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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SCOTT BLAIR
Patent Owner, Appellant

Appeal 2014-000060
Reexamination Control 90/011,861
Patent US 6,700,602 B1¹
Technology Center 3900

Before CAROLYN D. THOMAS, ELENI MANTIS MERCADER, and
DANIEL N. FISHMAN, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Issued Mar. 2, 2004 to Blair (hereinafter the “’602 Patent”).

STATEMENT OF THE CASE

The Patent Owner (hereinafter “Appellant”) appeals under 35 U.S.C. §§ 134(b) and 306 from the Final Rejection of claim 1.² Br. 1.

We reverse.

We have considered in this decision only those arguments Appellant actually raised in the Briefs. Any other arguments which Appellant could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellant’s Invention

Appellant’s invention relates to a television system, for subway cars including a plurality of TV monitors mounted at the junction of the sidewall and ceiling. *See generally* ’602 Patent, Abstract.

Claim 1 under reexamination is reproduced as follows:

1. A subway car for mass transportation including longitudinal opposed sidewalls, a ceiling adjoining the sidewalls, a video display system comprising a plurality of video display monitors each having a video screen, and a video signal source unit operatively connected to said monitors,

said monitors being spaced along the length of the car on opposed sides thereof, each of said monitor being mounted at

² In response to Patent Owner’s Request for *Ex Parte* Reexamination filed August 16, 2011, seeking reexamination of independent claim 1, an Order Granting Request for *Ex Parte* Reexamination was issued on September 29, 2011, ordering reexamination of claim 1. During reexamination, Patent Owner presented new claims 8-30. Claims 2-7 are not subject to reexamination, claims 8-18, and 20-30 stand patentable and/or confirmed, and claim 19 is canceled. Final Action 2 (mailed Apr. 25, 2012); Advisory Action 2, 22-23 (mailed Jan. 16, 2013).

the junction of the sidewall and ceiling, with the screen of the monitor substantially flushed with the adjacent wall surface structure of the car, and directed obliquely downwardly toward the car seats, so that each video screen is readily visible to passengers in the subway car.

The Examiner's Rejections

1. Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Minesaki (JP 63-125984, pub. May 30, 1988).
2. Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Amano (JP H2-223985, pub. Sept. 6, 1990).
3. Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Maekawa (JP H04-160991, pub. June 4, 1992) and Amano.
4. Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Minesaki and Moore (US 3,480,727, issued Nov. 25, 1969).
5. Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Amano and Moore.
6. Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Maekawa, Amano, and Moore.
7. Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Shinagawa (JP S61-285490, pub. Dec. 16, 1986), Amano, and Moore.

ANALYSIS

Claim 1 rejected under 35 U.S.C. § 102(b) as anticipated by Minesaki

Appellant argues, *inter alia*, that Minesaki fails to teach the limitation of “each of said monitor being mounted at the junction of a sidewall and ceiling” as recited in claim 1 (Br. 3). In particular, Appellant argues that “[w]hen the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value” (Br. 3 (quoting MPEP § 2125 (emphasis and internal quotation marks omitted))). *See Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956 (Fed. Cir. 2000). Appellant asserts that in Figure 2, the information transmission display parts J are shown as being curved along the top portion of the display and Minesaki provides no mention or explanation for this curvature in its specification, which would be unusual in that optically such a curve would distort the light rays emanating from the display in an inconsistent manner causing image distortion (Br. 3).

We agree with Appellant’s argument. Figure 2 certainly shows the monitors are mounted at the sidewalls but it is unclear from the informal drawings whether the monitors necessarily extend at the *junctions of the sidewalls and the ceilings*. It could be that the monitors are merely on the sidewalls. “The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient” under anticipation principles. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (emphasis added) (citations and internal quotation marks omitted).

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