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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAE-BYEONG HAN

Appeal 2010-008358
Application 11/545,239
Technology Center 2600

Before: JOSEPH L. DIXON, ST. JOHN COURTENAY III, and
CARLA M. KRIVAK, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1-14. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The claims are directed to a method and apparatus for using graphic object recognition in a mobile communication terminal. Claim 1, reproduced below, is representative of the claimed subject matter:

1. A method for setting an object of a background picture as an execution indicator for executing a function in a mobile communication terminal, comprising:

setting one of a graphic file and a photograph file as the background picture;

selecting the object in the selected background picture by tracing along a boundary of the object; and

setting an interface function of the mobile communication terminal corresponding to the selected object.

REFERENCES

The prior art relied upon by the Examiner as evidence in rejecting the claims on appeal is:

Baker	US 6,278,455	Aug. 21, 2001
Mizobuchi	US Pat. App. Pub. No. 2004/0119763 A1	Jun. 24, 2004

REJECTION

Claims 1-14 stand rejected under 35 U.S.C. §103(a) as unpatentable over the combination of Baker and Mizobuchi.

GROUPING OF CLAIMS

Based on Appellant's arguments, we decide the appeal of the rejection of claims 1-14 on the basis of representative claim 1. See 37 C.F.R. § 41.37(c)(1)(iv).

APPELLANT'S CONTENTIONS

Appellant contends, inter alia:

In regard to this recitation, the Examiner states that "Mizobuchi teaches selecting objects displayed on a touch screen (Abstract), and further in Figs. 4 A-K Mizobuchi shows different ways the object 10A can be selected, particularly in Fig. 4A it can be appreciated that the object 10A is selected by tracing along at least three boundaries of said object." (Examiner's Answer, page 15.)

On the contrary, Fig. 4A of Mizobuchi is an example of "if the entire Stroke is within an activatable object, the object is selected (FIGS. 4A, 4B)." (Mizobuchi, ¶0023, emphasis supplied.) That is, in Fig. 4A of Mizobuchi, there is no reason to trace along a boundary of the object. Rather, Mizobuchi teaches detecting whether a 'Stroke' falls entirely within the 'activatable object', i.e. entirely inside of, the 'activatable object'. An example of the 'Stroke' falling entirely outside of the 'activatable object' is provided at Fig. 4C of Mizobuchi, and examples of the 'Stroke' falling partially within and partially outside of the 'activatable object' are provided at Figs. 4 D-F of Mizobuchi.

Mizobuchi does not assess whether a 'Stroke' traces a boundary of a displayed object, and such assessment is not relevant to the system of Mizobuchi. Accordingly, the Examiner incorrectly relies on Mizobuchi in regard to selecting the object in the background picture by tracing along a boundary of the object, and for at least this reason the rejection of Claims 1, 5, 7, 8, 12 and 14 must be reversed.

(Reply Br. 1-2; *see also* App. Br. 5-7).

ISSUE

Under § 103, did the Examiner err in finding that the cited references, either alone or in combination, would have taught or suggested the disputed limitation “selecting the object in the selected background picture by *tracing along a boundary of the object*,” within the meaning of representative claim 1? (emphasis added; *see* commensurate limitations recited in claims 8 and 14).

ANALYSIS

This appeal turns upon claim construction. We focus our analysis on the scope of the disputed claim limitation “tracing *along* a boundary of the object.” (Independent Claims 1, 8, and 14).

“In the patentability context, claims are to be given their broadest reasonable interpretations . . . limitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citations omitted). Any special meaning assigned to a term “must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.” *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477 (Fed. Cir. 1998). Absent an express intent to impart a novel meaning to a claim term, the words take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003) (citation omitted).

Appellant has not established where a definition is set forth in the Specification that provides an artisan with notice of a special or uncommon meaning for the disputed limitation of “tracing *along* a boundary of the

object” (Independent claims 1, 8, 14, emphasis added). Appellant has also not established in the record a common or plain meaning for the claim limitation “tracing *along* a boundary of the object,” for example, by providing the Examiner with an extrinsic dictionary definition (for the claim term “*along*”) as rebuttal evidence for entry into the record. *See* MPEP §2145 Eighth Edition, Rev. 9, Aug. 2012. Nor is there a declaration of record to consider as evidence regarding the intended metes and bounds of the disputed limitation “tracing *along* a boundary of the object.” (Claims 1, 8, 14, emphasis added).

Turning to the supporting portions of Appellant’s Specification¹ for *context*, we observe that the disputed “tracing *along* a boundary of the object” (claim 1), is expressly described (according to one embodiment) as being performed with the user’s *finger*:

The user's selection of the specific object will be processed as follows. Using an input device (e.g., a stylus) for the touch pad 109, *or the user's finger*, the user selects the specific object by *tracing along a boundary of the specific object* of the background picture as illustrated in FIG 4B. Then, the user clicks a completion button (or an OK button) displayed on the background picture or an END button of the keypad 108.

Through these procedures, the selecting operation is finished.

(Spec. 8, l. 20 – 9, l. 1, emphasis added).

Because “tracing along a boundary of the specific object of the background picture” is described in the Specification as being performed with the user’s *finger* (according to one embodiment) (*id.*), we find a user’s

¹ *See* App. Br. 2, pointing to the corresponding support in the Specification for “tracing along a boundary of the object.”

finger would not reasonably trace *precisely* on the boundary, given the blunt characteristic of a user's fingertip (*cf.* with a stylus). Thus, a user's finger would more reasonably trace *along* the object boundary, with some portion of the fingertip falling *on either side* of the precise object boundary, and some portion of the fingertip overlapping the precise object boundary. This is essentially what Mizobuchi's Fig. 4A teaches (as relied on by the Examiner, Ans. 15). Even assuming *arguendo* that Mizobuchi's depicted trace (Fig. 4A) lies entirely *inside* the square boundary (as argued by Appellant, Reply Br. 1), we agree with the Examiner (Ans. 15) that Mizobuchi's depicted trace traces *along* the boundary of the square object on at least three sides:

Mizobuchi's Fig. 4A



Shown above, Mizobuchi's Fig. 4A depicts a square-shaped displayable object or icon (¶ [0023]) and also the outline of a representative stroke e.g., of a stylus, pen, or user finger (¶ [0018]).

Our construction also comports with a representative plain-meaning dictionary definition of the claim term: "*along*" . . . "In a line with: following the course of." Webster's II New Riverside Dictionary, published 1988. We observe that Mizobuchi expressly teaches that "touch-screen display 10, [may be] used with a stylus or pen 11 (or simply with the *finger*

of a user).” (¶ [0018], emphasis added). Therefore, on this record, we are not persuaded that the Examiner’s claim interpretation is overly broad, unreasonable, or inconsistent with Appellant’s Specification. Thus, we agree with the Examiner that a broad but reasonable interpretation of “*along* a boundary” (claim 1) does not preclude tracing *along* the proximate inside or the outside of the boundary, in a manner that may overlap or roughly follow or parallel the course of the boundary, as taught or suggested by the cited portions of Mizobuchi. See Ans. 15. We additionally note that the shape of the object would impact the tracing function and if a circle were chosen as the generic object then the illustrated tracing function would more clearly be shown to be along the boundary.

Appellant additionally argues that “[n]either the portions cited by the Examiner nor elsewhere does Baker disclose or suggest defining new icons by a user,” (App. Br. 5). However, Appellant is arguing limitations that are not claimed.

Therefore, we agree with the Examiner’s underlying factual findings and ultimate legal conclusion of obviousness for essentially the same reasons articulated in the Answer (12-15), and for the reasons discussed above. On this record, we are not persuaded of Examiner error regarding the obviousness rejection of representative claim 1. Accordingly, we sustain the rejection of claim 1. Claims 2-14 (not argued separately) fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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Application 11/545,239

DECISION

We affirm the Examiner's rejection under §103 of claims 1-14.

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) (2009).

AFFIRMED

Vsh