

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 SHERWOOD NOEL WAGNER

Appeal 2006-2139
Application 10/292,221
Technology Center 3700

Decided: March 12, 2007

Before MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and
STUART S. LEVY, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Sherwood Noel Wagner (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1, 3-5, 10-12, and 25-28, the only claims pending in the Application. We have jurisdiction over this appeal under 35 U.S.C. § 6.

The Invention

Appellant's invention is an interpretive art workbook comprising a plurality of bound sheets, each sheet having a free-form line drawing suitable for interpretation and supplementation by an individual (Specification 1). Independent claim 1 is illustrative of the invention and reads as follows:

1. An interpretive art workbook comprising:
a bound collection of sheets having
displayed on a surface of each of a plurality of
such sheets a different free-form line drawing that
a user can, through the exercise of imagination and
creativity, interpret and supplement to construct an
image that incorporates but is not determined by
the free-form line drawing.

The Evidence

The Examiner relies upon the following as evidence of unpatentability:

Meyers	US 1,419,882	Jun. 13, 1922
Whang	US 6,203,230 B1	Mar. 20, 2001

The Rejections

Appellant seeks review of the Examiner's rejection under 35 U.S.C. § 102(b) of claims 1 and 11 as anticipated by Meyers and rejections under 35 U.S.C. § 103(a) of claim 1 as unpatentable over Meyers and claims 3-5, 10-12, and 25-28 as unpatentable over Meyers in view of Whang.

The Examiner provides reasoning in support of the rejection in the Answer (mailed October 7, 2005). Appellant presents opposing arguments

in the Brief (filed August 4, 2005) and Reply Brief (filed December 12, 2005).

ISSUE

Appellant argues that Meyers does not anticipate claim 1 because Meyers fails to disclose a “free-form line drawing that a user can, through the exercise of imagination and creativity, interpret and supplement to construct an image that incorporates but is not determined by the free-form line drawing” (Br. 4). In particular, Appellant contends that Meyers does not meet that limitation because the objective of Meyers is to reproduce a single, previously determined image. *Id.*

Accordingly, the issue before us in this appeal is whether the partial sketch on each of the leaves of Meyers’ book is a “free-form line drawing that a user can, through the exercise of imagination and creativity, interpret and supplement to construct an image that incorporates but is not determined by the free-form line drawing” as called for in claim 1.

FINDINGS OF FACT

In the preferred embodiment of Appellant’s workbook, each sheet embodies a free-form line drawing, such as line drawings 22, 24, 26 (Figs. 3 and 4) in the form of a scribble or squiggle. In using the workbook, the user is encouraged to use creativity and imagination to interpret the drawing and, based on the interpretation, to supplement the drawing to construct a complete picture (Specification 4).

Meyers discloses a book comprising a plurality of leaves 5 bound together by wire fasteners 6, for example. Each leaf is provided with a

sketch 7 in simulation of any desired article. One half of the sketch is provided on one side of the leaf and the other half of the sketch is provided on the opposite side of the leaf.

Meyers discloses a method of using the book. Pursuant to the disclosed method, the student would study the portion of the sketch on one side of the leaf to obtain “a mind’s eye picture thereof” (Meyers 1: 64). After giving the picture sufficient thought to make an impression on his mind, the student would turn the page over and draw from memory the portion of the sketch studied adjacent to the remaining portion of the sketch, thus completing the sketch (Meyers 1: 60-76).

Meyers’ leaves, or sheets, can be made of any suitable material upon which pencil markings may be erased (Meyers 1: 88-92).

Appellant proffers four published definitions to denote the ordinary meaning of “free-form” (Br. 5-6). These definitions include “a shape having an irregular contour,” “encouraged to function or evolve without advance planning; spontaneous,” and “having or characterized by a usually flowing asymmetrical shape or outline.”

PRINCIPLES OF LAW

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Found. v. Genentech Inc.*, 927

F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference.

Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983).

A disclosure that anticipates under 35 U.S.C. § 102 also renders the claim unpatentable under 35 U.S.C. § 103, for “anticipation is the epitome of obviousness.” *Jones v. Hardy*, 727 F.2d 1524, 1529, 220 USPQ 1021, 1025 (Fed. Cir. 1984). *See also In re Fracalossi*, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); *In re Pearson*, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974).

ANALYSIS

The sketches on the leaves of Meyers’ books are certainly flowing, asymmetrical, and irregular in contour. Moreover, the term “sketch,” which Meyers uses to describe the drawings on the leaves, is ordinarily understood to mean “a simple, rough drawing or design, done rapidly and without much detail” (David B. Guralnik, *Webster’s New World Dictionary of the American Language* 1334 (2nd Coll. Ed., Simon & Schuster 1984) and thus evokes a connotation of spontaneity. We therefore conclude that Meyers’ sketches are “free-form” as that term is used in Appellant’s claims and defined in Appellant’s Brief.

The remainder of the claim language at issue, namely, “that a user can, through the exercise of imagination and creativity, interpret and supplement to construct an image that incorporates but is not determined by

the free-form line drawing,” merely sets forth how the workbook *can* be used. Claim 1 is not a method claim setting forth a particular method of using the workbook. Meyers’ book, in leaving half of each side of each leaf blank and including only a portion of a sketch, the other portion to be completed by the student, certainly is capable of a use wherein the student uses imagination and creativity to interpret and supplement the provided sketch portion to construct an image that incorporates but is not determined by the provided sketch portion. In other words, Meyers’ sketch *can* be completed in any manner desired by the user, whether or not Meyers instructs such manner of completion.

Moreover, while Appellant’s claims do not require a method of so using the workbook, Meyers does in fact teach such use. Specifically, according to Meyers’ disclosed method, the student turns the leaf over and completes the image from the “mind’s eye picture” formed in the student’s memory. Such a “mind’s eye picture” necessarily involves imagination, creativity and interpretation to fill in the details.

For all of the above reasons, we conclude that the partial sketch on each of the leaves of Meyers’ book is a “free-form line drawing that a user can, through the exercise of imagination and creativity, interpret and supplement to construct an image that incorporates but is not determined by the free-form line drawing” as called for in claim 1.

Appellant argues that the Examiner has not demonstrated that Meyers’ drawings would necessarily result in boosting the imagination and/or creativity of the user as Appellant’s invention discloses (Br. 9). While this may or may not be true, Appellant’s claims do not require that the imagination or creativity of the user be boosted. Appellant’s argument thus

is not relevant in determining whether Meyers anticipates the subject matter of claim 1.

In light of the above, we sustain the Examiner's rejection of claim 1, and claim 11 which Appellant has not argued separately from claim 1, as anticipated by Meyers. Having determined that Meyers meets the "free-form line drawing that a user can, through the exercise of imagination and creativity, interpret and supplement to construct an image that incorporates but is not determined by the free-form line drawing" limitation of claim 1, we also sustain the Examiner's rejection of claim 1 under 35 U.S.C. § 103(a) as unpatentable over Meyers.

In arguing against the Examiner's rejection of claims 3-5, 10-12, and 25-28 as being unpatentable over Meyers in view of Whang, Appellant merely relies on the argument discussed above that Meyers fails to disclose a "free-form line drawing that a user can, through the exercise of imagination and creativity, interpret and supplement to construct an image that incorporates but is not determined by the free-form line drawing." Having determined above that Meyers meets this limitation, we also sustain the rejection of claims 3-5, 10-12, and 25-28.

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SUMMARY

The decision of the Examiner to reject claims 1, 3-5, 10-12, and 25-28 is affirmed.

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

vsh

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