

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Keith Stinson, David W. Bickford and
Timothy J. Mallos

Appeal No. 2006-1429
Application No. 10/473,995
Technology Center 3600

ON BRIEF

Before LEVY, NAPPI and FETTNG **Administrative Patent Judges.**

NAPPI, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134(a) of the final rejection of claims 1 through 21, which constitute all the claims in the application. For the reasons stated *infra* we affirm in part the examiner's rejection of these claims.

Invention

The invention relates to a system and method for presenting custom labeled surface material samples over a computer network. See pages 1 and 2 of appellants' specification. Claim 1 is representative of the invention and reproduced below:

1. A method for presenting custom-labeled surface material samples over a computer network, the method comprising:
 - in at least one computer database, associating one or more surface material samples with a business entity wherein at least one of the surface material samples is labeled with information specified by the business entity;
 - receiving a data request for at least one of the surface material samples wherein the data request includes an identifier of the business entity; and
 - responding to the data request wherein the response includes at least one of the surface material samples and associated label information.

Reference

The references relied upon by the examiner are:

Brockhurst US2001/0047387 November 29, 2001

Eddie Bauer Inc. web pages printed from www.archives.org Jan. 01, 1996 through Dec. 03, 2002.

Rejection at Issue

Claims 1, 2, 6 through 13 and 17 through 20 stand rejected under 35 U.S.C. § 102 (e) as being anticipated by the Eddie Bauer web pages. The examiner's rejection is set forth on pages 3 through 7 of the answer. Claims 3 through 5, 14 through 16 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Eddie Bauer web pages in view of Brockhurst. The examiner's rejection is set forth on pages 7 through 9 of the answer. Throughout the opinion we make reference to the brief, the answer and the final Office action for the respective details thereof.

Opinion

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejection and the arguments of appellants and the examiner, and for the reasons stated *infra* we sustain the examiner's rejection of claims 1, 6 through 13 and 17 through 20 under 35 U.S.C. § 102 and we sustain the examiner's rejection of claims 3, 4, 14, 15 and 21 under 35 U.S.C. § 103. However, we will not sustain the examiner's rejection of claims 2 under 35 U.S.C. § 102, nor will we sustain the examiner's rejection of claims 5 and 16 under 35 U.S.C. § 103.

**Rejection of claims 1, 6 through 10, 12, 13 and 17 through 20 under
35 U.S.C. § 102**

Appellants argue, on pages 4 and 5 of the brief, that Eddie Bauer does not disclose “functionality for ‘associating’ surface material samples with a ‘business entity,’ or functionality for labeling the surface material samples with ‘information specified by the business entity.’” Further, appellants assert that because Eddie Bauer discloses hyperlinks for categories of products but that these hyperlinks identify products not business entities. Thus, on page 6 of the brief, appellants conclude that Eddie Bauer “fails to teach or suggest receiving a ‘data request’ including an ‘identifier of the business entity,’ Eddie Bauer accordingly fails to teach or suggest ‘responding’ to the data request with at least one of the surface material samples and associated label information specified by the business entity, as claim 1 recites.”

In response the examiner states, on page 10 of the answer, that the examiner considers the business entity to be Eddie Bauer, and that the surface material samples are the web pages and are labeled with information provided by Eddie Bauer. Thus, the examiner considers Eddie Bauer's web pages to contain surface material samples which are labeled by the business entity. The examiner also identifies that the claim is not limited to a catalog service for more than one business entity.

We concur with the examiner. Claim 1 includes the limitations of “ associating one or more surface material samples with a business entity wherein at least one of the surface material samples is labeled with information specified by the business entity” and “receiving a data request for at least one of the surface material samples wherein the data

request includes an identifier of the business entity” and “responding to the data request, wherein the response includes at least one of the surface material samples and associated label information.” We note that appellants’ specification, on pages 3 and 4 state:

Content in the form of surface material samples includes a **representation** of any material that can be applied to an object to change its physical appearance (e.g. fabrics, finishes, carpets, laminates, paints, stains, textures, etc). Typically, surface materials are applied to furniture, counter-tops, tables, walls, floors, ceilings, and the like to enhance their appearance. [emphasis added]

Thus, the scope of claim 1 is that the surface material sample is a representation, including a picture, of a material that can be applied to an object to enhance its physical appearance.

We find that Eddie Bauer discloses the system described in claim 1. Eddie Bauer, as appellants’ admit on page 5 of the brief, teaches a web site with hyperlinks; some of these pages include general listings of products for sale and provide a picture of the products, see e.g. page 38. Other pages such as 52 are limited to one product and provide links to view the products in different colors. We note that each of these pages are linked by hyperlinks. We consider a web page which presents a picture of a product or a picture of the product with options to change the product’s color, to be a surface material sample, i.e. we consider either the teaching of different categories of products or of the same product in different color, to meet the claim limitation of a surface material sample. We note that the web pages shown in the cited art sites provide both names of the product and names of the colors that the product can be displayed, see e.g. page 52 where the product is labeled “Satin-Stitch Tee” and the colors are labeled “dark charcoal”, “Boysenberry”...etc., we also note that the address/URL contains identifiers. Clearly, these labels and identifiers are specified by Eddie Bauer as they are displayed on Eddie Bauer’s web site. We consider these labels to meet the claimed labels. One skilled in the art would recognize that the hyperlinks on these pages have an address associated with the link. As shown in pages, 38 and 52 the address or URL of all of these pages includes the name Eddie Bauer (the name of the merchant) and an identifier of the product. Thus, by selecting a hyperlink to one of these products/product of a different

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color, the users are submitting a request for a page, which includes an identifier of the business entity. In response to this request, the new page with a depiction of the product or product of a different color, is presented to the user with the label information. We note, as the examiner identifies, that claim 1 is not limited to a catalog system where there is more than one merchant. Accordingly, we find ample evidence to support the examiner's finding that Eddie Bauer discloses the device claimed in claim 1 and we sustain the examiner's rejection under 35 U.S.C. § 102.

Regarding claims 6 and 7, appellants' only argument directed to these claims states:

Regarding claim 6, as discussed above, Eddie Bauer does not teach or suggest "surface material samples." Regarding claim 7, Eddie Bauer does not teach or suggest "associated certain surface material samples" with certain business entity products.

37 C.F.R. § 41.37 (c)(1)(vii) states: "A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim."

Accordingly, we do not consider claims 6 and 7 to be argued separately from claim 1 and group claims 6 and 7 with claim 1. Nonetheless, as discussed with respect to claim 1 we find that Eddie Bauer does teach surface material samples associated with a business entity. Accordingly, we sustain the examiner's rejection of claims 6 and 7 under 35 U.S.C. § 102.

Appellants have presented no arguments directed to claims 8 through 10, 12, 13 and 17 through 20. Accordingly, we sustain the examiner's rejection of claims 8 through 10, 12, 13 and 17 through 20 for the reasons discussed *supra* with respect to claim 1.

Rejection of claim 2 under 35 U.S.C. § 102

Appellants argue, on page 6 of the brief, that Eddie Bauer does not teach or suggest layered responses to data requests according to supply chain layer as is claimed.

Appellants reason:

Eddie Bauer merely teaches conventional user-selected hyperlinks for different clothing categories. One skilled in the art would not fairly consider clothing categories in a conventional online clothing catalog such

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as Eddie Bauer to teach or suggest layering according to supply chain (e.g. manufacturers, distributors, retailers etc.), as recited in claim 2.

In response, on page 13 of the answer, the examiner states:

[A]ppellant is not claiming the limitation of catalog services for more than one business entities. Eddie Bauer teaches or suggests layering responses to data requests (page 40, 43, Eddie Bauer teaches to support naming conventions associate with colors) according to supply chain layer (catalog category).

We disagree with the examiner's reasoning. While we concur with the examiner that Eddie Bauer teaches layering, in that as a user clicks on an item, an additional layer is presented. This is not what is claimed. Claim 2 includes the limitation "wherein the response to the data requested is layered based upon supply chain layer." As is apparent from appellants' specification, the supply chain refers to the chain of entities involved in supplying the goods, e.g. manufacturers, distributors and retailers. See for example discussion of the background of the art on page 1 of appellants' specification and the discussion on pages 7 and 8 of appellants' specification. We do not find any teaching in Eddie Bauer which discusses the supply chain for the product, rather Eddie Bauer appears to be concerned with only the retailer. As we do not find that Eddie Bauer discusses the supply chain, we do not find that it teaches or suggest that the response to a data request is layered based upon the supply chain layer. Accordingly, we will not sustain the examiner's rejection of claim 2.

Rejection of claim 11 under 35 U.S.C. § 102

Appellants argue, on page 7 of the brief, that Eddie Bauer does not teach “mapping” the surface material sample onto a “multidimensional representation of an object.” Appellants assert that Eddie Bauer merely discloses images of actual objects.

The examiner responds, stating, “Eddie Bauer teaches a photograph. A photograph is a two-dimensional image of an object.”

We concur with the examiner. Claim 11 is dependent upon claim 1 and adds the limitation that the surface material samples are mapped onto a multidimensional representation of an object. As discussed *supra*, Eddie Bauer teaches a web page which presents pictures of objects for sale (clothing). On one page 52, Eddie Bauer shows a web page with the caption “click below to change product color.” Thus, by selecting a color the selected object will be displayed in the newly selected color. As the object is a multidimensional object, the picture displayed is a representation of a multidimensional object. One skilled in the art would recognize that to display the selected color on the picture of the object, involves mapping the selected color (surface material sample) onto the representation of the selected object. According, we find ample evidence to support the examiner’s rejection of claim 11 under 35 U.S.C. § 102.

Rejection of claims 3, 4, 14, 15 and 21 under 35 U.S.C. § 103.

Appellants argue, on page 7 of the brief, “dependent claims 3-5 and 14 through 16 are patentable at least because of they depend from independent claims 1 and 12.” Appellants’ present no other argument directed to claims 3, 4, 14 and 15.

As discussed *supra* we sustain the examiner’s rejection of claims 1 and 12. Similarly, we sustain the examiner’s rejection of claims 3, 4, 14 and 15 under 35 U.S.C. § 103.

Appellants argue, on page 8 of the brief, that the examiner did not “consider the corresponding structure in Applicant’s specification for carrying our the claimed function

pursuant to 35 U.S.C. 112, paragraph 6.” Further, appellants incorporate the arguments directed the other rejected claims toward claim 21.

As discussed *supra*, we sustain the examiner’s rejection of claim 1 under 35 U.S.C. § 102. Appellants have not pointed to any specific claim limitation alleged as not taught by the reference, nor have appellants identified the corresponding structure in appellants’ specification that is claimed under 35 U.S.C. § 112, paragraph 6,¹ which is not taught or suggested by the art of record. Thus, appellants’ arguments have not persuaded us of an error in the examiner’s decision to reject claim 21 under 35 U.S.C. § 103. Accordingly, we sustain the examiner’s rejection of claim 21.

Rejection of claims 5 and 16 under 35 U.S.C. § 103.

Appellants argue, on page 7 of the brief, that the examiner has presented no evidence to support the findings concerning service level agreements being well known in the art.

In response the examiner states on pages 14 and 15 of the answer:

[H]aving business rules to govern service level configurations to a business entity for presenting their information is known to one of ordinary skill in the art at the time of the invention. For example, [a] web hosting service provider may have charges based on amount of data transferred to user on behalf of business, limitation on data storage used by a business on web server, location of business link on web page of the service provider, Quality of Service, Statement of Work, Service Contract etc.,

We disagree with the examiner’s rationale. Initially we note the examiner has not presented objective evidence that at the time of the invention it was known that a hosting service provider may have charges based on amount of data transferred to user on behalf of business. Further, had the examiner presented such evidence, the examiner has

¹ 37 C.F.R. § 41.37 (c)(v) states: For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

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not shown how this evidence along with the Eddie Bauer reference teaches that the business rules govern the service level configurations for presenting custom-labeled surface materials, as claimed in claims 5 and 16. Rather, it would seem that such evidence would just show that it was known to charge Eddie Bauer based on the amount of data stored on the server. Accordingly we will not sustain the examiner's rejection of claims 5 and 16 under 35 U.S.C. § 103.

Conclusion

In summary, we sustain the examiner's rejection of claims 1, 6 through 13 and 17 through 20 under 35 U.S.C. § 102 and we sustain the examiner's rejection of claims 3, 4, 14, 15 and 21 under 35 U.S.C. § 103. However, we will not sustain the examiner's rejection of claim 2 under 35 U.S.C. § 102, nor will we sustain the examiner's rejection of claims 5 and 16 under 35 U.S.C. § 103. The decision of the examiner is affirmed-in-part.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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Administrative Patent Judge)	INTERFERENCES
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