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Robert D. Shedd, Patent Operations THOMSON Licensing LLC P.O. Box 5312 Princeton, NJ 08543-5312			WONG, ALLEN C	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JILL MacDONALD BOYCE

Appeal 2010-003947
Application 10/410,456¹
Technology Center 2400

Before ST. JOHN COURTENAY III, MARC S. HOFF, and
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a Non-Final Rejection of claims 1-12. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellant's invention is directed to adaptive weighting of reference pictures in video encoders (Spec. 1). A reference picture weighting factor assignor produces an output indicative of a weighting factor for an image block. The output is associated with a particular reference picture index.

¹ The real party in interest is Thomson Licensing S.A.

The claimed invention recites that the reference picture index independently indicates, without use of another index, a reference picture from which the image block is predicted and the weighting factor from a set of weighting factors (Spec. 8).

Claim 1 is exemplary of the claims on appeal:

1. A video encoder for encoding video signal data for an image block, the encoder comprising a reference picture weighting factor assignor for assigning a weighting factor for the image block, the weighting factor being associated with a particular reference picture index, wherein the particular reference picture index is for independently indicating, without use of another index, a reference picture from which the image block is predicted and the weighting factor from a set of weighting factors.

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Yamaguchi US 6,292,514 B1 Sept. 18, 2001

Yoshihiro Kikuchi et al., *Multi-Frame Interpolative Prediction with Modified Syntax*, JOINT VIDEO TEAM (JVT) OF ISO/IEC MPEG & ITU-T VCEG 1 (Mar. 2002).

Claims 1-12 stand rejected under the doctrine of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent Application Publication No. 2004/0008783 (Application No. 10/410,481).

Claims 1, 2, and 4-7 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Kikuchi.

Claims 3 and 8-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kikuchi in view of Yamaguchi.

Throughout this decision, we make reference to the Appeal Brief (“App. Br.,” filed Aug. 9, 2007), the Examiner’s Answer (“Ans.,” mailed

Nov. 13, 2007), and the Reply Brief (“Reply Br.,” filed Dec. 6, 2007) for their respective details.

ISSUE

Appellant argues that Kikuchi does not teach a reference picture index for independently indicating, without use of another index, a reference picture from which the image block is predicted and the weighting factor from a set of weighting factors (App. Br. 10).

Appellant’s contentions present us with the following issue:

Does Kikuchi teach a reference picture index for independently indicating, without use of another index, a reference picture from which the image block is predicted and the weighting factor from a set of weighting factors?

PRINCIPLE OF LAW

“A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference.” *See In re Buszard*, 504 F.3d 1364, 1366 (Fed. Cir. 2007) (quoting *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994)).

ANALYSIS

REJECTIONS BASED ON PRIOR ART

The Examiner admits that “Kikuchi discloses the use of another, separate index, namely a weighting factor index, in addition to the reference picture index, or the use of directions for the reference pictures” (Ans. 9). As a result of the Examiner’s admission, we agree with Appellant that Kikuchi

requires, “at the least, two reference indexes to determine the value of a weighting factor index” (Reply Br. 11 (emphases omitted)). We further agree with Appellant, therefore, that the reference picture index of Kikuchi cannot anticipate the reference picture index of claim 1, because Kikuchi’s index does not *independently* indicate the reference picture *and* the weighting factor. We will not sustain the Examiner’s § 102 rejection of claims 1, 2, and 4-7 over Kikuchi.

We have reviewed Yamaguchi, and we find that Yamaguchi does not remedy the deficiencies of Kikuchi. Accordingly, we will also not sustain the Examiner’s § 103 rejection of claims 3 and 8-12 as being unpatentable over Kikuchi in view of Yamaguchi.

OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION

Appellants state that they do not appeal the obviousness-type double patenting rejection of claims 1-12 (App. Br. 6). Although the Examiner does not mention this rejection in the Examiner’s Answer, the rejection has not been withdrawn. Accordingly, we affirm *pro forma* the nonstatutory obviousness-type double patenting rejection of claims 1-12 as being unpatentable over U.S. Patent Application Publication No. 2004/0008783 (Application No. 10/410,481).

CONCLUSIONS

Kikuchi does not teach a reference picture index for independently indicating, without use of another index, a reference picture from which the image block is predicted and the weighting factor from a set of weighting factors.

Appeal 2010-003947
Application 10/410,456

ORDER

The Examiner's rejection of claims 1-12 is affirmed.

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2010).

REVERSED

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