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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RIDA M. HAMZA and KWONG W. AU

Appeal 2010-008499
Application 10/684,865
Technology Center 2400

Before JOHN A. JEFFERY, JAMES B. ARPIN, and TRENTON A. WARD,
Administrative Patent Judges.

WARD, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-30. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants' claimed invention relates to improved methods for motion detection with a video surveillance system. *See* Spec. ¶¶ 10-12. Claim 1 is illustrative with certain disputed limitations italicized:

1. A method of detecting motion in an area, the method comprising:
receiving at one or more processors frames of the area;
using a high speed motion detection algorithm executing in the one or more processors to remove frames in which a threshold amount of motion is not detected, wherein the high speed motion detection algorithm represents frames, wherein a plurality of the frames comprises a selected portion of a frame with a first pixel color distribution associated with a first block of pixels that does not represent any motion of interest, and wherein the high speed motion detection algorithm is configured such that the *first color pixel distribution is pre-selected, prior to the receiving the frames of the area, as a function of the block of pixels that does not represent any motion of interest*; and
using a high performance motion detection algorithm executing in the one or more processors on remaining frames to detect true motion from noise,
wherein the high performance motion detection algorithm operates on the frames, wherein the plurality of the frames comprises a selected portion of a frame with the first pixel color distribution associated with the first block of pixels and another portion of the frame with a second pixel color distribution associated with a second block of pixels.

THE REJECTIONS

(1) The Examiner rejected claim 27 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Ans. 27-28.¹

(2) The Examiner rejected claims 1-26 and 28-30 under 35 U.S.C. § 103(a) as unpatentable over Pavlidis (Ioannis Pavlidis et al., *Urban Surveillance Systems: From the Laboratory to the Commercial World*, 89 PROC. IEEE 1478 (2001)), Monroe (US 2003/0025599 A1; published Feb. 6,

¹ Throughout this opinion, we refer to (1) the Appeal Brief (App. Br.) filed December 23, 2009, (2) the Examiner's Answer (Ans.) mailed March 25, 2010, and (3) the Reply Brief (Reply Br.) filed May 12, 2010.

2003), Flickner (US 2003/0107649 A1; published June 12, 2003), Gu (US 5,874,988; issued Feb. 23, 1999), and Parker (US 2003/0122942 A1; published July 3, 2003). Ans. 4-22.

(3) The Examiner rejected claim 27 under 35 U.S.C. § 103(a) as unpatentable over Monroe, Pavlidis, Flickner, Gu, and Parker. Ans. 22-26.

THE STATUTORY SUBJECT MATTER REJECTION

The Examiner withdrew the rejection under § 101 of independent claims 1 and 16, but maintained the rejection of claim 27 under § 101. Ans. 27-28. The Examiner finds that claim 27 is directed towards software and lacks sufficient structure. *Id.*

Appellants argue that claim 27 is directed to statutory subject matter as it recites a system and does not encompass carrier waves. App. Br. 13; Reply Br. 1.

ISSUE

Under § 101, has the Examiner erred in rejecting claim 27 as directed to non-statutory subject matter?

ANALYSIS

The Examiner finds that claim 27 is directed to a system for detecting motion that comprises a means for receiving video images of the monitored area. Ans. 27. Furthermore, the Examiner finds that there is no structure set forth to perform the inventive steps, as claimed. *Id.* Specifically, the Examiner finds that the claimed modules for detecting motion are defined in the Specification as software, hardware, firmware, or any combination

thereof. *Id.* The Examiner treats claim 27 as directed to a pure software implementation and, thus, maintains the rejection under § 101.

Based on the record before us, we find that the Examiner erred in rejecting claim 27 under § 101. The *Supplementary Examination Guidelines for Determining Compliance with 35 U.S.C. 112 and for Treatment of Related Issues in Patent Applications* provide that “by choosing to use a means-plus-function limitation and invoke § 112, ¶ 6, applicant limits that claim limitation to the disclosed structure,” but the “examiner should not construe the limitation as covering pure software implementation.” 76 Fed. Reg. 7162, 7168 (Feb. 9, 2011) [hereinafter the 2011 Supplementary Guidelines]. In accordance with the 2011 Supplementary Guidelines, we find that the Examiner erred in treating claim 27 as covering a pure software implementation when implementation by software, hardware, firmware, or any combination was disclosed. Accordingly, we do not sustain the Examiner’s rejection of claim 27 under § 101.

THE OBVIOUSNESS REJECTIONS

The Examiner finds that the combination of Pavlidis, Monroe, and Flickner discloses all of the limitations of claim 1, except that “the first color pixel distribution is pre-selected, prior to the receiving the frames of the area.” Ans. 7-8. The Examiner cites Gu and Parker, in combination with Pavlidis, Monroe, and Flickner, as teaching or suggesting this limitation in concluding that the claim would have been obvious. *Id.*

Appellants argue that it would not have been obvious to incorporate Gu into Pavlidis because there is no reason to incorporate a predetermination of color parameter histogram data from Gu into a video surveillance system

of Pavlidis. App. Br. 14. With respect to Parker, Appellants argue that it would not have been obvious to combine Parker with Pavlidis since one of ordinary skill in the art would not have a reason to apply the skin color detection algorithm in Parker to a system for motion detection in Pavlidis. App. Br. 15.

ISSUE

Under § 103, has the Examiner erred in rejecting claim 1 by finding that the cited references collectively would have taught or suggested that “the first color pixel distribution is pre-selected, prior to the receiving the frames of the area”?

ANALYSIS

On this record, we find no error in the Examiner’s obviousness rejection of claim 1. Appellants make three arguments regarding the Examiner’s reliance upon Gu and Parker in the rejection, and we address Appellants’ arguments *seriatim*.

First, Appellants argue that “predetermining statistics regarding histograms is not a disclosure of a ‘pixel distribution [that] is preselected’ in a motion detection system as is recited in the claims.” App. Br. 14 (brackets in original). Apart from mere conclusory statements, however, Appellants’ arguments do not persuasively rebut the Examiner’s findings regarding Gu.

Second, Appellants state that the disclosure in Gu is unrelated to Pavlidis because Gu involves color correction systems. App. Br. 14. Thus, Appellants argue that it would not have been obvious to incorporate Gu into Pavlidis because there is no reason to incorporate a predetermination of

color parameter histogram data into a video surveillance system. *Id.* The Examiner finds that Gu is related to processing of color image signals for use in the television industry. Ans. 28-29 (citing Gu, col. 1, ll. 1-9, 20-24). Because Pavlidis discloses the use of color cameras as part of its surveillance system, the Examiner found that one of ordinary skill would combine the teachings of Gu with Pavlidis for providing improved efficient signal processing of color images. Ans. 29. We are not persuaded of error in the Examiner's findings as Gu discloses an embodiment in which an operator can select predetermined color parameter statistical data relating to a reference image to serve as a reference for comparison processing against incoming source image data. Gu, col. 4, ll. 13-29. Both Gu and Pavlidis relate to the same field of endeavor regarding improved techniques for color video signal processing; thus, as found by the Examiner, one of ordinary skill in the art would have been motivated to combine these references for "providing efficient signal processing of color images." Ans. 8.

Third, Appellants argue that Parker is not properly combinable with Pavlidis. App. Br. 15. The disclosure in Parker relates to a skin color detection algorithm, and Appellants argue that it would not have been obvious to combine Parker with Pavlidis since one of skill in the art would not have a reason to apply the skin color detection algorithm in Parker to the system for motion detection in Pavlidis. *Id.* As correctly noted by Appellants, Parker discloses a pre-determined skin distribution color image segmentation that can be used to determine if an image falls within that distribution – that is, if the image includes human skin. *Id.*; *see also* Parker, ¶ 45. Parker discloses that the use of a "pre-determined skin distribution" can be utilized to improve the processing of digital image by identifying the

main subject of an image, namely the human face. *See* Parker, ¶¶ 44, 45. The Examiner finds that this disclosure in Parker, relating to processing “digital motion image sequences captured by high resolution digital cameras,” is properly combined with the motion image processing techniques disclosed in Pavlidis. Ans. 29 (citing Parker, ¶ 1). We are not persuaded of error in the Examiner’s findings, as both disclosures relate to motion image processing and one of ordinary skill in the art would reasonably be motivated to combine the references to improve image processing. Ans. 30.

Accordingly, we not persuaded that the Examiner erred in rejecting claim 1 and claims 2-30 not separately argued with particularity.²

ORDER

The Examiner’s decision rejecting claim 27 under § 101 is reversed. The Examiner’s decision rejecting claims 1-30 under § 103 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)(1)(iv).

AFFIRMED

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² We note that, although the Examiner separately rejected claim 27 under § 103, with a similar rejection to the rejection under § 103 against claims 1-26 and 28-30, Appellants argue this claim together with claims 1-26 and 28-30.