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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEPHEN B. POLLARD

Appeal 2011-007923
Application 11/491,364¹
Technology Center 2600

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

HUGHES, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Application filed on Jul. 24, 2006 claiming benefit of United Kingdom Patent Application No.: GB 0518278.7, filed September 08, 2005. The Real Party in Interest is Hewlett Packard Development Company, LP. (App. Br. 1.)

STATEMENT OF CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-8 and 10-20. Claims 9 and 21 have been allowed and are not before us. (App. Br. 2.) We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

Invention

Appellant's invention is directed to image data processing. (Spec. 1, ll. 13-14.)²

Representative Claim

Independent claim 1, reproduced below with the key disputed limitations emphasized, further illustrates the invention:

1. A method of processing image data generated using an image capture device comprising a lens, the method comprising:

generating, by a processor in the image capture device, metric data for a plurality of segments of an image, the metric data representing a plurality of focus measures for each of the segments generated at a plurality of lens positions;

processing, by the processor, the metric data in order to cluster the segments into at least two groups on the basis of the respective focus measures of the segments, wherein each of at least one of the two groups includes multiple ones of the segments; and

determining, by the processor, a lens position for each of the groups corresponding to a position of true focus for the corresponding group.

² We refer to Appellant's Specification ("Spec."); Reply Brief ("Reply Br.") filed Apr. 20, 2011; and Appeal Brief ("App. Br.") filed Oct. 20, 2010. We also refer to the Examiner's Answer ("Ans.") mailed Dec. 14, 2010.

Rejections on Appeal

1. The Examiner rejects claims 1-4, 6-8, and 10-20 under 35 U.S.C. § 102(e) as being unpatentable over Kanayama (U.S. Patent No. 7,576,796 B2, issued Aug. 18, 2009 (filed Aug. 18, 2003)). (Ans. 3-9.)

2. The Examiner rejects claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Kanayama and Kinney (U.S. Patent No. 7,394,943 B2 issued July 1, 2008 (filed June 30, 2004)). (Ans. 10.)

Grouping of Claims

Based on Appellant's arguments in the Briefs, we will decide the appeal on the basis of representative claims 1 and 20. *See* 37 C.F.R. § 41.37(c)(1)(iv).

ISSUE

Under § 102, did the Examiner err in finding that Kanayama would have disclosed:

processing, by the processor, the metric data in order to cluster the segments into at least two groups on the basis of the respective focus measures of the segments, wherein each of at least one of the two groups includes multiple ones of the segments.

(emphasis added), within the meaning of independent claim 1 and the commensurate language of independent claim 20?

FINDINGS OF FACT

We adopt the Examiner's findings in the Answer and the Final Office Action mailed March 9, 2010 as our own, except as to those findings that we expressly overturn or set aside in the analysis as follows.

ANALYSIS

Claims 1-4, 6-8, and 10-19

Appellant argues, *inter alia*;

As purportedly disclosing the "metric data" that represents "a plurality of focus measures for each of the segments generated at a plurality of lens positions," the Examiner pointed to focus evaluation values obtained from image pickup devices 32A and 32B mentioned in column 6 of Kanayama. 05/25/2010 Office Action at 3. However, it is clear that Kanayama provides absolutely no hint whatsoever of processing such metric data in order to cluster the segments (of an image generated at a plurality of lens positions) into at least two groups on the basis of a respective focus measures of the segments, where each group includes multiple ones of the segments. In the rejection, the Examiner argued that channel A (chA) and B (chB) constitute the two groups of claim 1. *Id.* This allegation is clearly incorrect.

(App. Br. 5-6.) We agree for essentially the same reasons argued by Appellant.

The Examiner interpreted that adding together the signals in the focus areas for 86A and 86B, respectively, was equivalent to clustering of segments into first and second groups. (Ans. 12-13.) However, we agree with Appellant that Kanyama fails to disclose that each group comprises multiple segments of an image that are generated at multiple lens positions, as required by the claim language (App. Br. 5-6).

Based on this record, we conclude that the Examiner erred in rejecting independent claim 1. Accordingly, we reverse the Examiner's anticipation rejection of independent claim 1 and claims 2-4, 6-8, and 10-19 which depend therefrom.

Independent Claim 20

Appellant essentially argues that claim 20 is patentable for the same reasons as claim 1. (App. Br. 7.) The Examiner found that Kanayama disclosed a lens and a processor. (Ans. 9.) Appellant did not dispute the Examiners' findings. We agree with and adopt the Examiner's findings.

We observe that claim 20 is an apparatus claim that recites functional language ("a processor configured to: generate metric data . . . ; process the metric data . . . ; and determine a lens position . . ."). The argued limitations (App. Br. 7) fail to distinguish the claimed invention from the prior art either structurally or functionally. The claimed metric data, which is generated and processed, is non-functional descriptive material (data) and the functional limitations directed to it simply describe intended operations on data. Therefore, the limitations argued by Appellant are statements of intended use and non-functional descriptive material and we do not ascribe them patentable weight.

The data generated and processed by a device is non-functional descriptive material in that the underlying structure and functionality remain the same regardless of what the data constitutes, how the data may be named, or the relationship among the data and do not further limit the claimed invention either functionally or structurally. The informational content of the data thus represents non-functional descriptive material, which "does not lend patentability to an otherwise unpatentable computer-implemented product or process." *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) (“‘wellness-related’ data in the databases and communicated on distributed network does not functionally change either the data storage system or communication system used in the [claimed] method . . .”). *See also In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004); *Nehls*, 88 USPQ2d at 1887-90 (discussing non-functional descriptive material).

Based on this record, we conclude that Appellant has not shown the Examiner erred in rejecting claim 20. Accordingly, we affirm the Examiner’s § 102 rejection of claim 20.

Dependent Claim 5

As noted above, dependent claim 5 is rejected under § 103. We do not find, nor has the Examiner established, that Kinney cures the deficiencies of Kanayama discussed above. Accordingly, we reverse the Examiner’s rejection of claim 5 for the same reasons discussed above regarding claim 1.

CONCLUSION OF LAW

Appellant has shown that the Examiner erred in rejecting claims 1-4, 6-8 and 10-19 under 35 U.S.C. § 102(e).

Appellant has not shown the Examiner erred in rejecting claim 20 under 35 U.S.C. § 102(e).

Appellant has shown the Examiner erred in rejecting claim 5 under 35 U.S.C. § 103(a)

DECISION

We reverse the Examiner’s rejection of claims 1-4, 6-8 and 10-19 under 35 U.S.C. § 102(e).

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We affirm the Examiner's rejection of claim 20 under 35 U.S.C.
§ 102(e).

We reverse the Examiner's rejection of claim 5 under 35 U.S.C.
§ 103(a).

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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