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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/398,138	04/04/2006	Frank Li-De Lin	50V8204.02	7647
108359	7590	02/22/2013	EXAMINER	
Sony Corp of America - FVS 16530 Via Esprillo MZ 7190 San Diego, CA 92127			PHANTANA ANGKOOL, DAVID	
			ART UNIT	PAPER NUMBER
			2175	
			NOTIFICATION DATE	DELIVERY MODE
			02/22/2013	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL
BOARD

Ex parte FRANK LI-DE LIN and RACHEL THUY NGUYEN

Appeal 2011-006197
Application 11/398,138
Technology Center 2100

Before JOHN A. JEFFERY, ST. JOHN COURTENAY III, and
THU A. DANG, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

I. STATEMENT OF THE CASE

Appellants have filed a Request for Rehearing under 37 C.F.R. § 41.52(a)(1) (hereinafter “Request”) on May 27, 2011 for reconsideration of our affirmance of the Examiner’s rejection of claim 13 in a Decision mailed May 27, 2011 (hereinafter “Decision”).

The Decision affirmed the Examiner’s rejection under 35 U.S.C. § 102(e) of claims 1-4, 6, 8-10, 12-17, and 20 over Smith.

We have reconsidered our Decision regarding claim 13 in light of Appellants’ comments in the Request, and grant the request solely to clarify our holding regarding claim 13. As noted *infra*, we maintain our affirmance of the Examiner’s rejection of claim 13, but for the reasons indicated below. We otherwise decline to change our Decision for the reasons discussed *infra*.

A. CLAIM AT ISSUE

Claim 13 is set forth below:

13. A system, comprising:

a [sic] audio-video device;

a processor controlling at least in part a display of the audio-video device to display a GUI in at least a portion of the display, the GUI comprising:

at least one column of control buttons, at least some control buttons being selectable to alter an order of presentation of select buttons; and

at least two columns of select buttons, a select button being selectable to select a respective multimedia stream for playing thereof on the audio-video device.

B. REJECTION

The prior art relied upon by the Examiner in rejecting claim 13 is:

Smith US 6,970,602 B1 Nov. 29, 2005

Claim 13 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Smith.

II. ISSUE

The issue we address on this Request is whether Appellants have identified that the Board has misapplied the relevant law and misapprehended the Appellants' argument by finding no error in the Examiner's finding that Smith discloses "at least some control buttons being selectable to alter an order of presentation of select buttons" (claim 13).

III. ANALYSIS

Appellants contend that "[t]he Decision, however, did not address, discuss, or mention the reordering feature of Claim 13" (Request 2). According to Appellants, "Smith does not appear to suggest that an order presentation is altered" (*id.*).

Although we previously indicated that claim 13 fell with claim 1 (Decision 6) and did not squarely address Appellants' separate arguments in connection with the particular recited function associated with the selectable control buttons, namely to alter an order of presentation of select buttons (App. Br. 7-8; Reply Br. 3-4), we nonetheless maintain our affirmance of the Examiner's rejection of that claim for the following reasons.

First, claim 13 merely requires “control buttons being selectable to alter an order of presentation of select buttons” (emphasis added). We agree with the Examiner that “claim 13 does not recite ‘reordering’” (Ans. 13). That is, claim 13 does not recite any “reordering” features, as Appellants contend, but rather merely “control buttons” that are “selectable” for the intended purpose of altering an order of presentation. “An intended use or purpose usually will not limit the scope of the claim because such statements usually do no more than define a context in which the invention operates.” *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 320 F.3d 1339, 1345 (Fed. Cir. 2003). We therefore find that claim 13 only requires control buttons that are selectable.

As we found in our Decision, Smith discloses a multimedia document such as a webpage, which comprises buttons and links (Decision 4). As set forth in our Decision, “a user is able to ‘do something’ such as interact with Smith’s webpage comprising buttons and links by clicking on the buttons and links” (Decision 5). That is, we find Smith discloses “at least some control buttons being selectable” as required by claim 13.

Further, we note that claim 13 does not define as to what “an order of presentation” means, includes or represents. In fact, claim 13 does not even define “presentation.” We give “presentation” its broadest reasonable interpretation as an offering for display and find “an order of presentation” as any order in which the buttons are offered to be displayed.

Since Smith discloses buttons being selectable (Decision 4), we find Smith discloses that the order in which the buttons are selected comprises an order in which the buttons are offered for display, wherein changes in selections comprise an altering of the order of selections.

Thus, even if the altering of the order of presentation were not merely an intended purpose of the buttons, we find no error in the Examiner's finding that Smith discloses such step by disclosing "a select button being selectable to select a respective multimedia stream for playing thereof on the audio-video device" (Ans. 5, emphasis omitted).

Accordingly, giving the claims their broadest but reasonable interpretation, we find no error in the Examiner's finding that Smith discloses "at least some control buttons being selectable to alter an order of presentation of select buttons" as required by claim 13. Thus, we maintain our affirmance of the Examiner's rejection of claim 13.

Accordingly, although we have modified our Decision to clarify our holding regarding claim 13 in light of Appellants' Request, we nonetheless find Appellants' substantive arguments unavailing.

IV. CONCLUSION

We have carefully considered the arguments raised by Appellants in the Request for Rehearing, and we grant Appellants' request solely to clarify our holding regarding claim 13. Therefore, to the extent that we overlooked Appellants' separate arguments regarding claim 13, we nonetheless find them unpersuasive for the reasons noted above. Accordingly we are still of the view that the invention set forth in claim 13 is unpatentable over the applied prior art based on the record before us in the original appeal. This Decision on Appellants' Request for Rehearing is deemed to incorporate our earlier Decision (mailed May 27, 2011) by reference. *See* 37 C.F.R. § 41.52(a)(1).

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V. DECISION

We have granted Appellants' request to the extent that we have reconsidered our Decision of May 27, 2011 regarding claim 13. But we deny the request with respect to changing any other aspect of our earlier Decision.

REHEARING GRANTED-IN-PART

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