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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALIA A. ALMUTAWA

Appeal 2018-005248
Application 14/538,738
Technology Center 3700

Before EDWARD A. BROWN, JAMES P. CALVE, and JILL D. HILL,
Administrative Patent Judges.

HILL, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 19–28. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as the inventor, Alia A. Almutawa. Appeal Br. 3.

BACKGROUND

Independent claims 19, 27, and 28 are pending. Claim 19, reproduced below with certain limitations italicized, illustrates the claimed subject matter:

19. *An educational and socially interactive learning game, comprising:*

at least three separate and distinct game boards, each of the at least three separate and distinct game boards having a different uniquely identifiable indicia, each of the at least three separate and distinct game boards being exposed simultaneously on a surface for simultaneous play;

at least three sets of game pieces, each of the at least three sets of game pieces having at least three individual game pieces bearing the uniquely identifiable indicia of one of the at least three separate and distinct game boards;

wherein at least one of the game pieces of each of the at least three sets of game pieces includes a game piece having a distinctive feature;

a die having at least three faces, each of the at least three faces having a different uniquely identifiable indicia thereon, the uniquely identifiable indicia displayed on each of the at least three faces corresponding to the uniquely identifiable indicia displayed on one of the at least three separate and distinct game boards;

wherein each separate and distinct game board identified by the respective uniquely identifiable indicia and each of the at least three sets of game pieces corresponding to one of the at least three separate and distinct game boards identified by the respective uniquely identifiable indicia being associated as a group independent from the remaining separate and distinct game boards and corresponding sets of game pieces; and

a plurality of game cards including a distinct first subset of game cards, each of the game cards of the first subset of game cards having at least one question displayed thereon, a distinct second subset of game cards, each of the game cards of the second subset of game cards having a puzzle displayed thereon, and a distinct third subset of game cards, each of the game cards

of the third subset of game cards having a blank area displayed thereon.

REFERENCE

The prior art relied upon by the Examiner is:

Name	Reference	Date
Hamilton	US 4,569,526	February 11, 1986

REJECTION

I. Claims 19–28 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Hamilton. Final Act. 2.

ANALYSIS

Independent claims 19 and 28 recite a “learning game, comprising: at least three separate and distinct game boards, each of the at least three separate and distinct game boards . . . being exposed simultaneously on a surface for simultaneous play.” Independent claim 27 provides a similar recitation with the transition term “consisting of” rather than “comprising.”

Regarding independent claims 19, 27, and 28, the Examiner finds, *inter alia*, that Hamilton discloses (1) “at least three game boards . . . , each having distinctly different . . . identifiable indicia.” Final Act. 2. The Examiner determines that, regarding the claimed game boards being simultaneously exposed on a surface for simultaneous play, this limitation “does not add any structure to the apparatus.” *Id.* at 4 (emphasis omitted).

During examination, claims are given their broadest reasonable interpretation as they would be understood by a skilled artisan in light of definitions and the written description in the specification. *In re Morris*, 127

F.3d 1048, 1053–54 (Fed. Cir. 1997); *PPC Broadband, Inc. v. Corning Optical Commc’ns RF, LLC*, 815 F.3d 734, 740 (Fed. Cir. 2016). “Under a broadest reasonable interpretation, words of the claim must be given their plain meaning, unless such meaning is inconsistent with the specification and prosecution history.” *Trivascular Inc. v. Samuels*, 812 F.3d 1056, 1062 (Fed. Cir. 2016) (noting that the broadest reasonable interpretation standard does not give the Board unfettered license to interpret the words in a claim without regard for the full claim language and the written description). “Construing individual words of a claim without considering the context in which those words appear is simply not ‘reasonable.’ Instead, it is the ‘use of the words in the context of the written description and customarily by those of skill in the relevant art that accurately reflects both the ‘ordinary’ and ‘customary’ meaning of the terms in the claims.’” *Id.* (citation omitted).

Regarding the “at least three game boards” limitation, we interpret the claim language of a “learning game, comprising: at least three separate and distinct game boards” according to its plain meaning because Appellant’s Specification provides no special definitions or disclaimers. When we interpret this limitation in light of the plain, ordinary meaning of those terms, the other language of claim 19, and the Specification, we understand it to require that a single game is made up of, *inter alia*, at least three separate and distinct game boards. The game boards are simultaneously displayed for simultaneous play.

Hamilton does not disclose this claimed structure, configuration, or elements, i.e., a game made up of at least three separate and distinct game boards simultaneously displayed for simultaneous play. Rather, each

“game” of Hamilton is described as comprising a single game board. The Examiner provides no finding that Hamilton teaches a single game having at least three separate and distinct game boards. Indeed, we find no disclosure in Hamilton of a game having at least three separate and distinct game boards.

Appellant argues that Hamilton additionally does not disclose a game comprising “at least three separate and distinct game boards *being exposed simultaneously on a surface for simultaneous play*” (emphasis added), because Hamilton’s “players cannot play a game on the game matrix representing the Olympics at the same time they are playing football on the game matrix representing Football.” Appeal Br. 11.

The Examiner responds that the game surfaces being “simultaneously exposed on a surface” does not add any structure to the apparatus, because the limitation is an intended use limitation. Final Act. 4 (“Whether the game boards are open, closed or stored in a container the structure remains the same.”); Ans. 4 (“The examiner has the burden of searching the three distinct game boards and not whether the appellant wants to place them together next to each other or not.”).

We are not in agreement with the Examiner on this point. While the functional language of simultaneous exposure may not add any structure to the claim, it cannot be completely ignored or read out of the claim. The question, instead, is whether this functional limitation — asserted by Appellant to be critical for establishing novelty in the claimed subject matter — is an inherent characteristic of the prior art. *See In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997) (citing *In re Swinehart*, 439 F.2d 210, 213 (CCPA 1971)). The Examiner makes no such inherency finding. Moreover,

this limitation clarifies that the structure of the claimed game includes three separate and distinct game boards that together are part of the same game and therefore are “exposed simultaneously on a surface for simultaneous play” of that game. *See* Spec. ¶ 18, Fig. 1.

“[W]hen evaluating claims for obviousness under 35 U.S.C. § 103, all the limitations of the claims must be considered and given weight.” *In re Gardner*, 449 F. App’x 914, 916 (Fed. Cir. 2011) (non-precedential) (citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983)); *see In re Glatt Air Techs., Inc.*, 630 F.3d 1026, 1030 (Fed. Cir. 2011) (holding obviousness was not established where the prior art failed to teach the claimed shielding).

We determine that it is not reasonable for the Examiner to find that the mere existence of game boards from three different games satisfies a limitation for a single game that comprises three separate and distinct game boards displayed simultaneously to play that single game. A person of ordinary skill in the art would not understand single game boards for individual games of Chess, Go, Checkers, and Backgammon to form or comprise a single game, even if displayed and played simultaneously. Instead, a skilled artisan would understand each of those games to comprise a separate game.

Further, the Examiner does not explain why a single game comprising at least three simultaneously-displayed, separate, and distinct game boards would have been obvious in view of Hamilton’s teaching of plural different games each having a separate game board. The three game boards relied on by the Examiner pertain to three different games. Final Act. 2–4; Ans. 4. We are unable to discern why a skilled artisan would have been motivated to

play a single game using the separate game boards of individual games taught by Hamilton. Nor is it clear why a skilled artisan would have been motivated to combine the game boards of different games into a single game that is played by simultaneously using the different game boards of different games.

For this reason, we do not sustain the rejection of independent claims 19, 27, and 28 as unpatentable over Hamilton. Dependent claims 20–26 depend from claim 19, and are patentable for the same reason.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
19–28	103	Hamilton		19–28

REVERSED