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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RYUSUKE NISHIDA and KAZUHISA TSUCHIYA

Appeal 2011-000263
Application 10/551,556
Technology Center 2600

Before MAHSHID D. SAADAT, JASON V. MORGAN, and
JOHNNY A. KUMAR, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ Appellants waived an oral hearing scheduled for January 17, 2013.

STATEMENT OF THE CASE

Introduction

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 2, and 4 – 8. Claim 3 is canceled. App. Br. 3. We have jurisdiction under 35 U.S.C. § 6(b)(1).

We affirm and enter a new ground of rejection.

Invention

The invention relates to a nonlinear editing apparatus capable of creating an edit list based on an editing process when executing the editing process. *See Spec. 1.*²

Exemplary Claims (Emphases Added)

1. An editing apparatus comprising:

an edit list recognition unit for recognizing an edit list describing edit contents in a general-purpose data description language, the edit contents used for creating a series of video content by editing a plurality of edit material;

a video content creation unit for creating the video content by performing an editing process on the plurality of edit material based on the edit contents of the edit list *wherein the video content creation unit creates the video content by executing the editing process after converting the plurality of edit material into a prescribed edit format suitable for the editing process and extracting desired video content of the plurality of edit material based on a plurality of edit point information;*

an editing processor for performing an editing process on the video content created by the video content creation unit; and

² In this opinion we refer to Appellants' substitute specification, filed November 14, 2006 ("Spec.").

an edit list creation unit for creating a new edit list described in the general-purpose data description language based on the editing process executed by the editing processor.

7. The editing apparatus according to claim 1, *wherein said plurality of edit point information indicates IN-points and OUT-points of said edit list.*

Rejections

The Examiner rejects claims 1, 2, and 6 – 8 under 35 U.S.C. § 102(b) as being anticipated by Kawahara (US 2003/0026592 A1; Feb. 6, 2003).
Ans. 4 – 5; Misc. Comm. (June 16, 2010).

The Examiner rejects claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Kawahara and Chakravarty (US 2002/0175917; Nov. 28, 2002 A1). Ans. 5 – 7.

ISSUES

1. Did the Examiner err in finding that Kawahara discloses “wherein the video content creation unit creates the video content by executing the editing process after converting the plurality of edit material into a prescribed edit format suitable for the editing process and extracting desired video content of the plurality of edit material based on a plurality of edit point information,” as recited in claim 1?

2. Did the Examiner err in finding that Kawahara discloses “wherein said plurality of edit point information indicates IN-points and OUT-points of said edit list,” as recited in claim 7?

ANALYSIS

Claims 1, 2, and 4 – 6

Claim 1 is directed to an editing apparatus comprising an edit list recognition unit, a video content creation unit, an editing processor, and an edit list creation unit. The Examiner finds that Kawahara, which is directed to a content creating device and method, discloses all of these components. *See* Ans. 4 – 5. In particular, the Examiner finds that the combination of Kawahara’s video editing terminals 15, 16, and 17 and edit controller 20, discloses a video content creation unit. *See* Ans. 4 (citing, e.g., Kawahara fig. 1). The Examiner also finds that Kawahara’s editor 32 discloses an editing processor. *Id.*

Appellants contend that “there is no mention of a video content creation unit that creates video content by executing an editing process after converting the plurality of edit material into a prescribed edit format suitable for the editing process and extracting desired video content of the plurality of edit material based on a plurality of edit point information.” App. Br. 11. However, the Examiner correctly finds that Kawahara’s video editing terminals 15, 16, and 17 read out highly compressed sub materials from an internal recording medium, thus converting a plurality of edit material into a prescribed edit format suitable for the editing process. *See* Ans. 8 (citing Kawahara ¶ [0091]). The Examiner further finds that Kawahara uses edit controller 20 to extract desired video content based on edit point information. *See* Ans. 4 (citing Kawahara ¶ [0092]); *see also* Kawahara ¶ [0095] (“raw material 31 reads out the raw materials . . . based on the edit control signal supplied from the edit controller 20”). The Examiner also correctly finds that Kawahara’s editor (i.e., editing process) edits raw

materials on the basis of the edit control signal supplied from the edit controller 20 and thus discloses executing the editing process *after* performing the converting and extracting steps. *See* Ans. 4 (citing Kawahara ¶ [0096]); *see also* Kawahara fig. 1. That is, since the output provided by the video editing terminals and the edit controller 20 form the input provided to editor 32, the video control unit executes the editing process *after* converting edit materials and extracting desired video content. Therefore, we agree with the Examiner that Kawahara discloses “wherein the video content creation unit creates the video content by executing the editing process after converting the plurality of edit material into a prescribed edit format suitable for the editing process and extracting desired video content of the plurality of edit material based on a plurality of edit point information,” as recited in claim 1.

Accordingly, we affirm the Examiner’s 35 U.S.C. § 102(b) rejection of claim 1, as well as the 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) rejections of claims 2 and 4 – 6, which are not argued with sufficient specificity to constitute separate arguments. *See* App. Br. 8 and 12 – 15.

Claims 7 – 8

Claim 7 depends on claim 1 and recites “wherein said plurality of edit point information indicates IN-points and OUT-points of said edit list.” The Examiner finds that Kawahara, by disclosing edit cut-in and cut-out time codes, discloses this recitation. *See* Misc. Comm. (June 16, 2010) (citing Kawahara ¶ [0118]).

Appellants contend that the rejection is in error because the Examiner introduced a new ground of rejection without giving Appellants a chance to

respond. *See* Reply Br. 10. Appellants further assert that claims 7 – 8 would be allowable if re-written into independent form. *Id.* While the Examiner’s rejection of claims 7 and 8 was not provided until after the Examiner’s Answer was submitted, we find that Kawahara discloses portions of an edit procedure list (EPL) with time codes that “indicate an edit cut-in (IN) and cut-out (OUT) . . . of an editing.” Kawahara ¶ [0118]; *see also* Kawahara fig. 5. These time codes thus provide IN-points and OUT-points of the edit procedure list. We therefore agree with the Examiner that Kawahara discloses “wherein said plurality of edit point information indicates IN-points and OUT-points of said edit list,” as recited in claim 7.

Accordingly, we affirm the Examiner’s 35 U.S.C. § 102(b) rejection of claim 7 and of claim 8, which contains the same recitation. However, because the Examiner’s rejection of claims 7 and 8 was untimely, we designated this rejection a new ground of rejection.

DECISION

The Examiner’s decision to reject claims 1, 2, and 4 – 8 is affirmed.

The rejection of claims 7 and 8 is designated as a new ground of rejection.

37 C.F.R. § 41.50(b) provides that, “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that the Appellants, **WITHIN TWO MONTHS FROM THE DATE OF THE DECISION**, must exercise one of the following two options with respect to the new grounds of

Appeal 2011-000263
Application 10/551,556

rejection to avoid termination of proceedings (37 C.F.R. § 1.197 (b)) as to the rejected claims:

(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) Request rehearing. Request that the proceeding be reheard under 37 C.F.R. § 41.52 by the Board upon the same record. . . .

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
37 C.F.R. § 41.50(b)

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