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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SAVERIO CELIA, GIOVANI BALLOCCA, and PAOLO D'AMATO[1]

Appeal 2018-005338[2]
Application 13/516,587
Technology Center 2400

Before JEAN R. HOMERE, JAMES B. ARPIN, and IRVIN E. BRANCH, *Administrative Patent Judges*.

ARPIN, *Administrative Patent Judge*.

I. DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a), the Examiner's decision rejecting claims 1, 5–9, 11–24, and 26–30. Non-Final Act. 2. Claims 2–4, 10, and 25 are cancelled. *Id.* We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] According to Appellants, S.I.SV.EL Societa' Italiana Per Lo Sviluppo Dell'Elettronica S.P.A. is the real party-in-interest. App. Br. 3.

[2] In this Decision, we refer to Appellants' Appeal Brief ("App. Br.," filed August 1, 2017) and Reply Brief ("Reply Br.," filed April 8, 2016); the Non-Final Office Action ("Non-Final Act.," mailed April 8, 2016); the Examiner's Answer ("Ans.," mailed February 27, 2018); and the originally filed Specification ("Spec.," filed June 15, 2016).

II. STATEMENT OF THE CASE

The recited methods and devices relate to:

> generating a stereoscopic video stream (101) comprising composite images (C) which comprise information about a right image (R) and a left image (L). According to the method, pixels are selected from the right image (R) and from the left image (L), and then the selected pixels are entered into a composite image (C) of the stereoscopic video stream. The method also provides for entering all the pixels of the right image (R) and all the pixels of the left image (L) into the composite image (C) by leaving one of said two images unchanged and breaking up the other one into regions (R1, R2, R3) comprising a plurality of pixels. Said regions are subsequently entered into the composite image (C). The invention also relates to a method for reconstructing the right and left images starting from a composite image, as well as to devices allowing said methods to be implemented.

Spec., Abstract.

Figure 3 of the application is reproduced below.

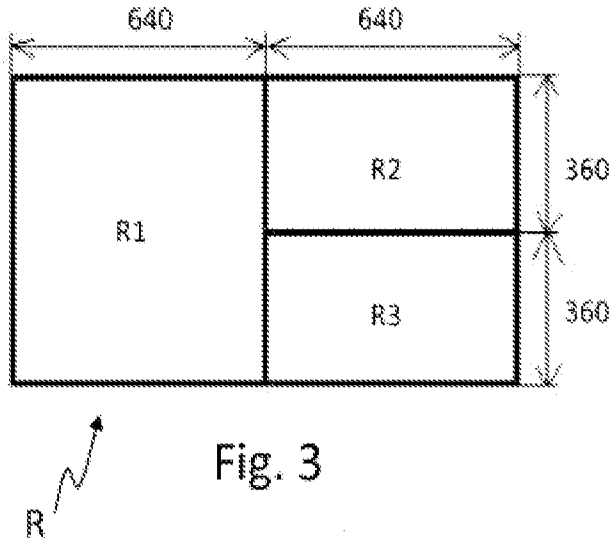

Fig. 3

Figure 3 depicts dividing right image (R) vertically into two equal portions, *and then* dividing one of the portions horizontally into two equal portions (R2 and R3). *Id.* at 6:15–7:1.

Figure 5 of the application is reproduced below.

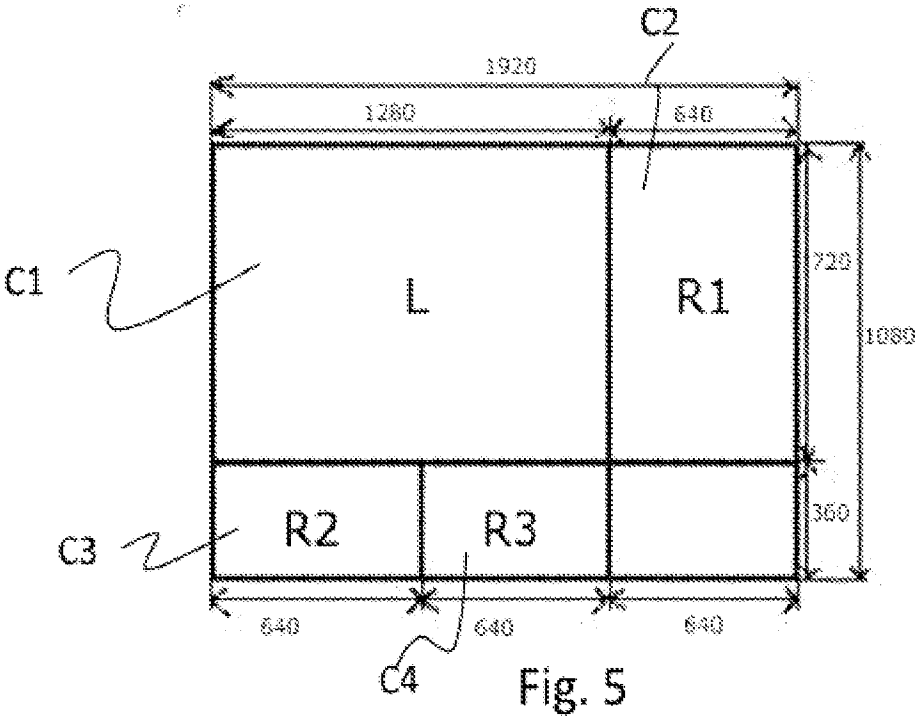

Fig. 5

Figure 5 depicts an embodiment, in which a composite image is formed by including left image (L) and first vertical portion (R1) and first and second horizontal portions (R1 and R2) of right image (R) in composite frame (C). *Id.* at 8:3–7; *see* App. Br. 24 (Claims App'x (claim 1)). Right image (R) and left image (L) can be reconstructed from such a composite image. Spec. 3:15–18, 3:30–4:4, 8:21–29; *see* App. Br. 26 (Claims App'x (claim 15)).

As noted above, claims 1, 5–9, 11–24, and 26–30 are pending, and claims 1 and 15 are independent. App. Br. 24, 26 (Claims App'x). Claims 5–9, 11–14, 23, 26, and 28–30 depend directly or indirectly from claim 1; and claims 16–22, 24, and 27 depend directly or indirectly from claim 15. *Id.* at 24–25, 26–28.

Claim 1, reproduced below, is illustrative.

> 1. A method for generating a stereoscopic video stream comprising composite images (C), said composite images

> (C) comprising information about a right image (R) and a left image (L), wherein
>
> selecting pixels of said right image (R) and pixels of said left image (L), and
>
> entering said selected pixels into a composite image (C) of said stereoscopic video stream,
>
> wherein all the pixels of said right image (R) and all the pixels of said left image (L) are entered into said composite image (C) by leaving one of said two images unchanged and breaking up the other one into regions (R1, R2, R3) having a rectangular shape and comprising a plurality of pixels and entering said regions into said composite image (C), in different areas of said composite image (C) not occupied by said unchanged image, a ratio between horizontal and vertical resolution of said left and right images being unchanged, said composite image (C) being a frame of said stereoscopic video stream having a number of pixels equal to or greater than a sum of the pixels of said left and right images,
>
> and
>
> *dividing vertically said other image (R) into two equally sized portions; and then dividing horizontally one of said two equally sized portions into two further equally sized portions (R2, R3), the other (R1) of said two equally sized portions being not further divided.*

Id. at 24 (disputed limitations emphasized).

III. REFERENCES

The Examiner relies upon the following prior art in rejecting the pending claims:

Butler-Smith *et al.* ("Butler-Smith")	US 2005/0041736 A1	Published Feb. 24, 2005
Katata *et al.* ("Katata")	EP 1 501 318 A1	Published Jan. 26, 2005;

IV. THE REJECTIONS

Claims 23, 24, and 28 stand rejected under 35 U.S.C. § 112, ¶ 1, as lacking adequate written description. Non-Final Act. 2–4, 23.

Claims 1, 5, 7, 11, 13–17, 21, 24, and 26–29 stand rejected under 35 U.S.C. § 103(a) as rendered obvious over the teachings of Butler-Smith. *Id.* at 5–16, 23–29.

Claims 6–9, 12, 18–20, 22, 23, and 30 stand rejected under 35 U.S.C. § 103(a) as rendered obvious over the combined teachings of Butler-Smith and Katata. *Id.* at 16–22.

Unless otherwise indicated, we adopt the Examiner's findings in the Answer as our own and add any additional findings of fact appearing below for emphasis. We address these rejections below.

A. Lack of Written Description

The Federal Circuit explained that "[t]he test for the sufficiency of the written description 'is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.'" *Vasudevan Software, Inc. v. MicroStrategy, Inc.*, 782 F.3d 671, 682 (Fed. Cir. 2015). Moreover, "[t]he written description requirement is separate and distinct

from the enablement requirement." MPEP § 2161(II)[3] (citing *Ariad Pharm., Inc. v. Eli Lilly and Co.*, 598 F.3d 1336, 1341 (Fed. Cir. 2010) (en banc)).

1. Claims 23 and 24

Claim 23 recites:

> A device for generating composite images (C), comprising a disassembler module for receiving a right image and a left image and an assembler module for generating a composite image (C) comprising information about said right image and said left image, wherein said disassembler module and said assembler module are adapted to implement *the method according to claim 1* and wherein said dissembler module comprises a video processor and wherein said assemble module comprises the video processor.

App. Br. 27 (Claims App'x (claim 23; emphasis added)). Claim 24 similarly depends from claim 15. *Id.* (Claims App'x (claim 24)). The Specification clearly describes the use of devices to accomplish the methods recited in claims 1 and 15. *See, e.g.*, Spec. 5:10–11 ("Fig. 1 shows a block diagram of a device for multiplexing the right image and the left image into a composite image"), 13:24–32 (describing the use of "a video processor" in such a device), Fig. 1. The Examiner determines, however, that "[t]he amended claim language [of claims 23 and 24] is interpreted to cover all ways of performing the '*generating a composite image (C) comprising information about said right image and said left image*' and '*generate said right image (R) and left (L) image*' functions with 'a processor'." Non-Final Act. 3. Moreover, the Examiner asserts the Specification lacks "an algorithm to perform the specialized programmed functions"; thus, the Specification

[3] All MPEP citations herein are to MPEP Rev. 08.2017, January 2018.

"does not sufficiently identify **how** the inventor has devised the function to be performed or result achieved." *Id.* We disagree.

Claims 23 and 24 depend directly from claims 1 and 15, respectively. The Examiner determined expressly that both claims 1 and 15 satisfy the written description requirement. *Id.* at 22–23. Appellants contend that, "[i]n light of the dependency, it is also clear that the inventor had possession of the claimed invention. Further, the algorithm for performing the method of claim 1 (and thus the required structure if necessary) is described throughout the application (*see e.g.,* Figures 1–2 and 12 of the specification and the accompanying description)." App. Br. 21–22; *see* Reply Br. 8–9. We agree.

The Examiner asserts that "the method according to claim 1 does not receive a right and a left image nor does it generate a composite image." Ans. 8. We disagree. Claim 1 recites, "[a] method for *generating* a stereoscopic video stream *comprising composite images (C)*, said composite images (C) *comprising information about a right image (R) and a left image (L).*" Spec. 17:2–4; *see* App. Br. 24 (Claims App'x). The claim language expressly recites *generating* a "composite image" from and left and right images and implicitly recites *receiving* the left and right images. Thus, we conclude the Specification shows that Appellants were in possession of the device recited in claims 23 and 24.

2. Claim 28

Claim 28 recites "[a] method according to claim 1, wherein at least a part of a boundary of said regions aligns with an edge of a macroblock." App. Br. 28 (Claims App'x). Initially, we note that this claim was not in the original application. *See* Spec., 19:12–13. Although the Specification discusses "macroblocks," the Specification does not discuss the macroblock

edges or limit their size. *Id.* at 10:17–20 ("*For example*, the H.264 standard provides for disassembling the image into macroblocks of 16x16 pixels, each of which represents this standard's elementary processing unit. *Based on this assumption*, the strip Ra3 has a width of 32 pixels." (emphases added)). The Examiner determines that "[w]hile page 10 of the specification discusses macroblocks as an example of an elementary processing unit, there is no discussion of aligning an edge of a macroblock. Therefore, the limitation introduces new matter." Non-Final Act. 4; *see* Ans. 9. We agree.

Appellants contend that

> because [of] the manner in which right and left images are inserted into the composite frame is disclose and because macroblocks are discussed in the specification and known to one of skill in the art[,] the recitation that "at least a part of said boundary area aligns with an edge of a macroblock" is *inherently* described when one accounts for the sizes of the regions and the size of a macroblock.

App. Br. 22 (emphasis added); *see TurboCare Div. of Demag Delaval Turbomachinery Corp. v. Gen. Elec. Co.*, 264 F.3d 1111, 1118–20 (Fed. Cir. 2001) (holding that to comply with the written description requirement the location of the spring must be actually or inherently disclosed; that the location may be obvious from the disclosure is not enough). In particular, Appellants contend that

> for example, the composite image C includes horizontal rows of pixels and vertical rows of pixels. Because a macroblock *may be* a block of 16xl6 pixels (or even if the macroblock is a different size), the horizontal and vertical sides of the macroblock must fall on certain horizontal rows and vertical rows of the composite image or frame. Claim 28 recites that, in the context of generating a stereoscopic video stream, at least a part of a boundary (which corresponds to at least part of a horizontal row

> and/or at least part of a vertical row) of said regions aligns with an edge of a macroblock.
>
> Thus, *when the size of the macroblock is 16x16*, the boundaries of the macroblock must fall on a pixel row and it is evident which pixel rows and columns align with the boundaries of the macroblock based on the pixel size. Reciting that at "least a part of a boundary of said regions aligns with an edge of a macroblock" is clear from the written description. *Figure 5, for example, can be used to determine which borders align with an edge of a 16x16 macroblock.*

App. Br. 22 (emphases added); *see* Reply Br. 9 ("Because a macroblock *may* be a block of 16x16 pixels (*or even if the macroblock is a different size*),[4] the horizontal and vertical sides of the macroblock must fall on certain horizontal rows and vertical rows of the composite image or frame." (emphases added)). Appellants further assert that "[e]ven if not explicitly stated in the specification, *this can be gleaned* from the macroblock size and the resolution of the images and image portions." Reply Br. 9 (emphasis added); *compare* Spec., Fig. 5 *and* Fig. 7. Appellants' contentions, however, fail to demonstrate that the macroblocks described in the Specification *must* have a required size or the edge alignment recited in claim 28. Thus, on this record, the Specification does not show expressly or inherently that Appellants were in possession of the methods recited in claim 28.

The Examiner erred in determining that claims 23 and 24 lack adequate written description, but did not err in determining that claim 28

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[4] Appellants do not provide evidence supporting this parenthetical assertion. However, Inventor D'Amato explains that "[i]n the present claimed invention as depicted in above Figure 5, the vertical borders of images R1, R2 and R3 fall on columns 640, 1280, and 1920 *which are all divisible by 16 and thus do not split the macroblocks*." D'Amato Decl. ¶ 17 (emphasis added); *see id.* ¶ 16; Spec., 3:19–21.

lacks adequate written description. We do not sustain the Examiner's lack of written description rejections of claims 23 and 24, but we sustain the Examiner's lack of written description rejection of claim 28.

B. Obviousness Over Butler-Smith

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art, i.e., Butler-Smith, are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). Obviousness is a question of law, which is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art;[5] and (4) when in evidence, objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

The Examiner finds that claims 1, 5, 7, 11, 13–17, 21, 24, and 26–29 are rendered obvious over the teachings of Butler-Smith. Non-Final Act. 5–16, 23–29. In particular, referring to claim 1, the Examiner finds that Butler-Smith expressly teaches or suggests all of the recited limitations, except that Butler-Smith teaches "dividing **horizontally** said other image (R) into two equally sized portions *(Right-Eye Top-half) [Figure 3]*; and then dividing

[5] Inventor D'Amato describes, "[a] person of ordinary skill in the art as of September 2012 or March 2013 would have had an academic degree in Electronic or Telecommunications Engineering, and years of experience in the field of television." D'Amato Decl. ¶ 10. The Examiner does not contest this description. To the extent necessary, we accept Inventor D'Amato's description.

vertically one of said two equally sized portions into two further equally sized portions (R2, R3), the other (R1) of said two equally sized portions being not further divided *(RtE B/L; RtE B/R) [Figure 3]*." Non-Final Act. 6–7. "However, [the Examiner acknowledges] Butler-Smith fails to explicitly disclose dividing **vertically** said other image (R) into two equally sized portions; and then dividing **horizontally** one of said two equally sized portions into two further equally sized portions (R2, R3), the other (R1) of said two equally sized portions being not further divided," as recited in claims 1 and 15. *Id.* at 7.

Butler-Smith's Figure 3 is reproduced below.

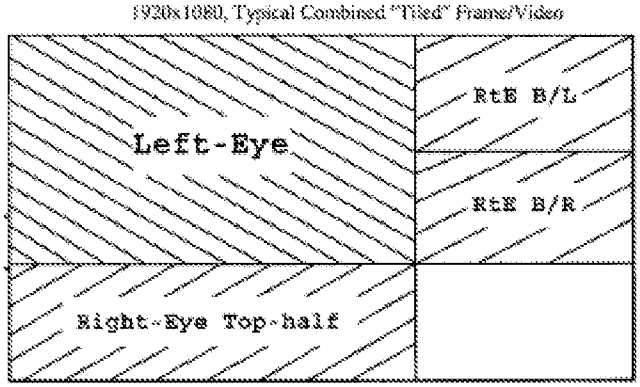

Figure 3

Figure 3 depicts a composite image in which the left-eye image is inserted in the frame and the right-eye image is divided, first *horizontally* and then the bottom half of the right-eye image is divided *vertically*, and the three portions of the right-eye image are inserted into the frame. *Id.*; *see* Butler-Smith ¶ 34. However, Butler-Smith explains "FIG. 3 is considered the encoded 'tiled' frame. It is a typical layout for the tiling, *but is not limited to this arrangement of tiled segments*." Butler-Smith ¶ 18 (emphasis added). Thus, the Examiner concludes that:

> Using the known techniques of dividing a right-eye view **horizontally/vertically**, it would have been obvious to one of ordinary skill in the art at the time the invention was made to divide the right-eye view **vertically first/horizontally second** instead of dividing the right-eye view **horizontally first/vertically second** yielding the predictable results of obtaining three separate regions of varying/equal sizes (R1, R2 and R3) and arranging them in a way to avoid loss of pixel data.

Non-Final Act. 7. The Examiner applies substantially the same analysis to independent claim 15. *Id.* at 9–11.

Appellants disagree for at least four reasons. App. Br. 7–21; Reply Br. 2–8. First, Appellants contend that Butler-Smith's Figure 3 does not teach or suggest the vertical first, horizontal second division of the right image, as recited in claims 1 and 15. App. Br. 7–12. Instead, Appellants contend that Butler-Smith's Figure 3 is limited to horizontal first, vertical second division of the right image and other "arrangements" of portions of the right image so divided. *Id.* at 8–12; *see* D'Amato Decl. ¶¶ 8–11. While we considered Inventor Amato's declaration testimony, we find neither Appellants' contentions nor Inventor Amato's testimony persuasive.

Initially, Butler-Smith teaches that alternative horizontal and vertical divisions are contemplated by its methods. In particular, Butler-Smith discloses that "'Pan-and-Scan Mode' is a mode in which the source material of the encoded tiled frame contains video imagery that has been 'stitched' together *either horizontally or vertically*, to create a panoramic view." Butler-Smith ¶ 47 (emphasis added); *see id.*, claim 10. Appellants provide definitions of "arrangement" in support of their narrow interpretation of the Butler-Smith's Figure 3. App. Br. 9–10; *but see* Ans. 3–5. In view of the cited disclosures, however, we conclude that Appellants propose an overly narrow interpretation of Butler-Smith's Figure 3. Butler-Smith ¶¶ 18, 47;

see id. ¶ 57. Moreover, we credit Inventor D'Amato's testimony with less weight in our analysis, especially in the context of an opinion rendered on the obviousness of the declarant's recited methods. D'Amato Decl. ¶¶ 2, 6; *see* Non-Final Act. 23–24; *see also Yorkey v. Diab*, 601 F.3d 1279, 1284 (Fed. Cir. 2010) ("We defer to the Board's findings concerning the credibility of expert witnesses.").

Second, Appellants contend that the Examiner relied on impermissible hindsight in rejecting these claims. App. Br. 12–14. In particular, Appellants contend that the Examiner has interpreted Butler-Smith's Figure 3 in view of the teachings of pending claims 1 and 15. *Id.* at 13. For the reasons set forth above, we determine that the disclosure of Butler-Smith supports the broad interpretation of its Figure 3.

Further, Appellants contend that

> Butler-Smith is concerned in part with temporal redundancy (which is an inter-frame issue) and not with artifacts related to encoding macroblocks (which is an intraframe issue). Also, even though the compression algorithms mentioned in Butler-Smith (MPEG-2, MPEG-4, and WM-9) make use of macroblocks and suffer from the effects associated with encoding macroblocks, the pixel loss referred to in Butler-Smith relates to entering the images into the frame. Compression is always associated with data loss of some type and Butler-Smith provides no guidance for reducing artifacts related to intraframe encoding. There is simply no discussion of tilings or arrangements that address the problem associated with artifacts created by the arrangement of the regions within the composite image itself and the artifacts generated when encoding the macroblocks of the composite image.

App. Br. 13. Although the Specification states that it is an object of the invention "to provide [a] multiplexing method (and a related device) for multiplexing the right and left images which allows a high compression rate

to be subsequently applied while minimizing the generation of distortions or artifacts" (Spec., 3:19–21), as the Examiner notes, "[n]either of the claims recite any mention of compression in any way, shape, or form." Ans. 6. Appellants may not rely properly on the Specification's and Butler-Smith's teachings on *compression* to show impermissible hindsight in the Examiner's application of Butler-Smith to the pending claims. *See* Non-Final Act. 26; Ans. 5–6.

Third, Appellants contend that the methods recited in claims 1 and 15 achieve "unique unexpected results." App. Br. 14–19. We consider secondary considerations, including "unexpected results," as part of our obviousness analysis. Nevertheless, "[f]or objective evidence of secondary considerations to be accorded substantial weight, its proponent must establish a nexus between the evidence and the merits of the claimed invention." *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010).

Relying on Inventor D'Amato's testimony, Appellants contend that:

> The artifacts introduced using the tiling of Figure 3 of *Butler-Smith* are significantly greater than the artifacts introduced by the claimed invention because more of the borders or boundaries are inside macroblocks. *In the claimed invention, as shown in Figure 5 of the specification, for example, the vertical borders of regions R1, R2, and R3 fall on columns 640, 1280 and 1920, which are all divisible by 16 and thus fall on the edges of macroblocks. See* Declaration ¶ 17. The horizontal borders of regions R1, R2 and R3 fall on horizontal rows 720 and 1080. *See Id.* Row 720 is divisible by 16 but not row 1080. Thus, of all borders of images R1, R2 and R3, only the borders of R2 and R3 on row 1080 result in partial macroblocks which can cause artifacts related to macroblock encoding. *See Id.* This artifact will be evident when the image is decoded.

> In contrast, the arrangements disclosed by *Butler-Smith* do not achieve this degree of result obtained in the claimed invention. *Figures 6A-F in illustrate [sic] 6 of the Declaration are examples of arrangements of image regions that are consistent with the teachings of Butler-Smith.* However, some of the borders of the regions $R_{TH\ (Top\ Half)}$, $R_{BL\ (Bottom\ Left)}$, and $R_{BR\ (Bottom\ Right)}$ fall on the rows 360 and 1080. These rows, however, do not coincide with edges of macroblocks. This is different from embodiments of the invention, where borders fall on rows 720 and 1080. The row 720 coincides with edges of macroblocks. Thus, embodiments of the invention have fewer artifacts during the encoding and decoding processes compared to *Butler-Smith*.

App. Br. 15–16. These contentions, however, rely on limitations appearing in dependent claim 28, rather than independent claims 1 and 15 (*see* App. Br. 28 (claims App'x: claim 28)), and on distinctions gleaned from drawings of other arrangements prepared by Inventor D'Amato for the declaration (*see* D'Amato Decl. ¶ 23 (depicting Figures 6A–F)). *See supra* Section IV.A.2. (claim 28 lacks written description). Thus, Appellants fail to demonstrate the necessary nexus between the limitations of claims 1 and 15 and the allegedly "unique unexpected results."

Fourth, Appellants contend that Butler-Smith's Figure 3 represents a species or subgenus that is insufficient to render the genus recited in claims 1 and 15 obvious. App. Br. 19–21; Reply Br. 7–8. As with the foregoing contentions, this contention is based on Applicants' overly narrow interpretation of Butler-Smith's Figure 3. Ans. 2–4; *see* Reply Br. 8. Because we do not find that Butler-Smith's Figure 3 is limited to "arrangements" of portions of the right-eye image, created by first horizontal, then vertical divisions of that image, we conclude that the Examiner properly relies on the teachings of Butler-Smith's Figure 3 to teach or suggest the limitations of independent claims 1and 15.

For the forgoing reasons, we conclude that independent claims 1 and 15, as well as the claims 5, 7, 11, 13, 14, 16, 17, 21, 24, and 26–29 dependent therefrom, are rendered obvious by the teachings of Butler-Smith, and we sustain the Examiner's rejections of those claims. *See* App. Br. 23.

C. Obviousness Over Butler-Smith and Katata

Claims 6–9, 12, 18–20, 22, 23, and 30 stand rejected as rendered obvious over the combined teachings of Butler-Smith and Katata. Non-Final Act. 16–22. Each of these claims' rejections relies on the finding of obviousness of their base claims, independent claim 1 or 15, over the teachings of Butler-Smith. *See* App. Br. 24–28 (Claims App'x). Appellants rely on their contentions with respect to the obviousness rejection of the base claims to overcome these rejections. App. Br. 21; *see* Ans. 8. For the reasons set forth above, we sustain the Examiner's rejections of claims 1 and 15 as rendered obviousness over the teachings of Butler-Smith. *See supra* Section IV.B. Thus, on this record, we conclude that the Examiner did not err in finding the claims 6–9, 12, 18–20, 22, 23, and 30 rendered obvious over the combined teachings of Butler-Smith and Katata, and we sustain these rejections as well.

V. DECISION

For the above reasons, we affirm the Examiner's decision rejecting claims 1, 5–9, 11–24, and 26–30.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED