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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NIKOLAOS GEORGIS, FREDRIK CARPIO, and PAUL JIN
HWANG

Appeal 2011-010896
Application 12/165,285
Technology Center 2600

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

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-4 and 6-19. Claim 5 has been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

A. INVENTION

According to Appellants, the invention relates generally to improving the image quality during digital zoom in cameras without optical zoom capability (Spec. 1, ll. 4-5).

B. ILLUSTRATIVE CLAIM

Claims 1, 6 and 14 are exemplary:

1. A method, comprising:

receiving a user selection of digital zooming in a camera;

responsive to the user selection of digital zooming in the camera and without further user input, automatically generating plural images by capturing the images automatically in quick succession within a few seconds of receiving the user selection of digital zooming in the camera, transparently to the user;

digitally zooming at least portions of at least some original images, each original image encompassing an original area, by removing a respective portion of each of the original images from the respective original image to render a respective cropped image of the original image and expanding remaining image pixels in the cropped image to fill an area equal in size to the original area; and

superimposing at least some cropped images to produce an improved digital zoom image transparently to the user.

6. Apparatus, comprising:

an imager;

a processor communicating with the imager to receive signals therefrom; and

a computer readable medium accessible to the processor and bearing instructions to cause the processor, in response to a predetermined user command, to:

generate at least two images automatically;

digitally zoom each image to render a respective zoomed image; and

superimpose the zoomed images on each other to render a modified zoomed image.

14. Apparatus, comprising:

an imager;

a display; and

a processor configured to present on the display a modified digital zoom image including at least two superimposed images.

C. REJECTION

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

Hijishiri	US 6,906,746 B2	June 14, 2005
Nestares	US Pat. Pub. 2007/0019887	Jan. 25, 2007
Nikkanen	US Pat. Pub. 2007/0019887 A1	Dec. 28, 2006

Claims 1-4, 6, 7, 9, 12-15, and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hijishiri and Nestares.

Claims 8, 10, 11, 16, 18, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hijishiri, Nestares, and Nikkanen.

II. ISSUES

The dispositive issues before us are whether the Examiner has erred in finding that the combination of Hijishiri and Nestares teaches or would have suggested:

1. “*responsive to the user selection of digital zooming..., automatically generating plural images by capturing the images automatically in quick succession within a few seconds of receiving the user selection of digital zooming*” (claim 1, emphasis added);
2. “*superimpose the zoomed images on each other*” (claim 6, emphasis added); and
3. “Apparatus, comprising... an imager; a display; and a processor *configured to present...*” (claim 14, emphasis added).

III. FINDINGS OF FACT

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

Hijishiri

1. Hijishiri discloses a digital still camera comprising a CCD 2 driving by a timing generator 11 to sense the image of the subject at regular time intervals (col. 4, ll. 56-59; Fig. 1).

2. Digital image data is stored temporarily in an image memory 5 via signal processing circuit (col. 4, ll. 65-67), wherein the image data is read out of the image memory 5 and is subjected to processing in the signal processing circuit (col. 5, ll. 38-43).

3. In cropped image sensing, the image within a cropping area is displayed on the display screen of the liquid crystal display device (col. 5, ll. 16-18).

Nestares

4. Nestares discloses a video surveillance system including a face detector to automatically select faces in the image as the region of interest, wherein the area of interest may be interpolated at x7 magnification with or without super resolution (p. 8, [00730]).

IV. ANALYSIS

Claims 1-4 and 6-13

As for claim 1, Appellants contend that in Hijishiri, “[t]he zooming of the cropped image occurs automatically” and that “nowhere does Hijishiri teach or suggest generating plural images responsive to a user-generated digital zooming selection” (App. Br. 5). In particular, Appellants contend

that “Hijishiri appears to generate images only in response to the shutter release button 16, which cannot be a digital zoom selector since the full uncropped image is the only thing generated in response to it” (*id.*).

Although the Examiner finds that, in Hijishiri, “a plurality of images of an imaged scene/subject are continuously generated in quick succession” (Ans. 15), we cannot find any teaching or suggestion in the sections of Hijishiri referenced by the Examiner of automatically generating plural images is “responsive to the user selection of digital zooming,” as required by claim 1.

We agree with the Examiner that Hijishiri discloses generating images automatically at regular time intervals (FF 1). Further, Hijishiri discloses cropping an image and displaying the cropped image (FF 2-3). We agree with the Examiner that the display of the cropped image comprises zooming of the image. However, we cannot find and the Examiner does not point to any portion of Hijishiri in which the images are generated responsive to the zooming.

Since the Examiner has not made a clear showing as to what teachings of Hijishiri comprise or would have suggested “responsive to the user selection of digital zooming..., automatically generating plural images by capturing the images automatically in quick succession within a few seconds of receiving the user selection of digital zooming” as required by claim 1 , we are constrained to reverse the Examiner’s rejection of independent claim 1 and claims 2-4 depending therefrom over Hijishiri in view of Nestares.

As for claim 6, Appellants argue that “no reference digitally zooms original images by using an expanded cropped image *as claimed for superimposition*” (App. Br. 5). Although the Examiner finds that “the

applied Nestares reference fully discloses a method that digitally zooms cropped images forming expanded cropped images and subjects the expanded cropped images to superimposition operations” (Ans. 19), we cannot find any teaching in the sections of Nestares referenced by the Examiner that superimposition operations are performed.

Nestares discloses selecting faces in an image as the region of interest, wherein the area of interest may be interpolated with or without super resolution (FF 4). That is, in Nestares, the area of interest may be interpolated.

We cannot determine and the Examiner does not explain where in the portions of Nestares of a teaching of superimposition operations. Since the Examiner has not made a clear showing as to what teachings of Nestares comprise superimposition of zoomed images on each other, as required by claim 6, we are constrained to reverse the Examiner’s rejection of independent claim 6 and claims 7, 9, 12 and 13 depending therefrom over Hijishiri and Nestares.

The Examiner does not show how Nikkanen cures the deficiencies of Hijishiri and Nestares. Accordingly, we also reverse the rejection of claims Claims 8, 10, and 11 depending from claim 6 over Hijishiri and Nestares in further view of Nikkanen.

Claims 14-19

As for claim 14, we note that the claim merely recites an apparatus comprising “a processor configured to” present on the display an image (emphasis added). We find such “configured to” language merely represents a statement of intended purpose of the processor. An intended purpose will not limit the scope of the claim because it merely defines a context in which

the invention operates. *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 320 F.3d 1339, 1345 (Fed. Cir. 2003). Thus, we give “processor configured to” its broadest reasonable interpretation as any processor that is capable of presenting an image.

Furthermore, we note that the “a modified digital zoom image including at least two superimposed images” is merely a data type that the processor is configured to present on a display. However, what type of data that is being presented for display does not alter the functionality of or provide any additional function to presenting of the data. That is, the limitation is essentially nonfunctional descriptive material in that the limitation simply describes the type data to be presented 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 conclude that claim 14 merely requires a processor that is able to present data. We find no error in the Examiner’s conclusion that Hijishiri in view of Nestares would have at least suggested such processor. Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting independent claim 14 and claims 15, and 17 depending therefrom over Hijishiri and Nestares.

Appellants do not provide arguments for claims 16, 18, and 19 separate from those of claim 14 (App. Br. 6). Accordingly, claims 16, 18, and 19 fall with claim 14.

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V. CONCLUSION AND DECISION

The Examiner's rejection of claims 14-19 under 35 U.S.C. § 103(a) is affirmed while the Examiner's rejection of claims 1-4 and 6-13 under 35 U.S.C. § 103(a) is reversed.

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).

ORDER

AFFIRMED-IN-PART

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