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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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Ex parte JOHN G. JOSEPH, TROY DAVID GEISER, and
ALBERT CHARLES ABNETT
_____

Appeal 2019-003474
Application 14/688,354
Technology Center 3700
_____

Before JENNIFER D. BAHR, MICHELLE R. OSINSKI, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

OSINSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's
decision rejecting claims 32 and 34–40.[2] We have jurisdiction over the
appeal under 35 U.S.C. § 6(b).

We REVERSE.

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[1] We use the term "Appellant" to refer to "applicant" as defined in 37 C.F.R.
§ 1.42. Appellant identifies the real party in interest as Shoot-A-Way, Inc.
Appeal Br. 2.
[2] Claims 1–31 are withdrawn, and claim 33 is cancelled. Appeal Br. 17–25
(Claims App.).

THE CLAIMED SUBJECT MATTER

Claim 32, the sole independent claim, is reproduced below and is representative of the claimed subject matter on appeal.

32. An apparatus which enables a player to practice basketball, comprising:

    a) a portable basketball launching machine which:

        i) comprises an interface that is programmable for selecting a number of basketball passes to different locations on a basketball court; and

        ii) launches said basketball passes for said player to catch;

    b) a detector which for each of said basketball passes, ascertains whether said player succeeded in making a goal; and

    c) a processor configured to, for all of said basketball passes, create a visual matrix, graph, scatter diagram or chart which includes (A) data describing the location of said basketball passes, and (B) for each of said basketball passes, data describing whether said player's basketball shot was successfully made;

    wherein said visual matrix, graph, scatter diagram or chart depict a representation of said basketball court overlaid with the percentage of the player's successfully made basketball shots shown at the location of said basketball passes;

    wherein said visual matrix, graph, scatter diagram or chart is updated as said basketballs are launched to said player and said player takes said basketballs shots.

EVIDENCE

The Examiner relied on the following evidence in rejecting the claims on appeal:

Klein	US 2008/0015061 A1	Jan. 17, 2008
Chipperfield	US 2008/0261726 A1	Oct. 23, 2008

Sniper: "The Sniper Basketball Training System," available at https://www.youtube.com/watch?v=X9SqMy8xdf4, pub. July 5, 2008,[3] and "Sniper: The Ultimate Basketball Trainer," Oct. 22, 1995.[4]

THE REJECTION

Claims 32 and 34–40 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sniper, Klein, and Chipperfield.

OPINION

The Examiner finds that Sniper teaches a basketball practice apparatus including most of the limitations recited in claim 32. Final Act. 2–6. The Examiner acknowledges that

> Sniper does not expressly disclose the system including a processor (the computer) configured to create a visual matrix, graph, scatter diagram or chart which includes the user information, wherein the visual matrix, graph, scatter diagram or chart depict a representation of a basketball court overlaid with the percentage of the player's successfully made shots and the visual matrix, graph, scatter diagram or chart is updated.

Id. at 7. However, the Examiner finds that Klein teaches "an apparatus and method for measuring shooting performance of a user(s). The user performance results are then gathered in graph or other tabular format for review by the user or coach." *Id.* (citing Klein ¶ 36). The Examiner finds that "FIG. 2C illustrates a further console embodiment, in which the shooter or coach can configure display area (204) to display one or more cells superimposed on the playing field in order to select shot locations (see

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[3] The Sniper video was made of record by the Information Disclosure Statement and Non-Patent Literature filings dated March 30, 2016.
[4] The Sniper document was made of record by the Information Disclosure Statement and Non-Patent Literature filings dated April 15, 2016.

paragraph 0027).” *Id.* (boldface and underlining omitted). The Examiner also finds that Chipperfield “teaches by viewing a record of the number of shots made and missed by a particular player at simulated positions on a basketball court, a coach can determine a player's shooting strengths and shooting weaknesses.” *Id.* at 9; *see also id.* (“upon completion of a shooting session, a player (or coach) may receive a print-out summarizing the various system variables and the player's shooting performance”). The Examiner concludes that

> it would have been obvious to one of ordinary skill in the art to have provided a computer/processor which has the ability to receive and store the gathered data from a practice session for one or more of the users for Sniper's assembly so that the user or coach is able to review the gathered information in order to determine the training course necessary for improving a user(s) performance.

Id. at 10.

Appellant argues that the cited references fail to teach or suggest a “visual matrix, graph, scatter diagram or chart [that] depict[s] a representation of said basketball court overlaid with the percentage of the player's successfully made basketball shots shown at the location of said basketball passes,” as recited in claim 32. *See* Appeal Br. 7–11. In particular, Appellant asserts that “Klein merely teaches presenting summary statistics in a format which emulates a basketball score board.” *Id.* at 7–8 (citing Klein, Fig. 4C, ¶ 36); *see also id.* at 8 (“Klein's display does not present a representation of a basketball court overlaid with percentage of the player's successfully made basketball shots shown at the location of said basketball passes as claimed.”). Appellant also asserts that “Chipperfield merely teaches creating a record and report of the number of made and

missed shots at the simulated positions." *Id.* at 10 (citing Chipperfield ¶¶ 79, 87). We agree with Appellant that a sustainable case of obviousness has not been established.

Klein teaches, with reference to Figure 2C, an embodiment "in which the shooter or coach can configure display area 204 to display one or more cells superimposed on the playing field in order to select shot locations." Klein ¶ 31 (boldface omitted). Klein teaches:

> A display 206 provides the player or coach with information and control capabilities from the console. Shooting session indicators including a shots taken display 222, shots made display area 224, percentage made display 226 and location display 228 present shooting session statistics to the player or coach at the end of a shooting session or in real time.

Id. (boldface omitted). In this regard, the Examiner determines that "[A]ppellant's assertion that Klein's display does not present a representation of a basketball court overlaid with [the] percentage of the player's" successfully made shots "is incorrect." Ans. 14. The Examiner takes the position that "Klein does teach that[,] in one embodiment, a player or coach can define a three point shooting cycle by entering numbers of cells to shoot from, storing the locations in a memory." *Id.*; *see also id.* (explaining that Klein "is a teaching reference for the use of a processor, superimposing layers and matrix and not the shape of the basketball court being displayed").

Appellant "acknowledges that Kl[ei]n makes reference to use of a display area 204 which may, at times, illustrate a representation of these cells" that relate to "a 'pressure sensitive grid' that tracks player location on the court." Reply Br. 2 (citing Klein Figs. 2A–2I, ¶ 34). Appellant, however, argues that "nowhere does Kl[ei]n make reference to using the

display area 204 with a representation of these cells to display summary shooting statistics information in the manner required by claim 32 (*i.e.,* percentage at locations of passes)." *Id.* at 2–3. We agree with Appellant that the Examiner does not explain adequately how Klein teaches or suggests a representation of a basketball court overlaid with the percentage of a player's successful shots at pass locations.

The Examiner does not appear to rely on Chipperfield for any teaching regarding the disputed limitation. *See* Final Act. 8–10 (presenting no findings that Chipperfield depicts a representation of a basketball court overlaid with the percentage of successful shots by a player at pass locations); Ans. 14 (explaining that "[t]he Chipperfield reference is a teaching reference and [w]as primarily used to emphasi[ze] the desirability to automate what was previously achieved manually"). In short, the Examiner has not shown by a preponderance of the evidence that either of the cited references of Klein or Chipperfield teaches or suggests a "visual matrix, graph, scatter diagram or chart depict[ing] a representation of said basketball court overlaid with the percentage of the player's successfully made basketball shots shown at the location of said basketball passes," as recited in claim 32 and as expressly found by the Examiner to be missing in Sniper. *See* Final Act. 7.

Moreover, the Examiner has not provided a reason with rational underpinnings to explain why one of ordinary skill in the art would have been led to modify Sniper to include a visual matrix, graph, scatter diagram or chart that depicts a representation of a basketball court overlaid with the percentage of successful shots by a player at pass locations. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (requiring "some articulated reasoning

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with some rational underpinning to support the legal conclusion of obviousness") (cited with approval in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007)). The Examiner's reasoning articulated in the rejection explains only why it would have been obvious to provide Sniper with a processor that receives and stores gathered practice session data. *See* Final Act. 10 (reasoning "that the user or coach [would be] able to review the gathered information in order to determine the training course necessary for improving a user(s) performance"). The Examiner has not articulated any modification to Sniper so as to include a visual matrix, graph, scatter diagram or chart that depicts a representation of a basketball court overlaid with the percentage of successful shots by a player at pass locations, much less explained why one of ordinary skill in the art would have been led to make such a modification.

For the foregoing reasons, we do not sustain the rejection of claim 32 and its dependent claims 34–40 under 35 U.S.C. § 103(a) as unpatentable over Sniper, Klein, and Chipperfield.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	References	Affirmed	Reversed
32, 34–40	103(a)	Sniper, Klein, Chipperfield		32, 34–40

REVERSED