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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAULO COLACO-DIAS

Appeal 2010-010776
Application 11/132,733
Technology Center 2100

Before CARL W. WHITEHEAD, JR., ERIC S. FRAHM, and
ANDREW J. DILLON, *Administrative Patent Judges*.

DILLON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-37. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

The invention assigns a single command ID to identical menu items of separate computer display windows. Spec., p. 2, l. 1 – p. 3, l. 5. Via this technique, “a given menu command may be used in multiple command

menus without having to program a given corresponding section of code more than once.” Spec., p. 3, ll. 3-5.

Claim 1 is illustrative, with a key disputed limitation emphasized.

1. A method for displaying a MDI [Multiple Document Interface] graphical user interface, comprising:

displaying a parent window;

displaying one or more command menus, corresponding to one or more parent window features, within the parent window;

displaying one status bar, corresponding to one or more parent window features, within the parent window;

displaying one or more child windows;

displaying one or more command menus, corresponding to at least one of a child window feature and a parent window feature, within each of the one or more child windows;

displaying one status bar, corresponding to one or more child window features, within each of the one or more child windows; and

wherein a selected one of the command menus from the parent window and a selected one of the command menus from at least one child window are both mapped to a single section of code for executing an action such that the single section of code is programmed only once.

The Examiner relies on the following references as evidence of unpatentability:

Dando US 2003/0058286 A1 Mar. 27, 2003

Roni Raab, *MeshMaker Tutorial*, MeshMaker 5.2 Manual, Internet Article, last updated on May 2003, *available at*

<http://www.cs.ubc.ca/~sheffa/dgp/software/html/tutorial.html> (last visited on 01/30/2013) (“MeshMaker”).

REJECTION,^{1, 2, and 3}

The Examiner rejected claims 1-37 under 35 U.S.C. § 103 as unpatentable over Dando and MeshMaker. Ans. 3-12.

ISSUE

Based upon our review of the record, the arguments proffered by Appellant, and the findings of the Examiner, we address the following issue:

Under § 103, has the Examiner erred in determining that it would have been obvious to assign the same command ID to identical menu items of Dando’s parent window and child windows?

¹ Throughout this opinion, we refer to the Appeal Brief filed December 11, 2009 (“App. Br.”), the Examiner’s Answer mailed March 19, 2010 (“Ans.”), and the Reply Brief filed May 18, 2010.

² The rejection of claims 15-18 under 35 U.S.C. § 101 has been withdrawn. Ans. 2.

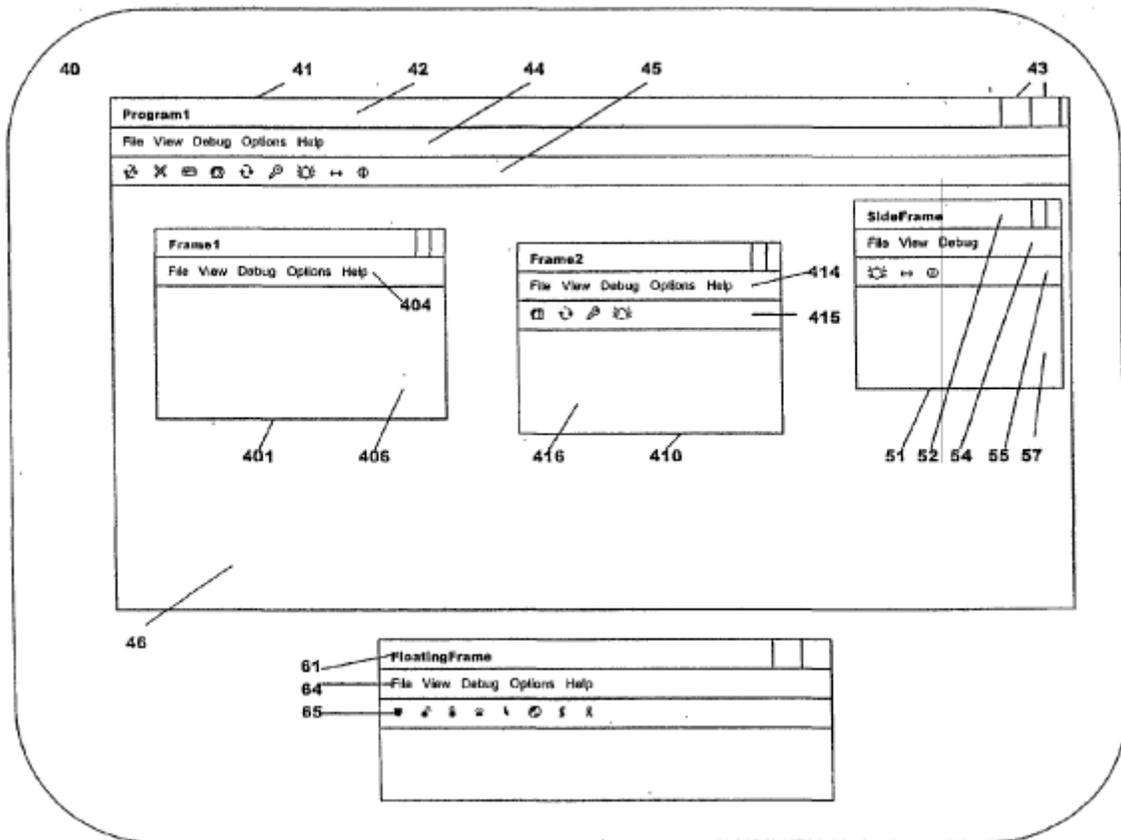
³ The Examiner’s formal statement of rejection (Ans. 3) incorrectly identifies only claims 1-33 as rejected. However, the Examiner clearly presents claims 34-37 as also rejected, identifying and addressing them with particularity in both the “Grounds of Rejection” section (Ans. 12) and “Response to Arguments” section (Ans. 14-16) of the Answer. Appellant was aware of the error in the formal statement. App. Br. 4, fn. 1. Accordingly, we find the Examiner’s misstatement to be harmless error and consider claims 1-37 as rejected under 35 § U.S.C. 103.

ANALYSIS

Claims 1-5, 10-14, 19-23, and 28

Appellant addresses claims 1-5, 10-14, 19-23, and 28 as a group. App. Br. 22. We select claim 1 as representative. Claims 2-5, 10-14, 19-23, and 28 stand or fall therewith. *See* 37 C.F.R. § 47.37(c)(1)(iv).

The Examiner finds that Dando's Figure 2 screenshot teaches all but the emphasized "wherein" limitation of reproduced claim 1. As shown by Dando's Figure 2, reproduced below, the screenshot includes a parent window 41, which in turn includes several child windows 401, 410, 51, wherein each window includes a command menu. Dando, ¶ [0046].



Dando's Figure 2 depicts a screenshot of the rejection's cited computer display windows.

To bridge the “wherein” limitation, the Examiner finds that MeshMaker assigns a single command ID to an added menu item and toolbar button, such that the menu item and button call the same function.

Ans. 4. The Examiner determined that it would have been obvious to likewise assign a single command ID to identical menu items of Dando’s windows 41, 401, 410, 51, e.g., such that, for example, the “file” menu items call the same function. Ans. 5. The Examiner’s reasoning is identical to the objective of Appellant’s invention – “mapp[ing] to a single section of code for executing an action such that the single section of code is programmed only once” (*id.*).

Appellant argues that MeshMaker does not assign a single command ID to respective menu items of a parent window and child window and, accordingly, cannot suggest this feature for Dando’s windows 41, 401, 410, 51. For example, Appellant argues that: MeshMaker merely links the menu item and toolbar button (App. Br. 25); MeshMaker is directed to a single window (*id.* at 27); and, in turn, the articulated reason for modifying Dando arises strictly from Appellant’s disclosure (*id.*).

Appellant neglects the gist of the rejection and cited teachings, which is as follows. Dando’s screenshot shows that parent and child windows had respective menu items with identical functions (i.e., identical operations). MeshMaker shows that artisans are assigning a single command ID to user commands with identical functions. Thus, given that Dando’s cited menu items are user commands with identical functions, it would have been obvious to assign the same command ID to those cited menu items.

It is immaterial whether the Examiner’s proposed reason for assigning a single command ID corresponds to Appellant’s reason for doing so. *See In*

re McLaughlin, 443 F.2d 1392, 1395 (C.C.P.A. 1971) (Hindsight reasoning is permitted “so long as it takes into account only knowledge which was within the level of ordinary skill [in the art] ... does not include knowledge gleaned only from applicant’s disclosure.”). The references teach: user commands (menu items) ascribed the same function; and an easy way of ascribing user commands the same function. The decision to combine such teachings arises from mere common sense. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) (“Rigid preventative rules that deny factfinders recourse to common sense, however, are neither necessary under our case law nor consistent with it.”).

Appellant further argues that MeshMaker’s command ID is not assigned to the tool bar button, but rather “refers to a single command menu [item] since the tool bar button is merely a shortcut to the associated command menu item.” Reply Br. 3.⁴ We disagree in light of MeshMaker’s clear instructions:

[W]e want the menu item and the toolbar button to have the same effect (the same function called), so we will give the new button the same ID as you gave the menu item[.] ... Now both the toolbar button and the menu item have the same ID.

MeshMaker, pp. 1-2. The passage unequivocally instructs the reader to assign a single command ID to both the menu item and tool bar button, particularly so as to call the same function. In the absence of a compelling reason to do otherwise, e.g., a persuasive artisan declaration, we must take this teaching as plainly presented. That is, the matter-of-fact teaching – “we

⁴ The Reply Brief lacks page numbers. We have counted the cover page as page 1 of the brief.

want ..., so we will ...” – implies that the technique of assigning a single command ID to identical user commands was notoriously well known.

Appellant further argues that “[t]here is no disclosure in the references as to how a modification of *Dando* to include the features to have coding similar to that of *MeshMaker* could be effected in a multiple window interface environment.” Reply Br. 5. Given that Appellant’s Specification summarily instructs the reader to assign a single command ID to parent and child windows, we find that artisans are skilled enough to do so. To the extent Appellant may seek confirmation that artisans are skilled enough to apply MeshMaker’s exact technique to Dando’s system, we note that no such showing is required. *See In re Keller*, 642 F.2d 413, 425 (C.C.P.A. 1981) (“The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference[.]”).

Appellant further argues that the Examiner failed to show a “status bar” within Dando’s cited windows; that is, to show “displaying one status bar ...” by a parent window and child window, as claimed. According to Appellant, the Examiner rather cites a “title bar 52” (as referenced in Dando ¶ [0052]) at the top of a window. App. Br. 28. To show the “title bar 52” is not a “status bar,” Appellant provides a dictionary definition of “status bar” as follows: “a strip along the bottom of a software or Internet application that indicates what is happening with a task or information like date, time, cursor, or scroll position, page number, open applications, etc.” *Id.* However, we do not find Appellant’s arguments to be persuasive because the “status” label of “status bar” is non-functional descriptive language, limiting only the informational content of the status bar. Such mere

informational content is not entitled to patentable weight. *See In re Lowry*, 32 F.3d 1579, 1583 (Fed. Cir. 1994).

For the foregoing reasons, we affirm the obviousness rejection of claims 1-5, 10-14, 19-23, and 28 over Dando and MeshMaker.

Claims 30-37

Though presented under separate heading, Appellant's arguments for claims 30-33 merely reiterate the contentions for claims 1-5, 10-14, 19-23, and 28. App. Br. 29-33; Reply Br. 6-9. To the extent Appellant may presume that those contentions differ for claims 30-33,⁵ our above analysis already addresses the added feature of assigning a single command ID to a call function, as claimed ("the single menu command id is associated with a section of code"). Accordingly, we affirm the obviousness rejection of claims 30-33 over Dando and MeshMaker.

Appellant also presents separate arguments for claim 34-37, but again merely reiterates the contentions for claims 1-5, 10-14, 19-23, and 28. App. Br. 33-37; Reply Br. 9-11. To the extent Appellant may presume that those contentions differ for claims 34-37,⁶ our above analysis already addresses the added feature of assigning a single menu command id to respective menu

⁵ If Appellant views the repeated arguments as differing amongst claims, then the difference should be meaningfully explained and supported. Otherwise, Appellant fails to address – and we likewise will not attempt to address – how the separately argued claims *respectively* distinguish over the prior art. *See In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (affirming in part because Appellant “merely argued that the claims differed from [the prior art], and chose not to proffer a serious explanation of this difference.”); *In re Baxter Travenol Labs*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an appellant[.]”).

⁶ *See* fn. 4.

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items of multiple child windows, as claimed (“a plurality of command menus from a plurality of child windows are mapped to a single section of code”). Accordingly, we affirm the obviousness rejection of claims 34-37 over Dando and MeshMaker.

ORDER

The Examiner’s decision rejecting claims 1-37 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

llw