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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL J. DELUCA, YURY PRILUTSKY, ERAN
STEINBERG, PETER CORCORAN, ALEXEI POSOSIN, PETRONEL
BIGIOI, ALEXANDRU DRIMBAREAN, ADRIAN CAPATA and,
FLORIN NANU

Appeal 2011-007374
Application 12/035,416
Technology Center 2600

Before THU A. DANG, JAMES R. HUGHES, and GREGORY J.
GONSALVES, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 2-23. Claim 1 has been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

According to Appellants, the invention relates generally to the area of flash photography and more specifically to filtering “red-eye” from a digital camera image (Spec. 1, ll. 18-19).

B. ILLUSTRATIVE CLAIM

Claim 2 is exemplary:

2. One or more processor-readable media having code embodied therein for programming a processor that resides upon a portable digital camera device to perform within that device a method of filtering red eye from a digital image, wherein the method comprises:

providing illumination during image acquisition;

acquiring an image;

analyzing a subsample resolution representation of selected regions of the image; and

modifying an area within the image indicative of a red-eye phenomenon based on the analyzing.

C. REJECTION

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

Benati	US 5,432,863	Jul. 11, 1995
Sobel	US 6,300,935 B1	Oct. 09, 2001

Claims 2-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Benati and Sobel.

II. ISSUE

The dispositive issue before us is whether the Examiner has erred in determining that the combination of Benati and Sobel teaches or would have suggested “analyzing a subsample resolution representation of selected regions” of an image (claim 2).

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Benati

1. Benati discloses determining and correcting for eye color defects in an image due to flash illumination (Abstract), which includes a detection phase and a fix phase (Fig. 2).

2. The detection phase includes 5 stages: identification of eye color defect candidate pixels, segmentation, first scoring, region growth (or pixel score transition identification), and second scoring (col. 3, ll. 46-54); while the fix phase includes scaling and correcting (col. 3, ll. 56-58).

3. The method includes scanning an image to produce a digital image, defining a spatial region within the digital image which includes at least a portion of the subject's head, sampling pixels within the spatial region for their color content, and comparing each such sampled pixel with a plurality of threshold values which are representative of eye color defects to identify possible eye color defect pixels (col. 10, ll. 22-32).

IV. ANALYSIS

Appellants contend that “Benati does not analyze a subsample resolution representation of [a selected] region as required by Applicants’ claims 2-23” (App. Br. 9). Appellants further contend that “Benati also discloses to use a same or different resolution during a *fix* phase” and thus “Benati does not teach nor suggest to use a different resolution, such as a subsample resolution, during the detection phase” (*id.*).

However, the Examiner finds that “Benati analyzes segmented regions of the eye where the red-eye phenomenon occurs during the detection phase and further analyzes the selected region in the fix phase” (Ans. 7). The Examiner then finds that “[a]fter the resolution scaling is completed, the correcting section corrects the red eye phenomenon based on the eye color defect pixel from the scaling section” (Ans. 7-8).

We give the claim its broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Claim 2 merely recites “analyzing a subsample resolution representation” but does not define as to what the “subsample resolution representation” is except that it is a type of data that is being analyzed. However, what type of data that is being analyzed does not alter the

functionality of or provide any additional function to how the data is analyzed. That is, the limitation is essentially nonfunctional descriptive material in that the limitation simply describes the type data to be analyzed, but the underlying functionality remains the same regardless of the data type. *Ex parte Nehls*, 88 USPQ2d 1883, 1889 (BPAI 2008) (precedential). *See Ex parte Curry*, 84 USPQ2d 1272, 1274 (BPAI 2005) (informative) (Fed. Cir. Appeal No. 2006-1003), *aff'd*, Rule 36 (June 12, 2006).

Thus, we interpret claim 2 to merely require analyzing data of selected regions of an image. We note that although Appellants argue that “Benati does not teach nor suggest to use a different resolution, such as a subsample resolution, during the detection phase” (App. Br. 9), such argument is not commensurate in scope with the recited language of claim 2. That is, claim 2 does not require any “use” of any “resolution,” let alone a “different” resolution “during the detection phase.”

Like the claimed invention, Benati discloses modifying an area within an image indicative of a red-eye phenomenon based on analyzing (FF 1), wherein Benati’s method includes identifying eye color defect candidate pixels and then correcting the red-eye phenomenon (FF 2). In particular, the method includes defining a spatial region within the digital image which includes at least a portion of the subject’s head, sampling pixels within the spatial region for their color content, and then comparing each such sampled pixels with threshold values to identify possible eye color defect pixels (FF 3).

We find that Benati’s defined spatial region which includes the subject’s head comprises a “selected” region of the image. Thus, we find Benati’s sampling of pixels within the spatial region for their color content

and comparing the pixels with threshold values comprise analyzing data of selected regions of the image.

Further, we find no error in the Examiner's finding that "[a]fter the resolution scaling is completed, the correcting section corrects the red eye phenomenon based on the eye color defect pixel from the scaling section" (Ans. 7-8). That is, the sampled pixels comprise content that represent the image's resolution to be scaled. Thus, even if we were to give patentable weight to the non-functional descriptive material, we find no error in the Examiner's finding that such pixels comprise subsample resolution representation.

Accordingly, we conclude that Benati, combined with Sobel, *at least suggests* "analyzing a subsample resolution representation of selected regions of the image," as recited by claim 2. Appellants provide no argument for claims 3-23 separately from those of claim 2 (App. Br. 9), and thus, claims 3-23 fall with claim 2.

V. CONCLUSION AND DECISION

The Examiner's rejection of claims 2-23 under 35 U.S.C. § 103(a) 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

peb