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Target Brands Inc. 1000 Nicollet Mall TPS-3165 Minneapolis, MN 55403			WANG, JIN CHENG	
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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* DANIEL MARK CUNDIFF and JOSHUA JAMES BECK

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Appeal 2019-003501  
Application 14/943,609  
Technology Center 2600

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Before JUSTIN BUSCH, JOYCE CRAIG, and  
MATTHEW J. McNEILL, *Administrative Patent Judges*.

CRAIG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–8, 10–15, and 17–20. *See* Final Act.

1. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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<sup>1</sup> 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 Target Brands, Inc. Appeal Br. 3.

### CLAIMED SUBJECT MATTER

The claims relate to planogram resets in a retail environment and, more particularly, to facilitating a planogram reset using augmented reality. Spec. ¶ 3. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A system using augmented reality to facilitate a planogram (POG) reset in a retail environment, the system comprising:
  - a location benchmark associated with an area of the retail environment including a plurality of retail displays;
  - a display generator located relative to the location benchmark, the display generator displaying an image corresponding to the POG reset on one of the retail displays;
  - a control processor communicating with the display generator and driving the display generator to display the image; and
  - a data source communicating with the control processor, the data source being a computer device that provides control signals to the control processor based on pre-stored POG data, wherein the control processor is programmed to identify a specific location of the display generator in the retail environment based on the relative position of the location benchmark.

### REJECTION

Claims 1–4, 7, 8, 10–13, 15, and 17–20 stand rejected under 35 U.S.C. § 102(e) as anticipated by Winkel (US 2014/0324642 A1, published Oct. 30, 2014). Final Act. 16.

Claim 6 stands rejected under 35 U.S.C. § 103 as unpatentable over the combination of Winkel and Chirakansakcharoen et al. (US 2016/0110902 A1, published Apr. 21, 2016) (“Chirakansakcharoen”). Final Act. 57.

Claims 5 and 14 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of Winkel and Durham et al. (US 2016/0088268 A1, published Mar. 24, 2016) (“Durham”). Final Act. 58.

## ANALYSIS

### Claims 1–4, 7, 8, 10–13, 15, and 17–20

With respect to independent claim 1, Appellant contends the cited portions of Winkel do not disclose the limitation “wherein the control processor is programmed to identify a specific location of the display generator in the retail environment,” as recited in claim 1. Appeal Br. 15. Appellant argues that “[i]n no instance does the computing device or projector identify a particular location of the projector and/or display board relative to the retail space.” *Id.* at 12–13.

We are persuaded that the Examiner erred. The Examiner explained that Appellant “*misinterpreted applicant’s own claim invention as specifically referring to a specific physical location of the display generator 12.*” Final Act. 22. The Examiner interpreted the limitation “specific location of the display generator in the retail environment based on the relative position of the location benchmark” as the display position of the display generator (projector) or the display position of the projected image by the projector relative to the location benchmark of the display board. *Id.* (citing Spec. ¶ 24). The Examiner then found that Winkel discloses identifying where the planogram is to be recreated, “*which is the same as the display location of the display generator that generates the planogram as well as calibrating/adjusting the projector to the particularly set distance away from the display board.*” *Id.* (citing Winkel, ¶¶ 117–118). The Examiner further found that “*the software of FIG. 12 inherently requires*

*identifying/adjusting a location of the projector,” id.* (citing Winkel, Fig. 12), and that Winkel discloses that any projected position may be manually adjusted or moved within the PIP system to correct the alignment of the relative location, *id.* (citing Winkel, ¶ 18). The Examiner pieced together further findings from paragraphs 25, 78, 117, 125, 126, and 137–142. *Id.* at 22–25; *see also* Ans. 5–19 (citing Winkel, Figs. 1A, 1B, 2, 9, ¶¶ 5, 12, 17, 25, 29, 31, 38, 39, 45, 94, 96–98, 115, 117, 118, 124, 126, 135–142).

We do not agree with the Examiner that Appellant misinterprets the disputed limitation of claim 1. *See* Final Act. 22 (citing Spec. ¶ 24). The plain language of claim 1 recites “to identify a specific location of the display generator in the retail environment based on the relative position of the location benchmark.” Appeal Br. 15 (Claims App’x). Thus, claim 1 on its face requires identifying the specific location of a display generator (e.g., projector) in the retail environment. Paragraph 24 of Appellant’s Specification describes that location benchmarks may include a keystone or the like positioned in an aisle in the retail environment, and that the system looks for and identifies the location benchmark nearest the display generator to identify the location of the display generator. Spec. ¶ 24. Reading claim 1 in light of paragraph 24 of the Specification, and contrary to the Examiner’s interpretation, claim 1 requires that the system identify a specific location of the display generator in the retail environment based on the relative position of a location benchmark. The Examiner has not proffered adequate support that “specific location” means “display position,” or that the disputed limitation is broad enough to include “the display position of the projected image by the projector.” For at least these reasons, we conclude the

Examiner's interpretation of the disputed limitation is overly broad, unreasonable, and inconsistent with the Specification.

The Examiner cited paragraph 118 of Winkel as disclosing a "set distance" away from the display, which the Examiner mapped to the limitation "a location benchmark associated with an area of the retail environment including a plurality of retail displays," as recited in claim 1. Final Act. 16. The Examiner found that "[t]he set distance in the context of FIG. 7C and/or FIG. 8A clearly indicates a specific location of the projector in the aisle of the retail environment." *Id.* We agree with Appellant that the Examiner has not adequately explained how the set distance between a display generator and a display board in Winkel discloses that a processor is programmed "to identify a specific location of the display generator in the retail environment based on the relative position of the location benchmark." *See* Appeal Br. 11–12.

In the Answer, the Examiner explained that Winkel refers to each of the storewide unique fixture/merchandise marker codes of a display board to the display location with a corresponding planogram Display #. Winkel's planogram data file for the fixture/merchandise to be displayed on a particular display board affixed with the unique marker code can be uniquely retrieved from the database based on the scanned unique fixture/merchandise marker code.

Ans. 4. The Examiner found that, because each marker code at a display location is unique, the display location for the fixture or for the merchandise item is unique in the retail store. Ans. 4 (citing Winkel, Figs. 1A, 1B, ¶ 12).

We agree with Appellant that there is no correlation in Winkel between the marker codes for the display board and the specific location of

the display board or the display generator in the store. Appeal Br. 11. As Appellant explains

Winkel refers to a unique marker code label that is attached to each display board for identifying particular fixtures to be mounted on the display board. *See, e.g.*, paragraph [0015]. Winkel defines “fixtures” as “hooks, shelves, bins, etc.” in paragraph [0041]. A completed PIP system planogram program 119A is sent to a storage device 119B and/or centralized computer server 119C. The marker code labels enable the projector to access the planograms from the storage device and/or server. *See* paragraph [0079]. The information embedded in the marker codes includes readable marker codes for fixtures and merchandise and other fixture and merchandise information. *See* paragraph [0083]. Nothing in the marker codes, however, identifies a specific location of the projector and/or display board relative to the retail environment.

Appeal Br. 12.

We agree with Appellant that the Examiner has not clearly shown that Winkel discloses, expressly or inherently, the disputed limitation arranged in the same way as in claim 1. Based on the record before us, we are persuaded that the Examiner erred in finding Winkel anticipates claim 1, which recites “wherein the control processor is programmed to identify a specific location of the display generator in the retail environment based on the relative position of the location benchmark.” Whether this limitation would have been obvious over Winkel or Winkel and another reference are questions that are not before us, and we will not speculate in that regard here in the first instance on appeal.

Accordingly, on this record, we do not sustain the Examiner’s § 102(e) rejection of independent claim 1, or the Examiner’s § 102(e) rejection of independent claims 10 and 15, not argued separately with particularity. Appeal Br. 10. Nor do we sustain the Examiner’s § 102(e)

rejection of dependent claims 2–4, 7, 8, 11–13, and 17–20, which depend from, and incorporate the limitations of, one of independent claims 1, 10, and 15.

With regard to the § 103 rejection of claim 6 in view of the combination of Winkel and Chirakansakcharoen, the Examiner did not rely on Chirakansakcharoen in any manner that remedies the deficiencies noted above with respect to the Winkel reference. Final Act. 57–58. Therefore, we do not sustain the Examiner’s § 103 rejection of claim 6.

Regarding the § 103 rejection of claims 5 and 14 in view of the combination of Winkel and Durham, the Examiner did not rely on Durham in any manner that remedies the deficiencies noted above with respect to the Winkel reference. Final Act. 58. Thus, we do not sustain the Examiner’s § 103 rejection of claims 5 and 14.

#### DECISION

We reverse the Examiner’s decision rejecting claims 1–8, 10–15, and 17–20.



DECISION SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-4, 7, 8, 10-13, 15, 17-20	102(e)	Winkel		1-4, 7, 8, 10-13, 15, 17-20
6	103	Winkel, Chirakansakcharoen		6
5, 14	103	Winkel, Durham		5, 14
<b>Overall Outcome:</b>				1-8, 10-15, 17-20

REVERSED