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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/011,231	09/14/2010	5,828,420	003597-0003-501	1972
75563	7590	02/27/2013	EXAMINER	
ROPES & GRAY LLP PATENT DOCKETING 39/361 1211 AVENUE OF THE AMERICAS NEW YORK, NY 10036-8704			ESCALANTE, OVIDIO	
			ART UNIT	PAPER NUMBER
			3992	
			MAIL DATE	DELIVERY MODE
			02/27/2013	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte UNITED VIDEO PROPERTIES, INC.

Appeal 2012-010796
Reexamination Control 90/011231
Patent 5,828,420
Technology Center 3900

Before HOWARD B. BLANKENSHIP, KEVIN F. TURNER, and
STEPHEN C. SIU, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

This is an appeal under 35 U.S.C. § 134(b) from the Examiner's final rejection of claims 15 and 16. Claims 2-5, 7, 9-12, and 14 are not subject to

¹ This appeal is related to Appeal No. 2012-101801, Control No. 90/011237 and Appeal No. 2012-010809, Control. Nos. 90/011236 and 90/011548.

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reexamination. Although claims 1, 6, 8, 13, 15, and 16 are under final rejection, Appellant appeals the rejection of only dependent claims 15 and 16, which are proposed new claims.

We have jurisdiction under 35 U.S.C. § 306. Oral hearing was on November 28, 2012.

We affirm.

Invention

The '420 patent is directed to a video mix program guide whereby a base programming signal has superimposed thereon a scroll information picture image signal which may be displayed on a viewer's television. Col. 2, ll. 35-56.

Figure 9 of the '420 patent is reproduced below.

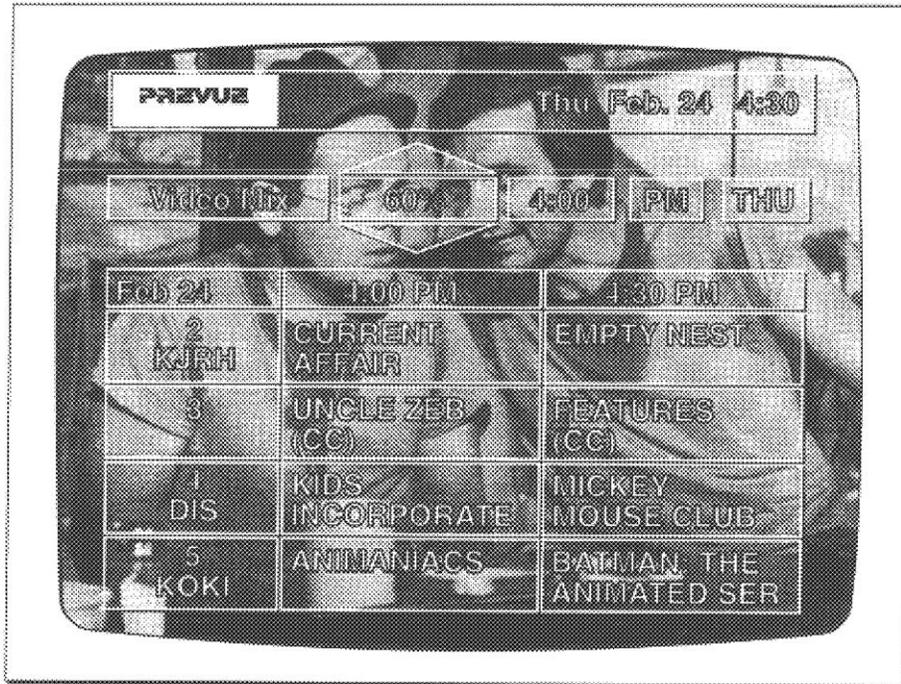


Fig. 9

Figure 9 is said to illustrate a sixty percent video mix, the percentage indicating the weight of the programming guide signal superimposed on the base programming signal. Col. 3, ll. 40-45.

Representative Claims

1. A system interactively controlled by a remote control for displaying a program guide on a display screen, comprising:

a tuner for receiving television signals corresponding to a plurality of television channels and providing an output television signal corresponding to a selected television channel of the plurality of television channels;

computer circuitry for receiving control signals from the remote control and for receiving program guide data for the program guide, the computer circuitry generating a program guide output signal corresponding to at least a portion of the program guide data; and

superimposing circuitry for displaying the program guide with a perceived transparency on the selected television channel on the display screen by combining the program guide output signal and the output television signal.

15. The system of claim 1, wherein a portion of the program guide is displayed without transparency such that the portion is opaque with respect to a portion of the selected television channel.

Prior Art

Reiter	US.4,751,578	June 14, 1988
Okura ²	JP 04291582	October 15, 1992
Yoshio	EP 0 342 803 B1	November 23, 1989

Examiner's Rejections

Claims 15 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Reiter and Okura or Yoshio.

Claim Groupings

Based on Appellant's arguments in the Appeal Brief, we will decide the appeal on the basis of representative claim 15. *See* 37 C.F.R. § 41.37(c)(1)(iv).

² With English translation provided by USPTO, September 2011.

FINDINGS OF FACT

1. Okura discloses that prior art television or other video signal display devices included the channel number of the program image superimposed on the program image. Okura ¶ [0003].

2. Figure 6 of Okura is reproduced below.

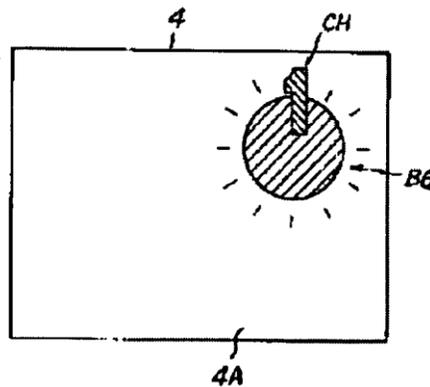


Figure 6: Conventional channel display

Figure 6 is said to show the image of the sun displayed as program image BG on a display screen in a conventional channel display. ¶ [0007]. Some of program image BG is displayed as replaced by channel number character CH (e.g., channel “1”). *Id.*

3. Okura notes that a problem with the prior art display was that the program image BG in the background of the channel number character CH will not be visible. ¶ [0008].

4. Figure 1 of Okura is reproduced below.

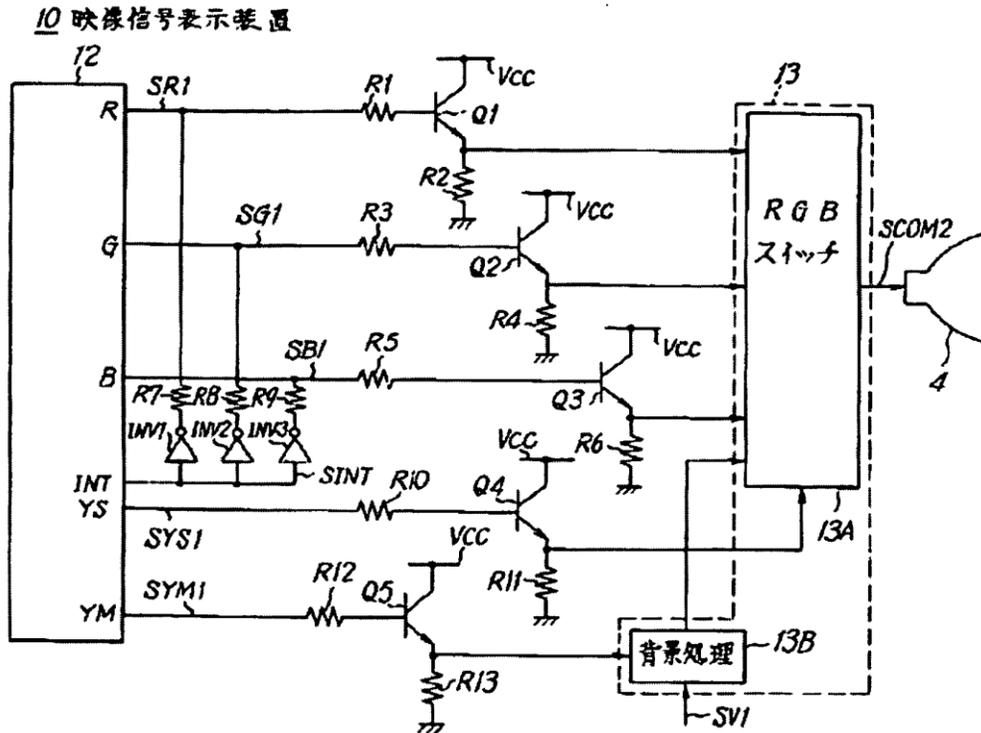


Figure 1: Configuration of application example

Figure 1 is said to be an improved circuit such that character CH and display image BG may be displayed simultaneously. ¶¶ [0011] - [0013].

5. Character output control circuit 12 (Fig. 1) outputs red (R), green (G), and blue (B) signals as primary color signals for the character image signal (channel number). ¶ [0013].

6. Character output control circuit 12 also raises background removal signal SYS1 to "H" level so as not to display the program image in

the synthesized portion where the channel number will be displayed.

¶ [0017].

7. Background removal signal SYS1 output by character output control circuit 12 is amplified to a prescribed signal level, yielding signal SYS2. ¶ [0018].

8. Character output control circuit 12 also raises background color halftone signal SYM1 to “H” level so as to lower the brightness of program image BG in the synthesized portion where the channel number will be displayed, while also making the hue lighter, in a process that Okura calls “halftone processing.” ¶ [0019].

9. Background color halftone signal SYM1 output by character output control circuit 12 is amplified to a prescribed signal level, yielding signal SYM2. ¶ [0020].

10. Background processing circuit 13B (Fig. 1) accepts the video signal SV1 and applies background processing to attenuate the video signal corresponding to the synthesized portion within the video signal where the channel number will be displayed, during the period that the background removal amplified signal SYS2 is at “H” level. ¶ [0021]. In an obvious informality, Okura refers to the background removal amplified signal as “SYM2” in paragraph [0021].

11. RGB switching circuit 13A (Fig. 1) removes the video signal corresponding to the synthesized portion, where the channel number will be displayed, from video signal SV1. The switching circuit obtains synthesized video signal SCOM2 by superimposing character video signals (SR2, SG2, and SB2) onto the primary color signals for red, green, and blue in video signal SV1, which is output to the display. ¶ [0022].

12. Okura further discloses that brightness and hue of the respective character and video signals in the synthesized portion of the display may be reduced 50 per cent to enhance viewing of both images. ¶¶ [0031]-[0037].

13. In particular, background removal signal SYS1 may be held at “L” level while background color halftone signal SYM1 is raised to “H” level synchronized to character video signals SR2, SG2, and SB2. Thus, in the portion where channel number character CH is displayed, the brightness of program image BG based on video signal SV1 drops while the hue becomes lighter. ¶ [0033].

14. Figure 3 of Okura is reproduced below.

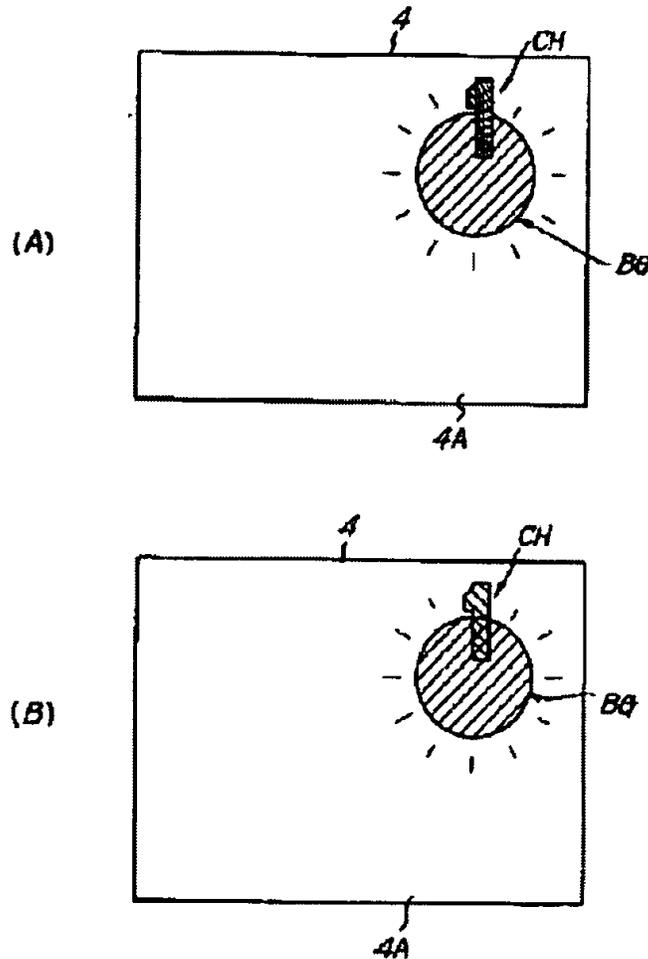


Figure 3: Halftone processing

Figure 3 is said to illustrate the display image during halftone processing. ¶ [0049]. As shown in Figure 3(A), the channel number character may be selected by the viewer to have maximum brightness such that it has priority over program image BG. ¶ [0030]. When program image BG and channel number character CH are each halftoned and synthesized, program image BG can be displayed through channel character number CH

such that program image BG can be seen in its entirety. ¶ [0034]-[0037];
Fig. 3(B).

ANALYSIS

In related appeal 2012-010809, the Board found that Okura teaches combining a character image and a program image such that the character image is superimposed on the program image, the program image being perceived through the character image. *See* FF 12-13; Okura Fig. 3(B). In the instant appeal Appellant seems to present arguments commensurate with base claim 1, contending that Okura fails to teach combining the relevant signals. However, claim 1 sets forth, *inter alia*, “superimposing circuitry for displaying the program guide with a perceived transparency on the selected television channel on the display screen by combining the program guide output signal and the output television signal.” Our analysis begins with the premise that the applied prior art renders obvious the subject matter of claim 1, because Appellant has chosen not to appeal the rejection of that claim.

Appellant states, in a footnote at page 8 of the Appeal Brief, that “for the sake of expediency on this appeal, and without waiver of or admitting anything to the contrary, Patent Owner for purposes of this appeal only does not press this issue with respect to independent claims 1 and 8.” Although the waiver of arguments will not be extended to the related appeals, in this appeal we will not review the rejection of non-appealed claim 1.

The issue in this appeal thus reduces to the question as to whether the ordinarily skilled artisan would have found it obvious to have a portion of the program guide displayed without transparency such that the portion is

opaque with respect to a portion of the television channel, in combination with the subject matter of claim 1, which subject matter has been effectively admitted to be obvious. Yet, Appellant admits that Okura discloses, during what Appellant calls “Phase I,” that when background removal signal SYS1 is at the “H” level, channel number CH is displayed opaque relative to the underlying video. *See* App. Br. 8-9; FF 6-7, 10-11; Okura Fig. 3(A).

Appellant alleges that Okura does not teach, and even teaches away from, “producing a display that is both opaque and partially transparent at the same time.” Reply Br. 4. Appellant’s allegation presupposes some kind of temporal restriction in claim 15, which we do not find to be a requirement of the claim. Base claim 1 calls for “superimposing circuitry” for displaying the program guide with a perceived transparency and dependent claim 15 calls for a portion of the program guide being displayed without transparency (i.e., opaque). Okura teaches “superimposing circuitry” (FF 4) that first displays a character image that is opaque (“Phase I”), and later a character image that is displayed with a perceived transparency (“Phase II”). *See* App. Br. 8-11. We therefore are not persuaded that claim 15 has been rejected in error.

Even if the claims were to require simultaneous display of a perceived transparency and an opaque portion, Appellant acknowledges that Okura teaches each type of display, although not at the same time. Further, it is undisputed that Reiter teaches an opaque program guide. *See* App. Br. 7. “[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual

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application is beyond his or her skill.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 417 (2007). The operative question is “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.* An improvement such that a perceived transparency and an opaque portion are simultaneously present on a program guide represents no more than the predictable use of prior art elements according to their established functions, rendering the predictable result of a displayed program guide that simultaneously contains a perceived transparency and an opaque portion.

As the subject matter as a whole of claim 15 has not been shown to be patentable over the combination of Reiter and Okura, we consider Yoshio to be merely cumulative in the rejection of claim 15.

DECISION

The Examiner’s decision to reject claims 15 and 16 is affirmed.

Extensions of time for taking any subsequent action in connection with this appeal are governed by 37 C.F.R. § 1.550(c). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

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