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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/906,021	01/31/2005	Christopher S. Campbell	ARC92000027US2	3021
66932	7590	01/31/2013	EXAMINER	
IP AUTHORITY, I.L.C. RAMRAJ SOUNDARARAJAN 4821A Eisenhower Ave Alexandria, VA 22304			BEKERMANN, MICHAEL	
			ART UNIT	PAPER NUMBER
			3622	
			NOTIFICATION DATE	DELIVERY MODE
			01/31/2013	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER S. CAMPBELL and PAUL PHILIP MAGLIO

Appeal 2010-006299
Application 10/906,021
Technology Center 3600

Before, MURRIEL E. CRAWFORD, ANTON W. FETTING and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

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STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-14 and 16-21. We have jurisdiction under 35 U.S.C. § 6(b). (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a method for the recognition of reading, skimming, and scanning from eye-gaze patterns. (Specification 1: ¶2).

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method of paying users for viewing advertisements comprising:
 - (a) determining viewer interaction with content of rendered advertisements based on eye-gaze patterns, said gaze patterns comprising any of the following: non-reading gaze, skimming gaze, or reading gaze, said determination of viewer interaction based on accumulated numerical evidence of eye movement in both X and Y directions, said numerical evidence independent of gaze time and factoring both incremental and decremental values;
 - (b) recording viewer interests based on determination in (a);
 - (c) computing payments based on viewer activity, and
 - (d) disbursing payments based on said computed payments.

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THE REJECTION

The Examiner relies upon the following as evidence unpatentability:

Goldhaber	5,794,210	Aug. 11, 1998
Tognazzini	5,886,683	Mar. 23, 1999

Pieters, "Visual Attention to Repeated Print Advertising: A Test of Scanpath Theory" Journal of Marketing Research, Vol. XXXVI, Nov. 1999, pp. 424-438.

The following rejections are before us for review.

The Examiner has rejected claims 1, 12, and 17 under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement.

The Examiner has rejected claims 1-14 and 16-21 under 35 U.S.C. § 103(a), as being unpatentable over Goldhaber in view of Tognazzini and further in view of Pieters.

FINDINGS OF FACT

1. We adopt the Examiner's findings as set forth on pages 5-9 of the Answer.

2. Tognazzi discloses:

As the user looks at the display area 209, the gaze tracking device determines the users gaze position. The gaze coordinate (raw) is an ordered pair of values providing the immediate two dimensional coordinates of where the user's gaze is positioned on the screen. A number of gaze coordinates can

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be used to develop a gaze position that is a two dimensional coordinate of a time weighted average of the gaze coordinates.

(Col. 9, ll. 53-61).

ANALYSIS

35 U.S.C. § 112, First Paragraph Rejection

In rejecting the claims under 35 U.S.C. § 112, first paragraph, the Examiner found that: “[p]aragraph 30 of the specification recites ‘First, the eye-movements in both x and y positions are quantized (and averaged) over 100 ms intervals’. The 100 ms intervals are indicative of ‘gaze time’. Thus, this is proof that gaze time is indeed a factor.” (Answer 4).

Appellants argue that the “the 100 ms is arbitrary as it merely refers to sampling time. This sampling value of 100 ms merely describes the sampling time and is not in any way related to the gaze time of the user or to the accumulated evidence.” (Appeal Br. 8).

Initially, we disagree with Appellants that the sampling time is “not in any way related to the gaze time of the user or to the accumulated evidence” because the so called “sample time” is still time which must be coincident with the time the user is looking at the screen. In other words, the sample time cannot be a value which exceeds the user’s use of the screen, and thus its maximum value is still constrained by how long the user watches the screen- thus is, in some way, dependent on gaze time. However, since a patent applicant is entitled to be his or her own lexicographer of patent claim

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terms, we will find no error with Appellants using the term “independent” so long it is understood that sample time is limited to the use time of the screen by the user. *See, In re Corr*, 347 F.2d 578, (CCPA 1965).

As such, we find that since Appellants are entitled to be his/her own lexicographers, we will not sustain the rejection under 35 U.S.C. § 112, first paragraph.

35 U.S.C. § 103(a) Rejection

Initially, we note that the Appellants argue independent claims 1 and 12 together as a group. Correspondingly, we select representative claim 1 to decide the appeal of these claims.

Appellants argue that the Examiner’s pointing to Tognazzini “of a **‘gaze coordinate’ ‘reads on incremental and decremental values’** of claim 1” is improper. (Appeal Br. 12). In support, Appellants maintain that: “[c]oordinates in general refer to location on a map or graph; however, the use of the term coordinates by no means indicates the **accumulation of numerical evidence of eye movement** nor does it indicate an **accumulated numerical evidence that factors in both incremental and decremental values** (emphasis original). (Appeal Br. 12).

We disagree with Appellants because nothing in claims prohibits the incremental or decremental values from being zero. As such, we find Tognazzi’s gaze coordinate to be an accumulation of numerical evidence that factors in both incremental and decremental values equal to zero for a given sampling time.

Appellants also argue that “that the art of record fail to teach such accumulation of numerical evidence that is independent of gaze time.” (Appeal Br. 13). We find Appellants’ argument unpersuasive because to the extent that Appellants’ numerical eye movement is not completely independent of association with the act of gazing as we found *supra*, so too are Tognazzi’s raw order pairs of data representing two dimensional coordinates of where the user's gaze is positioned on the screen independent of gaze time. (FF 1).

Concerning claim 17, this claim only differs from claim 1 by requiring at a minimum determining an amount of content interacted by the viewer. We find that this requirement is met by Tognazzi’s disclosing or determining at a minimum at least one ordered pair of values corresponding to a gaze coordinate (raw) which is an amount, albeit a very small fraction of the content presented on the screen, interacted with by the user.

We also affirm the rejections of dependent claims 2-11, and 13-14, 16, 18-21 since Appellants have not challenged such with any reasonable specificity (see *In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987)).

CONCLUSIONS OF LAW

We conclude the Examiner did err in rejecting claims 1, 12 and 17 under 35 U.S.C. § 112, first paragraph.

We conclude the Examiner did not err in rejecting claims 1-14, 16-21 under 35 U.S.C. § 103(a).

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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).

DECISION

AFFIRMED

JRG