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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAOLO FAZZINI

Appeal 2018-008146
Application 14/733,119
Technology Center 2600

Before IRVIN E. BRANCH, ADAM J. PYONIN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, Administrative Patent Judge.

DECISION ON REQUEST FOR REHEARING

Appellant timely requests rehearing under 37 C.F.R. § 47.52(a)(1) (2013) (“Request”) for reconsideration of our Decision on Appeal mailed October 30, 2019 (“Decision”). The Decision reversed the Examiner’s rejection of claims 1 and 4–14 under 35 U.S.C. § 103 and affirmed the Examiner’s rejection of claims 15–21 under 35 U.S.C. § 103. Dec. 19, 20.

ARGUMENTS AND ANALYSIS

“The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board.” 37 C.F.R. § 41.52(a)(1). Appellant presents two arguments. Appellant first argues we overlooked an argument regarding claim 15. Appellant next argues we misunderstood an argument regarding claim 21. We have

considered and address each argument herein, but decline to change our decision in view of Appellant's arguments.

Argument 1

Appellant points out that, with respect to independent claim 15, “[t]he final rejection asserts that control points 743, 745 in Fig. 7A of Ramanath correspond to ‘each source colour point lying outside the destination colour gamut.’” Request 1 (citing Final Act. 45). Appellant argues,

By contrast, points 743 and 745 in Fig. 7A are control points themselves. Control point 743, representing the maximum chroma of the input gamut 710, is merely manually mapped to control point 744 for the maximum chroma of the output gamut 720. Control point 745 in input gamut 710 maps to control point 746 in output gamut 720. See col. 8, ll. 4–18. Thus, Ramanath does not disclose translating a source colour point to a destination colour point, within the destination colour gamut along a curve of constant hue and varying luminance varying with distance . . .

as recited in claim 15. Request 1.

We are not persuaded we misapprehended or overlooked any points in our Decision sustaining the rejection of claim 15. *See* Decision 9–11. The Examiner finds, and we agree, that the combined teachings of Ramanath, Ben-Chorin, and Longhurst teach or suggest “a gamut mapper configured to, for each source colour point lying outside the destination colour gamut: identify a mapping operator for translating a source colour point to a destination color point,” as recited in claim 15. *See* Dec. 10, 11; Ans. 59. Particularly, the Examiner, as acknowledged by Appellant, finds control points 743, 745 in Figure 7A of Ramanath lie outside of destination gamut of Figure 2A and therefore teach “each source colour point lying outside the destination colour gamut,” as recited in claim 15. Final Act. 45.

The Examiner further relies on Ramanath's equations at column 7, lines 1–15 to teach “translating a source color point to a destination color point within the destination colour gamut,” as in claim 15. Ans. 56 (“In col. 7, lines 1–15, Ramanath teaches equations would allow any point within the input gamut to be mapped to a corresponding point within the output gamut.”).

Appellant's argument that “points 743 and 745 in Fig. 7A are control points themselves” does not persuade of us of error in the Examiner's finding that control points 743 and 745 lie outside Ramanath's destination colour gamut as shown in Fig. 7A, because Appellant fails to explain why being designated control points precludes points 743 and 745 from lying outside the destination colour gamut. Appellant's argument that control points 743 is merely manually mapped to control point 744 is unpersuasive for lack of evidence because the portion of Ramanath relied upon by Appellant does not disclose manually mapping control point 743. Furthermore, Appellant fails to point to any other portion of Ramanath to support this argument. Nor does Appellant explain why this controverts the Examiner's finding that control points 743 and 745 lie “outside the destination colour gamut,” as in claim 15. Appellant argues “Control point 745 in input gamut 710 maps to control point 746 in output gamut 720.” Even assuming this statement is accurate, Appellant fails to demonstrate why the statement is inconsistent with the Examiner's findings or why the Examiner's findings are in error. Thus, Appellant's arguments regarding claim 15 are unavailing and we decline to change our affirmance of the Examiner's rejection of claim 15.

Argument 2

Appellant argues that we misapprehended an argument in the Appeal Brief that the Examiner provided erroneous reasoning in combining the teachings of Ramanath and Ben-Chorin in the rejection of claim 21. Request 2 (citing Decision 17). Specifically, Appellant argues,

The Decision misapprehended [Appellant's] argument as being premised on a “physical” or “bodily” incorporation of limitations of one reference into the other (Decision at 17). By contrast, Appellant’s argument is that the concept of Ramanath’s teaching of a coefficient b_0 that modifies luminance, cannot be *conceptually* combined with a teaching of a curve having constant luminance (for which the rejection relies on Ben-Chorin).

Request 2.

Appellant does not show we erred in finding one of ordinary skill in the art would combine the teachings of the cited references in the manner claimed. *See* Decision 17. To the extent Appellant now argues that “conceptually combining” the references is different than bodily incorporating a reference, we did not misapprehend or overlook this argument because it was not presented previously. Request 2. In the Appeal Brief, Appellant argued “the attempted combination of Ramanath and Ben-Chorin is improper because the two disclosures are incompatible with each other.” Appeal Br. 19. In response, the Examiner recognized “that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference . . . [but] [r]ather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.” Ans. 69 (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)). In the Reply, Appellant does not

respond to the Examiner's bodily incorporation rationale or reliance on *Keller*. See Reply Br. 5–6.

Appellant therefore presents additional arguments and evidence in the Request that are beyond the scope of the Appeal Brief and Reply Brief. It is not appropriate in the Request for Rehearing to present additional arguments and evidence that have not been considered by the Examiner in an attempt to show that the Board misapprehended or overlooked something that was not timely presented to the Examiner or the Board. 37 CFR § 41.52(a). Thus, Appellant has not persuaded us that we misapprehended or overlooked any points in rendering our Decision regarding claim 21.

CONCLUSION

We have reconsidered our Decision in light of Appellant's arguments in the Request. We have granted Appellant's Request for Rehearing to the extent that we have reviewed our Decision and considered the arguments made in the Request. We are not persuaded of error in our previous Decision.

DECISION SUMMARY

Outcome of Decision on Rehearing:

Claims	35 U.S.C §	Basis	Denied	Granted
15–20	103	Ramanath, Ben-Chorin, Longhurst	15–20	
21	103	Ramanath, Higgins, Lee, Ben-Chorin	21	
Overall Outcome			15–21	

Final Outcome of Appeal after Rehearing:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1, 5, 6, 10, 11, 13, and 14	103	Ramanath, Higgins, Lee		1, 5, 6, 10, 11, 13, and 14
4	103	Ramanath, Higgins, Lee, Henley		4
7, 8, 9	103	Ramanath, Higgins, Ulichney, Dillinger		7, 8, and 9
12	103	Ramanath, Higgins, Lee, Aldrich		12
15–20	103	Ramanath, Ben-Chorin, Longhurst	15–20	
21	103	Ramanath, Higgins, Lee, Ben-Chorin	21	
Overall Outcome			15–21	1, 4–14

TIME PERIOD FOR 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)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv).

REHEARING DENIED
37 C.F.R. § 41.52(a)(1)