

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAYMOND McLAINE
and
CHARLES S. PALM

Appeal No. 1999-1892
Application No. 08/883,157

ON BRIEF

Before HAIRSTON, DIXON, and GROSS, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 7, 10 and 17. Inasmuch as appellants have withdrawn the appeal of claim 4 (brief, page 2), and correspondingly dependent claim 5 based upon appellants' failure to list claim 5 among the appealed claims, the remaining claims on appeal are claims 1 through 3, 6, 7, 10 and 17.

Appeal No. 1999-1892
Application No. 08/883,157

The disclosed invention relates to a method and apparatus for making three-dimensional color images or an anaglyph¹ of a scene.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. Apparatus for making three dimensional color images comprising:

a. a left and a right color image source each image source producing an output comprising three image planes each plane corresponding to substantially red, substantially green and substantially blue color information respectively,

b. a combiner for selecting green and blue image planes from only one of left and right image sources and a red image plane from only the other image source and combining without color matrixing as an output signal,

whereby information from two image sources is combined into three dimensional color images.

The reference relied on by the examiner is:

Butterfield et al. (Butterfield) 4,734,756 Mar. 29, 1988

¹An anaglyph is defined in the Webster's New Collegiate Dictionary as "a stereoscopic motion or still picture in which the right component of a composite image usu. red in color is superposed on the left component in a contrasting color to produce a three-dimensional effect when viewed through correspondingly colored filters in the form of spectacles." A copy of the dictionary definition is attached.

Appeal No. 1999-1892
Application No. 08/883,157

Claims 1 through 3, 6, 7, 10 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Butterfield.

Reference is made to the examiner's rejection (paper number 21), the brief (paper number 28) for appellants' position in response to the rejection, and the answer (paper number 29) for the examiner's response to appellants' position.

OPINION

We have carefully considered the entire record before us, and we will sustain the obviousness rejection of claims 10 and 17, and we will reverse the obviousness rejection of claims 1 through 3, 6 and 7.

Appellants acknowledge that in Butterfield three-dimensional color images or anaglyphs of a scene are produced by combining the red image plane from a left color video camera with the blue and green image planes from a right color video camera (appellants' declaration (paper number 25), page 1, paragraph 3). Appellants argue (brief, page 9) that Butterfield's method and apparatus differs from the claimed method and apparatus in that NTSC encoding with

Appeal No. 1999-1892
Application No. 08/883,157

color matrixing is used in the reference. Claims 1 through 3, 6 and 7 expressly state that the image sources are combined without color matrixing.²

In view of the holding in In re Karlson, 311 F.2d 581, 584, 136 USPQ 184, 186 (CCPA 1963) that "omission of an element and its function in a combination is an obvious expedient if the remaining elements perform the same functions as before," the examiner is of the opinion (paper number 21, pages 3 and 4) that "it would have been obvious for one of ordinary skill in the art to disable Butterfield's NTSC coding application from the overall operation of the reference's stereoscopic encoder in order to produce a 3-D color image without color matrixing for non-NTSC display formats for suggested medical and industrial applications." The examiner indicates (paper number 21, page 3) that Butterfield "does suggest non-NTSC applications for the stereoscopic encoder which would require display without color matrixing (Butterfield: column

²Appellants' originally filed disclosure and claims never expressly state that the colors are combined "without color matrixing." If there is a written description problem with this phrase in the claims, then we leave it to the examiner to resolve with the appellants.

Appeal No. 1999-1892
Application No. 08/883,157

10, lines 59-62).” When the referenced portion of Butterfield is read in context with the preceding paragraphs in column 10, it is quite clear that the non-NTSC applications mentioned by the examiner occur after the encoder 4 has performed NTSC/matrixing functions. The examiner’s contentions (paper number 21, page 3) to the contrary notwithstanding, Butterfield never states that the “stereoscopic encoder superimposes the images for 3-D image construction, and *then performs* the NTSC coding.” Nothing in Butterfield teaches or would have suggested that “[t]he control computer would inherently enable one of skill in [the] art to suspend NTSC coding in the stereoscopic encoder (Butterfield: column 22, lines 48-60) for effecting the production of a 3-D image for the non-NTSC imaging applications (Butterfield: column 10, lines 59-62)” (paper number 21, page 3). Since none of the embodiments disclosed in Butterfield for combining colors in the manner set forth in the claims on appeal separates out the combining function from the NTSC encoder/matrixing function in encoder 4 (Figures 1, 2, 6A and 16), we agree with the appellants’ argument (brief, pages 7 and 9) that it would not have been

Appeal No. 1999-1892
Application No. 08/883,157

obvious to the skilled artisan to eliminate the NTSC/matrixing function from Butterfield. The only rationale of record for making such a modification to Butterfield is impermissible hindsight (brief, pages 6 and 7).

Based upon the foregoing, the obviousness rejection of claims 1 through 3, 6 and 7 is reversed.

Turning to claims 10 and 17, we agree with the examiner's statement (paper number 21, page 4) that the three-dimensional color image making in Butterfield can be computer controlled based upon the teachings of Butterfield (column 22, lines 12 through 65). Thus, the obviousness rejection of claims 10 and 17 is sustained because these claims do not preclude either the color matrixing or the cameras used in Butterfield.

DECISION

The decision of the examiner rejecting claims 1 through 3, 6, 7, 10 and 17 under 35 U.S.C. § 103 is affirmed as to claims 10 and 17, and is reversed as to claims 1 through 3, 6 and 7. Accordingly, the decision of the examiner is affirmed-in-part.

Appeal No. 1999-1892
Application No. 08/883,157

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

AFFIRMED-IN-PART

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH L. DIXON)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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ANITA PELLMAN GROSS)	
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KWH:hh

Appeal No. 1999-1892
Application No. 08/883,157

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