, 18, 21, 22, 23	
1, 2, 5–13, 21, 23	§ 103	Chambless, Bakken	1, 2, 5–13, 21, 23	
3, 14–16, 18	§ 103	Chambless, Bakken, Guyer	3, 14–16, 18	
17	§ 103	Chambless, Bakken, Guyer, Weigl	17	
19	§ 103	Chambless, Bakken, Guyer, Casey	19	
20	§ 103	Chambless, Bakken, Stromberg	20	
22	§ 103	Chambless, Bakken, Dunham	22	

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Claims Rejected	Basis 35 U.S.C.	Reference(s)/Basis	Affirmed	Reversed
Overall Outcome			1-3, 5-23	

FINALITY AND RESPONSE

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED