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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte UDO VOGT¹

Appeal 2018-002713
Application 12/999,224
Technology Center 2800

Before BRADLEY W. BAUMEISTER, SHARON FENICK, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–11 and 16–22, which constitute all the claims pending in this Application. App. Br. 7–48.² We have jurisdiction under 35 U.S.C. § 6(b). Oral arguments were heard September 9, 2019. A transcript will be added to the record in due course. We reverse.

¹ Appellant lists ITW MORLOCK GMBH as the real party in interest. Appeal Brief filed June 13, 2016 (“App. Br.”) 2.

² Rather than repeat the Examiner's positions and Appellant's arguments in their entirety, we refer to the above mentioned Appeal Brief, as well as the following documents for their respective details: the Final Action mailed November 5, 2015 (“Final Act.”); the Examiner's Answer mailed November 18, 2016 (“Ans.”); and the Reply Brief filed November 13, 2017 (“Reply Br.”).

STATEMENT OF THE CASE

Appellant describes the present invention as follows:

A pad printing machine (1) to print an object (8) in at least two stages, said machine comprising at least one printing pad (6) to print said object and at least two printing plate zones (10) within each of which a printing plate (14) may be moved into the desired position, the pad printing machine furthermore comprising an image recorder (44) generating an image of at least a partial area of at least one printing plate zone (10), and a comparator (46) to compare the image generated by said recorder (44) with reference data.

Abstract.

Independent claim 16, reproduced below with added emphasis, illustrates the appealed claims:

16. A pad printing machine for printing an object in first and second stages, said machine comprising:

first and second printing plate zones;

a plate carrier configured to carry a printing plate displaceable to the first and second printing plate zones;

an image recorder configured to generate a second image of the second printing plate zone; and

a comparator configured to compare the second image of the second printing plate zone with a reference image.

Claims 1–11, 16–18, 21, and 22 stand rejected under 35 U.S.C.

§ 103(a) as being unpatentable over Binnen (US 5,383,398; issued Jan. 24, 1995) and Suenaga (JP 07-17029 A; published Jan. 20, 1995). Final Act. 4–8.³

³ The Examiner omits claim 8 from the list of rejected claims (Final Act. 4). But claim 8 is pending (App. Br. 51), and the Examiner does not indicate that claim 8 is allowable (Final Act. cover sheet). Accordingly, we presume for the purpose of this appeal that the Examiner intended to reject claim 8.

Claims 19 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Binnen, Suenaga, and Onozuka (JP 06-134977 A; published May 17, 1994). Final Act. 9.

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

ANALYSIS

The Examiner finds that Binnen discloses all of the elements of the claimed pad printing machine except that “*Binnen fails to teach the pad printing machine further comprises at least one image recorder generating an image of the second printing plate zone and at least a comparator to compare the second image generated by the image recorder with reference data.*” Final Act. 6 (emphasis added). The Examiner finds that Suenaga teaches these missing limitations. *Id.* at 6–7 (citing Suenaga ¶¶ 37–43; Figs. 1, 2, 4, 8). The Examiner determines that motivation existed to incorporate Suenaga’s teachings into Binnen’s system. *Id.* at 7.

Appellant asserts, *inter alia*, that Suenaga does not teach claim 16’s last limitation of “a comparator configured to compare the second image of the second printing plate zone with a reference image.” App. Br. 7–33. More specifically, Appellant argues that the cited portions of Suenaga do not teach that control devices 40, 40a compare *images*, as claimed. *Id.* at 25. According to Appellant, Suenaga, instead, teaches comparing values that represent the positions of the work (W) that is fixed onto work surface plate (7) and the intaglio (P) that is fixed onto intaglio printing platen (6). *Id.* at 27. Appellant frames the issue as follows:

whether the person of ordinary skill in the art would [have] construe[d] the recitations of the claim regarding the comparator “compare[s] the second image . . . with a reference image” to have such breadth as to encompass the feature “compare the value of relative location of the alignment mark position with an acceptable value” disclosed in Suenaga (emphasis added).

Id.

Suenaga discloses aligning the work (W) and intaglio (P) via an alignment apparatus (4). Suenaga ¶ 22. The alignment apparatus performs the alignment by comparing data representing the alignment marks of the work and intaglio. *Id.*

The Examiner does not dispute that this is how Suenaga’s alignment is carried out. The Examiner explains, though, that the alignment marks are being interpreted as corresponding to the claimed second image of the second printing plate zone and reference image. Ans. 4. The Examiner more specifically reasons, as follows:

it is clear from the context of Suenaga that the detected image generated by the image recorder (i.e., optical apparatus 4a, 4b) of Suenaga is broadly compared to a reference image (i.e., an expected or previously saved image) such that the image information is converted into values or digital information that can be used to determine relative position data to be compared and saved. It is further noted, that a system of this type (such as one using a [charge carrier device] CCD camera and a computer) is only capable of comparing values or data such as digital information that has been obtained from the images read or detected by the CCD cameras. Any computer system ultimately only manipulates values when performing calculations. That is, a computer, being a computational device, performs calculations based on values and not images. Thus, it is the Office’s position that Suenaga teaches an image recorder and comparator to

compare the image generated by the image recorder with a reference image as broadly recited.

Id. at 4–5.

The Examiner’s interpretation is unreasonable. To be sure, a CCD camera converts detected images into numerical values so that calculations and comparisons can be performed. However, that fact is not dispositive.

Claim 16 does not merely recite using a comparator or computer to compare *data or numerical values* that have been generated by an image recorder, as the Examiner interprets the claims. *Id.* Rather, claim 16 sets forth that the recorder is “configured to *generate a second image* of the second printing plate zone,” and it is this *generated second image* that the comparator compares with a reference image.

The Examiner has not established that the cited art generates an image that is compared to a reference—only that the cited art entails comparing data that is derived from an image. Accordingly, Appellant has persuaded us of error in the Examiner’s obviousness rejection of independent claim 16. We, therefore, reverse the obviousness rejection of claim 16, of independent claims 1 and 21, which recite similar language, and of claims 2–11, 17, 18, and 22, which depend from independent claims 1, 16, and 21.⁴

With respect to the remaining rejection of dependent claims 19 and 20, the Examiner does not rely on the additionally cited reference, Onozuka, to cure the deficiency of the obviousness rejection explained above. Final

⁴ *See* Ans. 2 (wherein the Examiner acknowledges that the Claim Appendix section of the Appeal Brief omits language from the last limitation of claim 1 and wherein the Examiner sets forth that the last limitation is intended to recite “wherein the comparator includes a system comparing the generated image with a reference image”).

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Act. 9. Accordingly, we likewise reverse the obviousness rejection of these claims for the reasons set forth in relation to claim 16.

DECISION

The Examiner's decision rejecting claims 1–11 and 16–22 is reversed.

REVERSED