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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANTHONY J. SAMMARCO

Appeal 2011-004275
Application 11/380,451
Technology Center 2600

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

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1, 2, 5, 6, 9, and 10. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellant's claimed invention is a portable mobile communications device and a "system and method that can display and manipulate multiple real-time data streams on a mobile device." (Spec. ¶ [0002].)

Independent claim 1, reproduced below, is representative of the subject matter on appeal.

> 1. A method of navigating among multiple real-time data streams on a mobile device, the method comprising:
>
> locating and identifying real-time data streams capable of being displayed by the mobile device;
>
> determining whether the mobile device is capable of executing multiple real-time data streams simultaneously;
>
> displaying multiple thumbnail image representations, each thumbnail image representation associated with an available real-time data stream;
>
> receiving a selection for a picture-in-picture (PIP) display;
>
> receiving a first navigation input from a user interface, the navigation input for navigating among the multiple displayed thumbnail image representations;
>
> selecting a primary thumbnail image representation based on the navigation input;

> receiving a second navigation input from the user interface and selecting a secondary thumbnail image representation based on the second navigation input;
>
> activating an audio portion of the real-time data stream associated with the primary thumbnail image representation; and
>
> displaying the real-time data stream associated with the primary thumbnail image representation and the real-time data stream associated with the second thumbnail image representation in a PIP format on a mobile device display,
>
> wherein the thumbnail image representations comprise still images captured from their associated real-time data streams when the mobile device is not capable of executing multiple real-time data streams simultaneously and wherein each thumbnail image representation comprises a real-time data stream when the mobile device is capable of executing multiple real-time data streams simultaneously.

REFERENCES

Zaslavsky	US Pat. App. Pub. No. 2003/0014752 A1	Jan. 16, 2003
Barrett	US Pat. App. Pub. No. 2005/0071782 A1	Mar. 31, 2005
Masuda	US Pat. App. Pub. No. 2005/0176471 A1	Aug. 11, 2005

REJECTION

Claims 1, 2, 5, 6, 9, and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Barrett, Zaslavsky, and Masuda.

ANALYSIS

With respect to independent claims 1, 5, and 9, Appellant presents arguments as to all three (3) claims as a single group. (App. Br. 7-12).

Therefore, we will address Appellant's claims on appeal as a single group. We select independent claim 1 as the representative claim and will address Appellant's arguments thereto.

Appellant argues that "[t]he present invention locates and identifies real-time data streams that are **capable of being displayed by the mobile device.**" (App. Br. 9). Appellant contends that "the present invention provides for searching the received data streams and discriminating between such data streams based upon whether the data streams are capable of being displayed by the mobile device" and Appellant contends that the "identifying data streams capable of display is equivalent to discriminating between data streams." (*Id.*). We disagree with Appellant's contentions and find that Appellant's argument is not commensurate in scope with the express language of independent claim 1.

Appellant further contends that "[i]dentifying data streams capable of display prior to displaying the data streams insures that the real-time data stream is in a form that allows the user to comprehend the subject matter currently being broadcast on the data streams." (App. Br. 9). Again, we disagree with Appellant's contention and find that Appellant's argument is not commensurate in scope with the express language of independent claim 1.

Appellant repeats the language of "locating and identifying …" and maintains that the Barrett reference does not teach or suggest the claimed limitations. (App. Br. 10). We disagree with Appellant and find that the Examiner has further explained the claim interpretation and line of reasoning where locating and identifying is interpreted with respect to the specific area of the display with respect to the channel information (Ans. 13-14). We

agree with the Examiner's claim interpretation and application of the prior art teachings. Appellant has not identified any express definition of the claim terminology, and we find the same language as the claim language at page 6 of Appellant's Specification. Therefore, Appellant has not shown error in the Examiner's claim interpretation or application of prior art teachings to show error in the Examiner's ultimate conclusion of obviousness.

Appellant argues that "Barrett does not teach or suggest any pre-processing prior to display of the data stream that would locate and identify data streams **capable** of being displayed." (App. Br. 10). Appellant's argument is not commensurate in scope with the express language of independent claim 1 and does not show error in the Examiner's conclusion of obviousness.

Appellant repeats the language of independent claim 1 with regard to the step of "determining whether the mobile device is capable of executing multiple real-time data streams simultaneously" and the two "wherein" clauses and contends that:

> **[**C]ertain mobile devices may not be capable of executing or displaying multiple real-time data stream simultaneously, in which case the mobile device is limited to display thumbnail image representations of still images captured from their respective real-time data streams. The presently claimed invention provides for determination of whether the mobile device is capable of executing multiple real-time data streams simultaneously and based on the determination . . . .

(App. Br. 11). We disagree with Appellant's contention that the display is "based upon the determination" since "based upon" is not expressly found in the language of independent claim 1 and the "wherein" clauses are not

necessarily linked to this determination step. Appellant further contends that the "determination of whether the mobile device is capable [of] executing multiple real-time data streams simultaneously takes into account that the result of the determination may change over time, for example, if the device undergoes a software upgrade or the like." (App. Br. 11). Again, Appellant's argument is not commensurate in scope with the claim language of independent claim 1 and does not show error in the Examiner's showing of obviousness.

With respect to Appellant's arguments regarding process IDs (PID's) and multiple video streams in Zaslavsky (App. Br. 11-12; Reply Br. 3-4), we disagree with Appellant that Zaslavsky necessarily would determine "how *many* video streams" since there may be older or less expensive set top boxes which have limited capabilities. Therefore, Appellant's argument does not show error in the Examiner's conclusion of obviousness.

Appellant contends that Zaslavsky is "silent as to any teaching that, absent the capability of executing multiple real-time data streams simultaneously, the set top box would provide for displaying thumbnail image representations that include still images captured . . . ." (App. Br. 12; *see generally* Reply Br. 5-9). The Examiner maintains that Zaslavsky's paragraphs [0021] and [0117] teach and suggest this claimed limitation. (Ans. 16). We agree with the Examiner and find that Zaslavsky's paragraphs [0021], [0117], and [0118] discuss and suggest the use of "snapshots" of programming on each channel, live video, and "images" of actual real-time programming. We find Appellant's argument unavailing, and Appellant does not show error in the Examiner's conclusion of obviousness.

With respect to Appellant's arguments in the Reply Brief, we find Appellant's arguments unavailing and not commensurate in scope with the express language of representative independent claim 1. (Reply Br. 1-3). Appellant argues that Appellant "can find no disclosure of the television of Barrett actually performing any operations other than merely displaying a received signal which may or may not be a video feed capable of display." (Reply Br. 3). We find Appellant's argument unavailing since the method of independent claim 1 places no restrictions on the steps of "locating and identifying" and "determining." Therefore, Appellant's argument is unpersuasive. Additionally, we note that Barrett's paragraph [0056] which further details the disclosure in Figure 3 as introduced by paragraph [0054] identifies channel information which necessarily would have to be identified and located appropriately to the corresponding video data display. Therefore, Appellant's argument does not show error in the Examiner's claim interpretation or reliance on the prior art of Barrett.

With respect to Appellant's argument that the "determination of whether the mobile device is capable . . ." (Reply Br. 3) may change over time is not commensurate in scope with the express language of independent claim 1. Therefore, we find Appellant's argument unpersuasive of error.

With respect to Appellant's argument concerning the Examiner's interpretation with regard to determining whether a mobile device is capable of executing multiple real-time data streams simultaneously and the software capability and software updates (Reply Br. 4-5), Appellants' arguments are not commensurate in scope with the express language of independent claim 1. Therefore Appellants' arguments are not persuasive of error in the Examiner's showing of obviousness.

With respect to dependent claims 2, 6, and 10, Appellant relies upon the arguments advanced with respect to independent claims 1, 5, and 9. Since we found no deficiency, we find Appellant's argument unavailing and group these claims as falling with representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

The Examiner did not err in rejecting claims 1, 2, 5, 6, 9, and 10 under 35 U.S.C. § 103(a).

DECISION

The Examiner's decision rejecting claims 1, 2, 5, 6, 9 and 10 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