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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HOWARD GANZ and KARL JOSEPH BORST

Appeal 2018-006030
Application 13/924,885
Technology Center 2100

Before JENNIFER S. BISK, JASON J. CHUNG, and BETH Z. SHAW, *Administrative Patent Judges*.

BISK, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to finally reject claims 1–4, 8, 9, 11, 12, 14–17, and 23, which are all claims pending in the application. Appellant has canceled claims 5–7, 10, 13, and 18–22. 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 the real party in interest as GANZ. Appeal Br. 2.

BACKGROUND[2]

Appellant's disclosed embodiments and claimed invention relate to a website in combination with a commercially purchased toy that allows the toy user to access a virtual representation of the toy in a "virtual world." Spec. ¶ 5. Claim 1, reproduced below, is are illustrative of the subject matter on appeal:

> 1. A method for providing a virtual world presentation to a user, said method comprising the steps of:
>
> registering a first product on a website, using a first registration code provided with the first product, wherein, during said registering of the first product, a successful registration verifies said first registration code, wherein said first product being a real world non virtual product;
>
> responsive to said successful registration of the first product, displaying a virtual replica of the first product on said website, said virtual replica of the first product being associated with a user ID;
>
> further responsive to said successful registration of the first product, granting access to a first subset of restricted content on said website, said first subset of restricted content interacting with said virtual replica of the first product, with said first subset of restricted content also being associated with said user ID such that logging in to said website using said user ID provides access to said first subset of

[2] Throughout this Decision we have considered the Specification filed June 24, 2013 ("Spec."), the Final Office Action mailed February 21, 2017 ("Final Act."), the Appeal Brief filed November 21, 2017 ("Appeal Br."), the Examiner's Answer mailed March 21, 2018 ("Ans."), and the Reply Brief filed May 21, 2018 ("Reply Br.").

restricted content and said virtual replica of the first product to allow said interacting;

registering a second product on said website, using a second registration code provided with the second product, wherein the second registration code is different from the first registration code, wherein the second product is provided with an additional registration code, wherein, during said registering of the second product, a successful registration verifies said second registration code, wherein said second product being a real world non virtual product that is an accessory to said first product, and wherein said second product being a real world non virtual product;

responsive to registering the second product, displaying a virtual replica of the second product on said website, said virtual replica of the second product also being associated with said user ID, wherein said virtual replica of the first product interacts with said virtual replica of the second product on said website;

providing the additional registration code to said website; and

responsive to providing the additional registration code, granting access to a subset of restricted content on said website, said subset of restricted content being associated with said user ID such that logging in to said website using said user ID also provides access to said subset of restricted content, wherein said subset of restricted content interacts with one or both of said virtual replica of the first product and said virtual replica of the second product.

Appeal Br. 15 (Claims App.).

REJECTION

Claims 1–4, 8, 9, 11, 12, 14–17, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of US 2005/0192864 A1, published Sept. 1, 2005 ("Ganz") and US 2005/0250415 A1, published Nov. 10, 2005 ("Barthold"). Final Act. 2–11.

ANALYSIS

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). To the extent Appellant has not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. 37 C.F.R. § 41.37(c)(1)(iv).

We have considered all of Appellant's arguments and any evidence presented. We highlight and address specific findings and arguments for emphasis in our analysis below.

Rejection of Claims Under 35 U.S.C. § 103

Appellant argues that the Examiner has failed to show the references teach or suggest two limitations, the first applies to all independent claims (claims 1, 8, 11, 17, and 23) and the second applies to independent claims 1, 11, and 23. Appeal Br. 11–13; Reply Br. 2–5. Appellant does not make separate arguments for dependent claims 2–4, 9, 12, 14–16, and 23. Appeal Br. 14. As permitted by 37 C.F.R. § 41.37, we decide the Appeal for the rejection for each of claims 1–4, 8, 9, 11, 12, 14–17, and 23 based on claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The additional code limitation

The Examiner relies on a combination of Ganz and Barthold for teaching, "wherein the second product is provided with an additional registration code" (the "additional code limitation"). Final Act. 4–5 (citing Ganz Fig. 7, ¶¶ 58–64, 102, 167; Barthold ¶¶ 45, 47); Ans. 3–4 (citing Barthold ¶¶ 67, 94, 210–215).

Appellant argues that the relied upon references do not teach the additional code limitation. Appeal Br. 11–12; Reply Br. 2–4. Specifically, Appellant asserts that, "Barthold merely describes a single code per product." Appeal Br. 11 (citing Barthold ¶ 43). According to Appellant, Barthold's reference to "bonus content codes" does not refer to an additional code for the disclosed vehicle, but "merely relates to the type of content unlocked by the code" and "[n]owhere does Barthold describe that a single product has multiple codes" as required by the claim language. *Id.* at 11–12.

In response, the Examiner explains that Barthold teaches "a singular vehicle having [a] plurality of codes" that "may also be etched unto wheels of the vehicle" or onto other parts of the vehicle. Ans. 3–4 (quoting Barthold ¶¶ 45, 67, 94). In addition, the Examiner states that "Barthold further teaches that a number of cards 1018 may each include one or more codes." *Id.* at 4 (quoting Barthold ¶ 210).

Appellant argues that "in each instance identified by the examiner, the reference describes general properties of codes, products, and how the codes may be applied to the products," but "Barthold never actually identifies that multiple codes may be linked to a single product." Reply Br. 2.

Appellant does not persuade us of error in the Examiner's finding that the combination of Ganz and Barthold teaches or suggests the additional

code limitation. We agree with the Examiner that Ganz teaches providing access to restricted content allowing for interaction with virtual replicas of multiple products based on codes associated with multiple products. Ganz ¶¶ 12, 58–64. And we agree with the Examiner that Barthold teaches a single product including multiple codes. Barthold ¶¶ 34, 67, 94, 210–215. Moreover, we agree with the Examiner that, "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Ganz with that of Barthold so as to provide further customization or interaction with the toy for the user" by linking more than one code to a specific product. Final Act. 5.

For these reasons, we agree with the Examiner that a person of skill in the art would understand that the additional code limitation would have been obvious over the combined disclosures of Ganz and Barthold.

The accessory limitation

The Examiner relies on Ganz for teaching, "wherein said second product being a real world non virtual product that is an accessory to said first product" (the "accessory limitation"). Final Act. 4 (citing Ganz ¶ 8); Ans. 4–5 (citing Ganz Figs. 9, 10B, ¶¶ 6–11).

Appellant argues that Ganz does not teach the accessory limitation because "the mere fact that it is known to have real accessories and separately to have virtual accessories in no way suggests that the real accessories and virtual accessories should be related by providing a code for registering the real accessory for use in a virtual world." Appeal Br. 13; Reply Br. 4.

Ganz explicitly states that "a virtual world could be used to maintain

the relationship between the toy owner and the toy manufacturer . . . allowing new toys, *accessories*, and services of the manufacturer, retailer, or other provider to be offered to the toy owner" and it would be beneficial to "creat[e] such a virtual world to take advantage of such marketing potential." Ganz ¶¶ 8, 11 (emphasis added); *see also* ¶¶ 66 (describing accessories such as virtual furniture, cash, etc.) 6–11 (listing benefits of linking toy purchases with a virtual world). These statements at least suggest the accessory limitation. Moreover, we agree with the Examiner that it would have been obvious to one of ordinary skill in the art to modify the explicit statements of Ganz to include accessory products with further registration codes in order to achieve the described benefits.

For these reasons, we agree with the Examiner that a person of skill in the art would understand that the accessory limitation would have been obvious over the disclosures of Ganz.

DECISION

We affirm the Examiner's rejection of claims 1–4, 8, 9, 11, 12, 14–17, and 23 under 35 U.S.C. § 103.

CONCLUSION

Claims Rejected	Basis	Affirmed	Reversed
1–4, 8, 9, 11, 12, 14–17, and 23	§ 103 over Ganz and Barthold	1–4, 8, 9, 11, 12, 14–17, and 23	
Overall Outcome		1–4, 8, 9, 11, 12, 14–17, and 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED