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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK A. REICHOW, JEFFREY L. VORIS,
JOHN DAVID SMITH, ZACHERY W. KENNEDY, and
PRESTON TIMOTHY LANDRY

Appeal 2019-003963
Application 15/291,235
Technology Center 2400

Before BRADLEY W. BAUMEISTER, GREGG I. ANDERSON, and
SCOTT RAEVSKY, *Administrative Patent Judges*.

RAEVSKY, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the
Examiner's decision to reject claims 1, 2, 4–12, 14–17, 19, 20, and 22–24.

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

We AFFIRM IN PART.

¹ We use the word “Appellant” to refer to “applicant” as defined in
37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Disney
Enterprises, Inc. (a wholly owned subsidiary of The Walt Disney Company).
Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to a multimedia system for transforming any room into a show environment. Spec., Title. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A system for providing entertainment with multimedia content matched to a particular space or room, comprising:
 - a display device positioned in a room;
 - a projector positioned in the room for projecting on one or more surfaces in the room;
 - an audio system for providing audio output into the room; and
 - a show controller operating, based on a show file defining display content, projector content, and audio content for a show, the display device to display the display content, the projector to project the projector content onto the one or more surfaces in the room, and the audio system to output the audio content for the show into the room,
 - wherein the projector content is mapped, prior to the show controller operating, to the one or more surfaces in the room using projection mapping,
 - wherein the projection mapping includes determining size, shape, and location of the one or more surfaces in the room and at least one of fitting and aligning the projector content to the size, shape, and location of the one or more surfaces in the room,
 - wherein during a first time period the display content includes an object, and
 - wherein during a second time period the projector content includes the object and the display content is free of the object, whereby the object moves from the display device onto the one or more surfaces between the first and second time periods.

REFERENCES

The prior art relied upon by the Examiner is:

Bhat	US 2007/0126864 A1	June 7, 2007
Benko	US 2014/0051510 A1	Feb. 20, 2014

REJECTION

Claims 1, 2, 4–12, 14–17, 19, 20, and 22–24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bhat and Benko. Final Act. 2.

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). Arguments not made are waived. *See id.*; 37 C.F.R. § 41.37(c)(1)(iv) (2019).

Independent Claims 1 and 7

Appellant contends that the combination of Bhat and Benko fails to teach or suggest “a show controller operating, based on a show file,” recited in claim 1. Appeal Br. 12–13. Appellant asserts that Bhat contains “no teaching or suggestion of use of a show controller *or that it should be operated based on ‘a show file’* to operate the system components.” *Id.* at 12 (emphasis added).

The Examiner initially finds that Bhat discloses the disputed limitation at paragraphs 51–53. Final Act. 3. In the Answer, the Examiner specifies that paragraph 52’s disclosure of a “projector is integrated with or

connected to a device that controls the projected surround visual field” is the recited “show controller.” Ans. 8. The Examiner does not address Appellant’s argument that Bhat does not disclose a show controller operating based on a show file. *See Id.*²

We agree with Appellant that Bhat does not disclose this limitation. Although Bhat discloses “a device (not shown) that controls the projected surround visual field,” the Examiner has not established any description of a “show file” in Bhat, let alone that a show controller is operated based on the “show file.” *See Bhat* ¶ 52. We, therefore, do not sustain the Examiner’s rejection of claim 1. As independent claim 7 recites identical claim language, we, likewise, do not sustain the Examiner’s rejection of claim 7, or of claims 2, 4–6, 8, and 22–24, which depend from claims 1 and 7.

In so doing, we note that in an *ex parte* appeal, the Board “is basically a board of review—we review . . . rejections made by patent examiners.” *Ex parte Gambogi*, 62 USPQ2d 1209, 1211 (BPAI 2001). “The review authorized by 35 U.S.C. Section 134 is not a process whereby the examiner . . . invite[s] the [B]oard to examine the application and resolve patentability in the first instance.” *Ex parte Braeken*, 54 USPQ2d 1110,

² The Examiner states, “[Bhat’s] device might also contain data that was authored to project and synchronize the surround visual field to the content being displayed on the TV.” Ans. 8. It is unclear whether the Examiner intended this statement about “data” to refer to a show file. Regardless, the Examiner’s statement that Bhat’s device “might” contain such data is speculative and falls short of establishing a prima facie case of obviousness that one of ordinary skill in the art *would* have found it obvious to modify Bhat to include a show file. *Cf. Personal Web Techs. LLC v. Apple, Inc.*, 848 F.3d 987, 993 (Fed. Cir. 2017) (it is not enough to state that “a skilled artisan, once presented with the two references, would have understood that they *could* be combined”) (emphasis added).

1112 (BPAI 1999). Because we are a board of review, and not a place of initial examination, we will not engage in the *de novo* examination required to supplement the Examiner's findings in connection with the requirement that the show controller operate based on a show file. We express no opinion as to whether independent claims 1 and 7 would be obvious over Bhat and Benko if supported by additional explanation and/or references. We leave any such further consideration to the Examiner. Although the Board is authorized to reject claims under 37 C.F.R. § 41.50(b) (2019), no inference should be drawn when the Board elects not to do so. *See* MPEP § 1213.02 (9th ed. rev. 10.2019 June 2020).

Furthermore, our decision is limited to the findings before us for review. The Board does not allow claims of an application and cannot direct an Examiner to pass an application to issuance. Rather, the Board's primary role is to review adverse decisions of examiners including the findings and conclusions made by the Examiner. *See* 37 C.F.R. § 41.50(a)(1) (2019) ("The Board, in its decision, may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner.").

Independent Claim 9

Appellant contends,

claim 9 includes limitations similar to claim 1 (e.g., "to project video mapped to a surface of at least one of the walls by *projection mapping* that includes spatially mapping the surface and fitting or aligning the video, prior to projecting by the projector, to the spatially mapped surface" and inclusion of "a show controller") such that the reasons for allowing claim 1 over Bhat and Benko are applicable to claim 9.

Appeal Br. 17 (emphasis added). We did not address this particular claim 1 argument above because we reverse the rejection of claim 1 on other grounds. We now address this argument.

With respect to claim 1, Appellant begins by construing “projecting mapping”—a term that also appears in claim 9. Appeal Br. 8–9. Appellant contends this term is a “term of art” and directs the Board to a definition of the term provided by Wikipedia (https://en.wikipedia.org/wiki/Projection_mapping). *Id.* at 8. Appellant does not state what this definition is but asserts,

[b]ased on this definition, “projection mapping” is not shown by merely “extending or supplementing the content that [is] displayed on the TV” . . . and is not shown by the masking of Benko or its mere projection of light on unmasked portions of a room. Instead, in projection mapping, content has to be mapped carefully onto surfaces (which may be irregular and/or 3D as shown in the images in Wikipedia with Appellant’s claim 23 that specifically calls out a 3D object to be in surfaces mapped in the projection mapping).

Id. Appellant then points to several paragraphs of the Specification that purportedly are “wholly consistent with the definition known to those skilled in the art (such as provided in Wikipedia).” *Id.* at 9 (citing Spec. ¶¶ 21, 25, 26, 36, 42, 50, 53, 62).

Appellant’s arguments construing “projection mapping” are unpersuasive for at least the following reasons. First, Appellant cites Wikipedia but does not say what definition from Wikipedia it is relying on. *Id.* at 8. Second, Wikipedia is generally not a reliable source. *See, e.g., Ex parte Three-Dimensional Media Group, Ltd.*, 2010 WL 3017280, at *17 (BPAI 2010) (“Wikipedia is generally not considered to be as trustworthy as traditional sources for several reasons, for example, because (1) it is not peer

reviewed; (2) the authors are unknown; and (3) apparently anyone can contribute to the source definition”); *see also Bing Shun Li v. Holder*, 400 Fed. Appx. 854, 857 (5th Cir. 2010) (noting Wikipedia’s unreliability). Third, Appellant cites eight paragraphs of the Specification without any analysis. Appeal Br. 9. “A skeletal ‘argument’, really nothing more than an assertion, does not preserve a claim.” *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)). Finally, as we will explain below, the Specification contradicts Appellant’s argument that the broadest reasonable interpretation of “projection mapping” does not encompass “masking.”

The Specification affirmatively includes the concept of masking in projection mapping. The Specification describes “map[ping] where projected content should be provided to achieve a desired visual effect/show *and where content should not be projected or be blocked . . .* (e.g., to avoid projecting light onto the display device[]).” Spec. ¶ 21 (emphasis added); *see also id.* ¶ 26 (“projection mapping . . . typically includes a mapping of the various content/images To avoid interference with the display image . . . , the area 118 on the wall 112 associated with the display device 150 may be blocked out or blacked out”). Thus, under the broadest reasonable interpretation in light of the Specification, projection mapping includes both projecting content and not projecting or blocking out content in specific areas, including the display device. We find the Specification’s description of not projecting or blocking out content encompasses masking.

The Examiner finds Benko discloses projection mapping in both claims 1 and 9. Final Act. 3 (citing Benko ¶¶ 17, 20, 22, 27, 40); Ans. 7.

For instance, Benko discloses a “fitting procedure,” where “light is not projected onto the plants, bookshelf, decorations, or floor[, and] the primary display may be masked from projection in all illusions.” Benko ¶ 27.

We agree with the Examiner that Benko’s fitting procedure and masking, as described in the cited paragraphs of Benko, teaches or suggests the projection mapping limitations of claim 9, including “operating the video projector to project video mapped to a surface of at least one of the walls by projection mapping that includes spatially mapping the surfaces and fitting or aligning the video, prior to projecting by the projector, to the spatially mapped surface.”

Appellant also contends that the combination of Bhat and Benko fails to teach or suggest the following additional limitations of claim 9:

a remote control device transmitting a show signal to the controller,

wherein the show controller responds to the show signal to determine an identifier for the remote control device and to initiate or modify operations of the show components in the room based on the identifier.

Appeal Br. 17.

Specifically, Appellant contends, “Bhat fails to show a controller determining a remote control device’s identifier and, in response, selecting a show file from a plurality of such files for use in operating show components in a room.” *Id.* Appellant asserts that although the Examiner cites paragraphs 61, 118, and 123 of Bhat, “none of these paragraphs discuss determining an identifier for a control device and then using this identifier to select a show file.” *Id.*

The Examiner initially finds, “[p]aragraphs 0061, 0118 and 0123 [of Bhat] disclose the user of a remote controller and that [t]he video is

animated based on control signals from the remote control.” Ans. 10. The Examiner further reasons in the Answer, “[i]t [was] well known in the art that the identifier for such remote controls has to be determined in order for the remote controller to communicate with the system and to control the show.” *Id.* at 11–12.

Appellant does not address the Answer’s clarified finding in its Reply Brief. *See* Reply Br., *passim*. Arguments not made are waived. 37 C.F.R. § 41.37(c)(1)(iv). Furthermore, Appellant’s argument is not commensurate with the scope of claim 9 because claim 9 does not refer to “selecting a show file.” *See* Appeal Br. 17. Accordingly, we sustain the Examiner’s rejection of claim 9.

Dependent Claim 12

Appellant contends that claim 12, which depends from claim 9, “includes limitations similar to those of claim 7 such that the additional and separate reasons provided for allowing claim 7 over Bhat and Benko are relevant to the allowance of claim 12.” Appeal Br. 18. We did not address the similar limitation in claim 7 above because we reverse the rejection of claim 7 on other grounds.

Claim 12 recites, “wherein the show components further includes a plurality of lighting elements and wherein the controller operates the lighting elements to provide lighting effects including varying brightness and color based on content of the video projected by the video projector.” With respect to claim 7, Appellant argues that the combination of Bhat and Benko fails to teach or suggest “a lighting system—that is separate from the display device and the projector—with independently operable light elements.” *Id.* at 16. Appellant contends that Bhat paragraph 125 fails to teach this

limitation because “[t]here is no discussion of operation of **actual light elements in the room** containing the display device.” *Id.*

Although the Examiner initially cites Bhat paragraph 125, in the Answer, the Examiner further finds that “Benko discloses in paragraph 0034 that the lighting in the room can be changed based upon the mood or theme in the game. The room could be illuminated by point light sources.”

Ans. 10. Appellant does not address this finding in the Reply Brief and, therefore, waives any argument against this finding. *See* 37 C.F.R.

§ 41.37(c)(1)(iv); Reply Br., *passim*. As Appellant’s argument for claim 12 rests on its argument for claim 7, we sustain the Examiner’s rejection of claim 12. *See* Appeal Br. 18.

Independent Claim 15

Appellant contends that “independent claim 15 is directed to a method with limitations similar to claim 1 as modified by claim 7 such that the reasons for allowing claims 1 and 7 are applicable to claim 15.” Appeal Br. 18. As claim 15 does not contain the “show file” limitation we used as a basis to reverse the rejection of claims 1 and 7, we sustain the rejection of claim 15 for reasons similar to those discussed above.

We also sustain the rejection of dependent claims 10, 11, 14, 16, 17, 19, and 20, which Appellant does not argue separately. *See* 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 4–12, 14–17, 19, 20, 22–24	103	Bhat, Benko	9–12, 14–17, 19, 20	1, 2, 4–8, 22–24

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 IN PART