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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ABDOL HAMID HASHEMI

Appeal 2018-003902
Application 14/753,358
Technology Center 3600

Before JAMES P. CALVE, MICHELLE R. OSINSKI, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

CALVE, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the decision of the Examiner to reject claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b). Appellant appeared at an oral hearing conducted on November 7, 2019.

We AFFIRM.

¹ “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies IPIC-GOLD CLASS ENTERTAINMENT, LLC as the real party in interest. Appeal Br. 3.

CLAIMED SUBJECT MATTER

Claims 1, 11, and 19 are independent. Claim 1 is reproduced below.

1. A theater seating system comprising:
 - a separating panel having a separating panel lengthwise axis, a first end, a second end, a first section, a second section, a third section, and a fourth section, the separating panel lengthwise axis extending through the second section and the fourth section, the first section extending from the first end to the second section, the second section extending from the first section to the third section, the third section extending from the second section to the fourth section, the fourth section extending from the third section to the second end, the first section, the second section, the third section, and the fourth section cooperatively defining a chamber, the first end separated from the second end to define an opening providing access to the chamber, the first end separated from the second end by a first length, the third section having a second length that extends from the second section to the fourth section, the second length being greater than the first length; and
 - a first theater seat disposed within the chamber;
 - wherein the second section of the separating panel has a second section bottom surface, a second section top surface, and a first height that extends from the second section bottom surface to the second section top surface; and
 - wherein the fourth section of the separating panel has a fourth section bottom surface, a fourth section top surface, and a second height that extends from the fourth section bottom surface to the fourth section top surface, the second height being less than the first height.

REJECTIONS

Claims 1–9, 11–13, 16, 17, 19, and 20 are rejected under 35 U.S.C. § 103 as unpatentable over Johnson (US 2012/0318918 A1, pub. Dec. 20, 2012) and Baloga (US 4,715,154, iss. Dec. 29, 1987). Final Act. 4–9; Ans. 3–4 (omission of Baloga from caption in Final Action was inadvertent).

Claims 5, 6, 14, and 15 are rejected under 35 U.S.C. § 103 as unpatentable over Johnson, Baloga, and Bettell (US 7,997,531 B2, iss. Aug. 16, 2011).

Claims 10 and 18 are rejected under 35 U.S.C. § 103 as unpatentable over Johnson, Baloga, and Hankinson (US 2010/0193634 A1, pub. Aug. 5, 2010).

ANALYSIS

Claims 1–9, 11–13, 16, 17, 19, and 20 Unpatentable over Johnson and Baloga

The Examiner finds that Johnson teaches a separating panel (travel suite 10) with four sections, opening 16, and a theater seat (passenger seat 20) as recited in claim 1, but Johnson does not teach a second section with a first height greater than a second height of the fourth section as claimed. Final Act. 4–5. The Examiner finds that Baloga teaches a second section (privacy panel 50) with a first height and a fourth section (reception area panel 40) with a second height that is less than the first height. *Id.* at 5–6. The Examiner determines it would have been obvious to modify Johnson to use a shorter fourth section “for the purpose of keeping the cost low” as “smaller panel (42) of Baloga will require less material to manufacture.” *Id.* at 6; Ans. 5. *Alternatively*, the Examiner finds that “Johnson in figures clearly discloses the height [of the second and fourth section walls] are different.” Final Act. 2; Ans. 4. In particular, the Examiner finds Johnson’s drawings illustrate seatback 20 is higher than the opposite side, which is cut lower and dips down, as claimed, and *further* “the panel behind the seatback 20 also includes two different heights” where “[o]ne of the heights is greater than the height on the opposition section” as claimed. Ans. 4.

We agree with Appellant that passenger seat 20 of Johnson and its seat back do not correspond to a panel as claimed. Appeal Br. 10–12. The Examiner’s interpretation and findings in this regard are inconsistent with the claim language interpreted in light of the Specification.

Independent claims 1, 11, and 19 each recite a separating panel with first, second, third, and fourth sections that define a chamber.² Appeal Br. 19, 21, 23–24 (Claims App.). These claims also recite “a first theater seat disposed within the chamber.” *Id.* at 19, 22, 25. The theater seat is claimed as a distinct element from the separating panel sections, and the theater seat is disposed within a chamber formed by the sections of the separating panel. The Specification also describes separating panel 12 as comprising sections 42, 44, 46, 48 that define chamber 50 that is sized and configured to receive first and second theater seats 14, 16. Spec. ¶¶ 36, 37, Figs. 1, 2.

In the Final Office Action, the Examiner correctly finds that passenger seat 20 of Johnson corresponds to the first theater seat that is disposed within a chamber formed by the sections of the separating panel as claimed. Final Act. 4. Johnson discloses that travel suite 10 is defined by enclosure 11 that delimits the area of the travel suite to provide support structures for interior components. Johnson ¶ 38. Johnson teaches passenger seat 20 as an interior component that is positioned within walls 14 of enclosure on one end of the enclosure. *Id.* ¶ 40. These teachings of Johnson undermine the Examiner’s finding that passenger seat 20 is part of the separating panel (enclosure 11). Final Act. 2–3; Ans. 4. Johnson describes seat 20 as a separate component positioned *within* the interior of enclosure 11. Johnson ¶¶ 38, 40, Figs. 1–9.

² Claim 19 recites these elements as first/second separating panel that define first/second separating panel chambers. Appeal Br. 23–24.

However, we agree with the Examiner that Johnson teaches a separate section of wall 11 that is behind seatback 20 and has two different heights. One of the heights is greater than the height of a section of wall 11 on the opposite side. Ans. 4. Therefore, Johnson teaches a second section having a height that is greater than a height of a fourth section as claimed.

Figure 4 of Johnson, reproduced below, illustrates this feature.

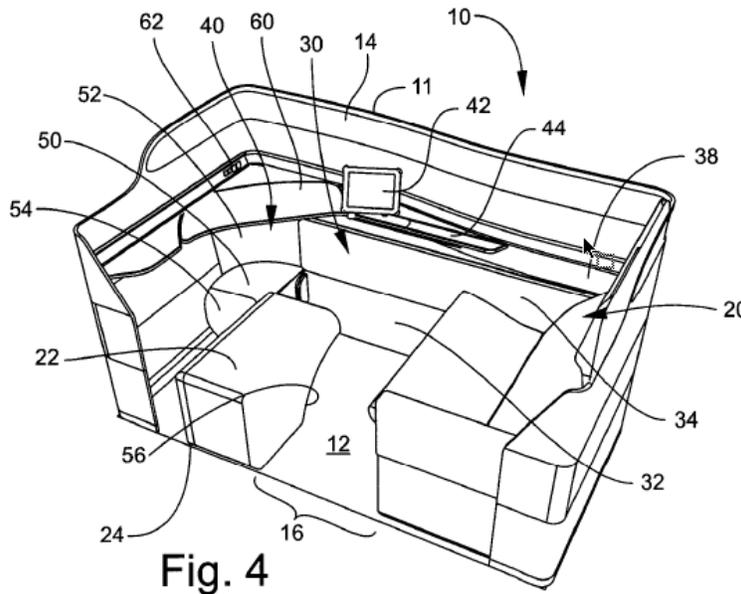


Figure 4 illustrates enclosure 11 with wall 14 having a raised height adjacent to video monitor 42 and a reduced height near ottoman 22. Johnson ¶¶ 38–41. The Examiner correctly finds that a left section of wall 14 (at lead lines 50 and 54) is lower than a section of wall 14 behind seat 20 as claimed for the fourth and second sections. Ans. 4. In view of these teachings, we disagree with Appellant’s argument that Johnson illustrates opposing wall sections having the same height in all embodiments. *See* Appeal Br. 10–12. Appellant presents no other argument apprising us of error in the Examiner’s findings that Johnson teaches a fourth section with a height less than a height of a second section as claimed. *See* Reply Br. 1–3.

Drawings in a utility or design patent can be cited against claims of a utility patent application. *See In re Aslanian*, 590 F.2d 911, 913–14 (CCPA 1979). Prior art teachings, including the drawings, are evaluated on the basis of what they reasonably disclose and suggest to a skilled artisan. *Id.* at 914. “[A] claimed invention may be anticipated or rendered obvious by a drawing in a reference, whether the drawing disclosure be accidental or intentional.” *In re Meng*, 492 F.2d 843, 847 (CCPA 1974) (citation omitted); *Aslanian*, 590 F.2d at 914 (holding “a drawing in a utility patent can be cited against the claims of a utility patent application even though the feature shown in the drawing was unintended or unexplained in the specification of the reference patent.”); *In re Mraz*, 455 F.2d 1069, 1072 (CCPA 1972) (holding that things shown clearly in patent drawings are not to be disregarded).

Appellant has not apprised us of error in these findings. *See* 37 C.F.R. § 41.37(c)(1)(iv) (the Appeal Brief “shall explain why the examiner erred as to each ground of rejection contested by appellant.”); *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (approving of the Board’s practice to require an applicant to identify error in an examiner’s rejections; “Moreover, even assuming that the examiner had failed to make a prima facie case, the Board would not have erred in framing the issue as one of ‘reversible error.’”).

Even if these findings of the Examiner constitute a new ground of rejection in the Answer, as Appellant alleges (Reply Br. 2), Appellant’s recourse was to petition the Director under 37 C.F.R. § 1.181 within two months of entry of the Answer and before the filing a Reply Brief. *See* 37 C.F.R. § 41.40(a); MPEP § 1207.03. Appellant’s decision to file a Reply Brief instead of a petition to the Director waives any argument that the rejection must be designated as a new ground. *See* 37 C.F.R. § 41.40(a).

Regarding Appellant's arguments that the Examiner failed to provide adequate notice under 35 U.S.C. § 132 (Appeal Br. 8–9; Reply Br. 1–2), the main issue in dispute is whether Johnson teaches second and fourth sections with different heights. Appellant did not challenge the Examiner's finding that Johnson teaches these feature in the drawings as discussed above.³ Nor did Appellant apprise us of error in the Examiner's findings that Johnson teaches all of the other features recited in claim 1. *See* Appeal Br. 8–15; Reply Br. 1–3. Thus, we are not apprised of error in any of the Examiner's findings that Johnson teaches all of the features recited in claim 1 to include the claimed second and fourth section heights. *See* Final Act. 4–5; Ans. 4. Accordingly, we sustain the rejection of claim 1 and claims 2–9, 11–13, 16, 17, and 19, which are not argued separately.⁴ 37 C.F.R. § 41.37(c)(1)(iv); *see* Appeal Br. 8–12. Our affirmance of this rejection based on Johnson is a general affirmance of this rejection. *See* 37 C.F.R. § 41.50(a)(1). Because we affirm this rejection based on Johnson's teachings, we do not address the Examiner's findings related to Baloga (Final Act. 5–6; Ans. 4–5). *See In re Kronig*, 539 F.2d 1300, 1303 (CCPA 1976) (holding that Board's affirmance of a rejection on less than all references was not a new ground of rejection because the Board relied on the same teachings as the Examiner); *see also Jung*, 637 F.3d at 1365 (Board can affirm the Examiner if appellant has had a fair opportunity to react to the thrust of the rejection).

³ At the hearing, Appellant acknowledged these findings in the Answer and stated they were not traversed. Hr'g Tr. 14:17–20, 15:16–16:8, 17:14–21; *see* Reply Br. 3 (“This Reply Brief raises no new issues. Appellant requests that this matter proceed to the Board without further briefing.”).

⁴ Reciting claims 9 and 17 and asserting that their features are not obvious (Appeal Br. 15) is not an argument for separate patentability. *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011).

*Claims 5, 6, 14, and 15
Unpatentable over Johnson, Baloga, and Bettell*

Appellant argues that Bettell does not cure the defects of Johnson and Baloga as to claims 1 and 11 from which claims 5, 6, 14, and 15 depend respectively. Appeal Br. 15–16. Because we sustain the rejection of claims 1 and 11 as unpatentable over Johnson, there are no defects for Bettell to cure. Thus, we also sustain the rejection of claims 5, 6, 14, and 15.

*Claims 10 and 18
Unpatentable over Johnson, Baloga, and Hankinson*

Appellant argues that Hankinson does not cure the defects of Johnson and Baloga as to claims 1 and 11 from which claims 10 and 18 depend respectively. Appeal Br. 15–16. Because we sustain the rejection of claims 1 and 11 as unpatentable over Johnson, there are no defects for Hankinson to cure. Thus, we also sustain the rejection of claims 10 and 18.

CONCLUSION

We affirm the rejection of claims 1–20.

Claims Rejected	35 U.S.C. §	Basis or Reference	Affirmed	Reversed
1–9, 11–13, 16, 17, 19, 20	103	Johnson, Baloga	1–9, 11–13, 16, 17, 19, 20	
5, 6, 14, 15	103	Johnson, Baloga, Bettell	5, 6, 14, 15	
10, 18	103	Johnson, Baloga, Hankinson	10, 18	
Overall Outcome			1–20	

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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).

AFFIRMED