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CARR & FERRELL LLP 120 CONSTITUTION DRIVE MENLO PARK, CA 94025			LARYEA, LAWRENCE N	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* SORIN GRUNWALD, ROBERT STANSON,  
SOO HOM, AILYA BATOOL, and  
GLEN W. MCLAUGHLIN

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Appeal 2010-010985  
Application 11/336,088  
Technology Center 3700

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Before: LINDA E. HORNER, BRETT C. MARTIN, and  
LYNNE H. BROWNE, *Administrative Patent Judges*.

MARTIN, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF CASE

Sorin Grunwald et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-18. We have jurisdiction under 35 U.S.C. § 6(b).

We DIMISS-IN-PART and AFFIRM.

## THE INVENTION

Appellants' claims are directed generally "to a user interface for an ultrasound imaging device and to a handheld ultrasound imaging device." Spec., para. [1003]. Claim 2, reproduced below, is illustrative of the claimed subject matter:

2. An ultrasound system comprising:
  - an ultrasound imaging device capable of operating in a plurality of operation modes, wherein at least one of the operation modes is selected from a group of operation modes; and
  - a user interface comprising an auto optimize mode, the auto optimize mode configured to automatically optimize a display of the ultrasound imaging device by adjusting one or more settings selected from the group consisting of: gain, contrast, compression maps, position of an image on the display, edge enhancement, persistence, flash suppression, or baseline shift, in accordance with a plurality of parameters selected by a user of the ultrasound imaging device.

## REFERENCES

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

Vara	US 6,063,030	May 16, 2000
Guracar	US 6,110,118	Aug. 29, 2000
DeLuca	US 6,238,338 B1	May 29, 2001

### THE REJECTIONS ON APPEAL

The Examiner made the following rejections:

Claims 1-16 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Vara and Guracar. Ans. 3.

Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Vara, Guracar, and DeLuca. Ans. 5.

Claim 1 stands rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Ans. 6.

### ANALYSIS

#### *Rejection under 35 U.S.C. § 101*

The Examiner presents a new ground of rejection in the Examiner's Answer rejecting claim 1 as being directed to non-statutory subject matter due to the recitation of "a graphical user interface." Ans. 6. The Examiner makes this rejection because "this limitation could read on as [sic] a software program not embodied on a computer readable medium which is intangible." *Id.* According to the Examiner this does not allow for categorization into "one of the four enumerated categories of invention and therefore is non-statutory subject matter." *Id.* Appellants did not exercise one of the two options required under 37 C.F.R. § 41.50(b) following entry of a new ground of rejection in an examiner's answer. Specifically, § 41.50(b) provides that "to avoid sua sponte dismissal of the appeal as to the claims subject to the new ground of rejection" appellant must either request that prosecution be reopened by filing a reply under 37 C.F.R. § 1.111 or maintain the appeal by filing a reply brief under 37 C.F.R. § 41.41. Appellants took neither action. As such, the appeal is dismissed as

to claim 1. *See Manual of Patent Examining Procedure* (MPEP) § 1207.03 (8th Ed., Rev. 9, Aug. 2012) (“If only some of the claims under appeal are subject to the new ground of rejection, the dismissal of the appeal as to those claims operates as an authorization to cancel those claims and the appeal continues as to the remaining claims.”)

*Obviousness over Vara and Guracar*

Claims 2-18

Appellants argue claims 2 and 16 together as a group. App. Br. 12-13. We select claim 2 as representative. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2011). Further, because Appellants provide no separate arguments with respect to claims 3-15, 17, and 18<sup>1</sup>, which variously depend from claims 2 and 16, these claims stand or fall with claim 2.

As to claim 2, Appellants assert that the Examiner has failed to account for two recitations, specifically “a user interface comprising an auto optimize mode” and the auto optimize mode configured to automatically optimize a display “in accordance with a plurality of parameters selected by a user.” App. Br. 12. The Examiner utilizes Guracar for teachings relating to the auto-optimization aspects of claim 2<sup>2</sup> and Appellants argue that Guracar does not suggest “that the optimization of the display may be conducted in association with a mode included on a user interface” because Guracar discusses “a microprocessor that automatically adjusts the image by controlling the beamformer and/or increasing the frame rate.” App. Br. 12. (emphasis removed).

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<sup>1</sup> *See* App. Br. 14.

<sup>2</sup> *See, e.g.,* Ans. 4.

As the Examiner points out, however, “Guracar et al teach an ultrasound imaging system which includes an auto optimize mode which is automatically configured to adjust (optimize) a plurality of parameters which includes a color ultrasound image(s).” Ans. 8 (citing to Guracar col. 3, l. 57, col. 4, ll. 1-25, col. 11, ll. 65-66, col. 12 lines 24-34) (emphasis removed). Furthermore, as the Examiner points out, one of the settings specifically disclosed as being optimized is baseline shift, which is one of the settings claimed in claim 2. Ans. 8 (citing to Guracar col. 15, ll. 5-67 and col. 17, ll. 1-33). The Examiner also references (Ans. 8) Guracar’s disclosure that “[t]he parameter selection and threshold unit **168** also implements selection of various parameters ... [and] [t]he selection is controlled by the operator via user interface 133.” Col. 8, ll. 8-11 (emphasis added). As such, the Examiner’s findings with respect to what Guracar discloses in relation to the claim language at issue appear to be sufficient to support the rejection.

Given these findings by the Examiner as to the teachings of Guracar and their alignment with the language of claim 2 at issue, we are not apprised of error in the Examiner’s decision to reject claim 2 as obvious over the combination of Vara and Guracar. Accordingly, we sustain the Examiner’s rejection of claim 2. As noted above with regard to Appellants’ claim groupings, claims 3-18 stand or fall with claim 2, thus we sustain the Examiner’s decision to reject claims 3-18 for the same reasons as stated above with respect to claim 2.

## DECISION

For the above reasons, we AFFIRM the Examiner’s decision to reject claims 2-18. The appeal is DISMISSED as to claim 1.

Appeal 2010-010985  
Application 11/336,088

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).

DISMISSED-IN-PART; AFFIRMED

Klh