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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YONATAN LEHMAN and EZRA DARSHAN

Appeal 2011-006316
Application 11/579,651
Technology Center 2400

Before ELENI MANTIS MERCADER, CARL W. WHITEHEAD, JR., and
GREGORY J. GONSALVES, *Administrative Patent Judges*.

GONSALVES, Administrative Patent Judge

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the rejection of claims 1, 4-7, 11-16, 20-31, 48, 51, and 59-64 (App. Br. 2-3). Claims 2, 3, 8-10, 17-19, 32-47, 49, 50, and 52-58 were cancelled (*id.*). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

The Invention

Claim 1 follows:

1. A system for managing resource-usage conflict among a plurality of viewers associated with a plurality of TVs, comprising:

a plurality of resources for shared usage among the viewers, the resources including at least one input device adapted to receive a program broadcast and to transmit the program broadcast onward for display; and

a resolution arrangement operationally connected to the at least one input device, the resolution arrangement being adapted to:

identify a usage conflict of at least one of the resources;
and

pass, in a consecutive manner, an on-screen display having a resource usage action-choice among the TV s for display by the TV s, so that the on-screen display is first displayed by one of the TVs and then displayed by another one of the TVs; and

determine the order of passing the on-screen display based on a priority assignment of the TVs, the priority assignment being based on at least one of the following: a time

of day; which of the viewers are viewing the TVs; a nature of viewing currently being viewed on the TVs; a channel being viewed on each of the TV s; and a viewing time of each of the TVs.

Claims 1, 4, 5, 11-16, 20, 21, 24-27, 48, 51 and 59-64 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Sparrell (US 2004/0268407 A1) (Ans. 3-6).

Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being rendered obvious by Sparrell in view of Young (US 7,251,255 B1) (Ans. 7).

Claims 22, 23 and 28 stand rejected 35 U.S.C. § 103(a) as being rendered obvious by Sparrell in view of Mate (US 6,859,845 B2) (Ans. 8-9).

Claims 29-31 stand rejected 35 U.S.C. § 103(a) as being rendered obvious by Sparrell in view of Cragun (US 5,973,683) (Ans. 9-11).

ISSUES

Appellants' responses to the Examiner's positions present the following issues:

1. Does Sparrell disclose a priority assignment for passing an on-screen display based on "*which of the viewers are viewing the TVs,*" as recited in independent claim 1, and as similarly recited in independent claims 48 and 51?
2. Does Sparrell disclose the priority assignments recited in dependent claims 12, 14-16, 60, and 62-64?

ANALYSIS

35 U.S.C. § 102 Rejection of Claims 1, 4, 5, 11, 13, 20, 21, 24-27, 48, 51 59, and 61

Appellants contend that the Examiner erred in rejecting independent claims 1, 48, and 51 as anticipated because Sparrell does not disclose the claim limitation emphasized above (App. Br. 7-10). In support of their contention, Appellants argue that “Sparrell does not disclose ordering the passing of the display (i.e., the claimed ‘on-screen display having a resource usage action-choice’) among the TVs based on which ones of the plurality of viewers are viewing those TVs - but discloses only separating out any of the TVs that is not being viewed by any of the viewers.” (App. Br. 8 (emphasis omitted)).

The Examiner found, however, that Sparrell discloses that alert screens are sent to televisions in a home network in an order that is based on whether the televisions are being viewed by a viewer:

[T]he alert is sent first to a TV has a high probability of being turned off then to the next TV with the next most likely powered off TV and so on. Sparrell discloses the claimed priority assignment of the TVs. For example, a TV has high priority to be alerted if no activity exists on the TV or if the viewer is not viewing TV

(Ans. 13). We agree with the Examiner’s finding. Sparrell discloses that the priorities of the resources in a home network changes when a television is no longer being viewed by Mom: “If Mom turns off the TV in the kitchen . . . The scheduling application communicates with the centralized resource manager 12 to tear down the previously instantiated graph (media pipeline)

and re-allocate the network resources to the current media request” (¶[0077]). Accordingly, we find no error in the Examiner’s anticipation rejection of independent claims 1, 48, and 51 as wells as claims 4, 5, 11, 13, 20, 21, 24-27, 59, and 61 dependent therefrom because Appellants did not set forth any separate patentability arguments for those dependent claims (*see* App. Br. 10).

35 U.S.C. § 102 Rejection of Claims 12, 14-16, 60, and 62-64

Appellants contend that the Examiner erred in rejecting claims 12 and 60 as anticipated because Sparrell does not disclose “a time of day as a basis for any priority assignment” (App. Br. 10). Appellants also contend that the Examiner erred in rejecting claims 14 and 62 because Sparrell does not disclose “nature of viewing currently being viewed on the TV s as a basis for any priority assignment” (*id.* at 12). Appellants further contend that the Examiner erred in rejecting claims 15 and 63 because Sparrell does not disclose “a channel being viewed on each of the TV s as a basis for any priority assignment” (*id.* at 14). Appellants also contend that the Examiner erred in rejecting claims 16 and 64 because Sparrell does not disclose “viewing time of each of the TVs as a basis for the priority assignment” (*id.* at 16). The Examiner, however, viewed these dependent claims as merely “further limiting alternatives which were not required to be addressed further for anticipation by Sparrell over and above the rational provided in the independent claims” (App. Br. 16). The Examiner also found, that even if the limitations recited in these dependent claims were given weight, Sparrell

would nonetheless anticipate them because it discloses that a priority is set based on the televisions that are being viewed (*see* App. Br. 17-21).

We agree with Appellants. Contrary to the Examiner's conclusion, each of dependent claims 12, 14-16, 60 and 62-64 contain limitations beyond those recited in the claims from which they depend. In particular, independent claims require a priority to be based on one of several factors while each of dependent claims 12, 14-16, 60 and 62-64 require the priority to be based on a particular factor. Moreover, these dependent claims require more than simply setting priority based on the televisions that are being viewed. Each of these claims require the priority to be set based on a particular factor (i.e., time of day, nature of viewing, channel being viewed and viewing time). And the Examiner did not show that Sparrell sets a priority based on any of these factors (*see* App. Br. 17-21). Accordingly, we find error in the Examiner's anticipation rejection of claims 12, 14-16, 60, and 62-64.

35 U.S.C. § 103 Rejection of Claims 6, 7, 22, 23, 28-31

We find no error in the Examiner's obviousness rejection of claims 6, 7, 22, 23, and 28-31 because Appellants did not set forth any separate patentability arguments for those claims (*see* App. Br. 10). Therefore we sustain the Examiner's rejection of the claims for the reason set forth above.

DECISION

We affirm the Examiner's decision rejecting claims 1, 48, and 51 as well as claims 4, 5, 11, 13, 20, 21, 24-27, 59, and 61 as anticipated under 35

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U.S.C. § 102(b) and claims 6, 7, 22, 23, and 28-31 as unpatentable under 35 U.S.C. § 103(a). We reverse the Examiner's decision rejecting claims 12, 14-16, 60, and 62-64 as anticipated under 35 U.S.C. § 102(b).

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-IN-PART

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