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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/011,237	09/16/2010	6305016	003597-0003-503	5242
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 2012-010801
Reexamination Control 90/011237
Patent 6,305,016 B1
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 8, 21, 28, and 30-32. According to Appellant, claims 7

¹ This appeal is related to Appeal No. 2012-010796, Control No. 90/011231 and Appeal No. 2012-010809, Control Nos. 90/011236 and 90/011548.

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and 20 have been cancelled. Claims 9-11, 22-24, and 29 have been indicated to be patentable. Claims 1-6, 12-19, 25-27, and 33-35 are also under final rejection but Appellant does not appeal the rejection of those claims.

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

We affirm.

Invention

The '016 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. 36-55.

Figure 9 of the '016 patent is reproduced below.

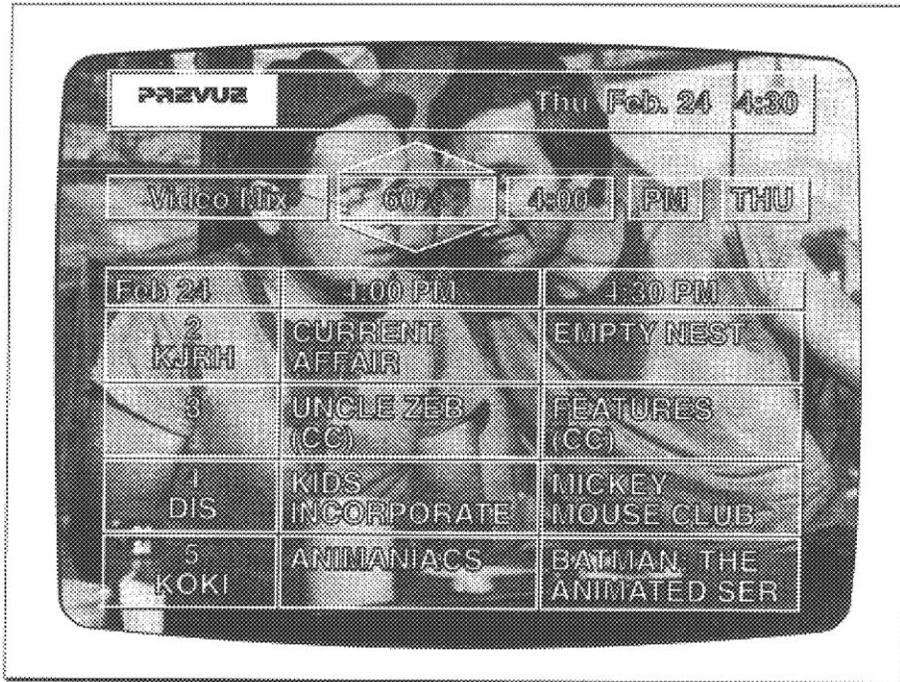


Fig. 9

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. 44-49.

Representative Claims

15. A method for presenting a computer-generated image with a television program, comprising:

- receiving digital data;
- generating an image using the digital data;
- receiving the television program; and

presenting the image and the television program simultaneously so that the image has a perceived partial transparency.

21. The method of claim 15, wherein the image has a weight of transparency with respect to the television program and the weight of transparency is variable.

32. The method of claim 15, wherein a portion of the image is displayed without transparency such that the portion is opaque with respect to a portion of the television program.

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 8, 21, 28, and 32 are rejected under 35 U.S.C. § 102(b) as being anticipated by Okura.

Claims 8, 21, and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Reiter and Okura.

Claims 30-32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Reiter and Okura or Yoshio.

² With English translation provided by USPTO, September 2011.

Claim Groupings

Based on Appellant's arguments in the Appeal Brief, we will decide the appeal on the basis of representative claims 21 and 32. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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.

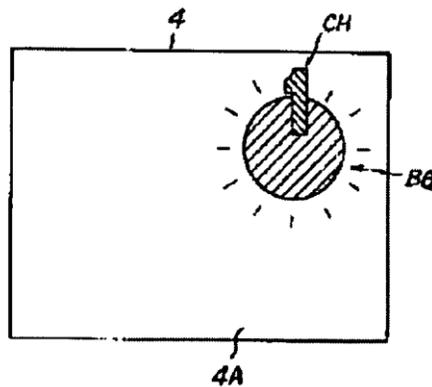


Figure 6: Conventional channel display

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.

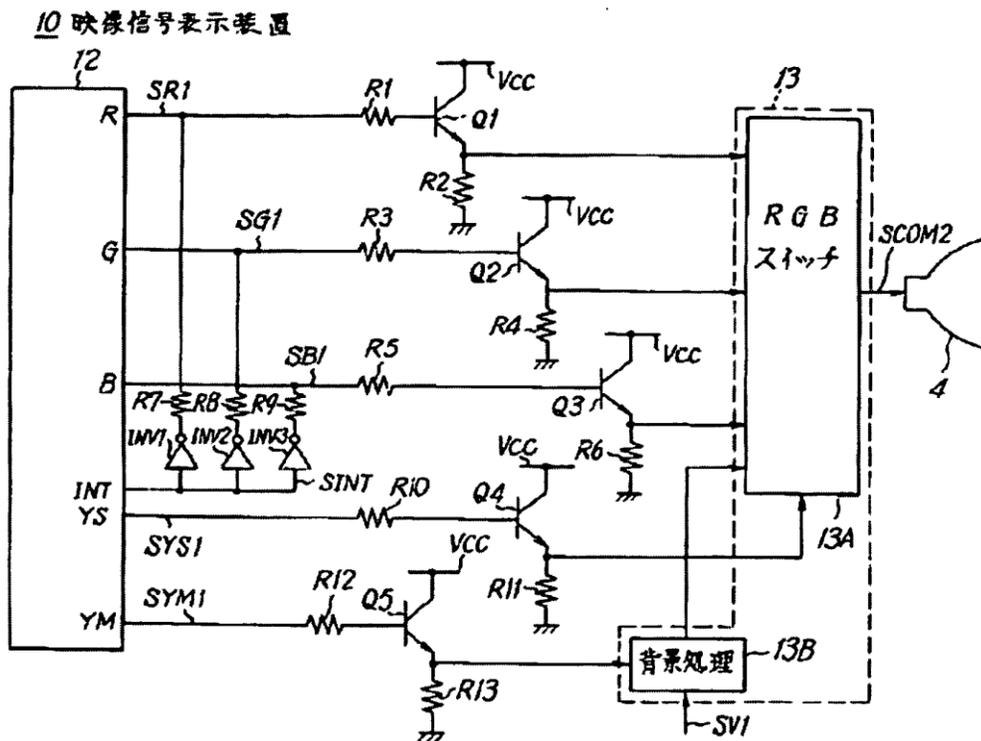


Figure 1: Configuration of application example

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.

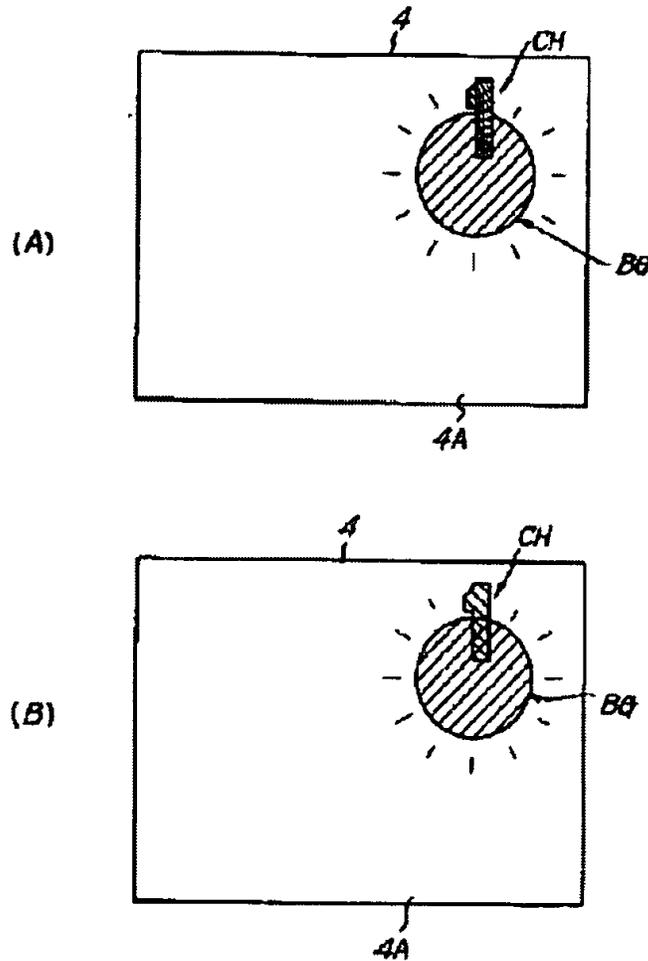


Figure 3: Halftone processing

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

Claim 32

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 15, contending that Okura fails to teach combining the relevant signals. However, claim 15 sets forth, *inter alia*, “presenting the image and the television program simultaneously so that the image has a perceived partial transparency.” Our analysis begins with the premise that the applied prior art renders obvious the subject matter of claim 15, because Appellant has chosen not to appeal the rejection of that claim.

Appellant states, in a footnote at page 9 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, 2, and 15.” 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 15.

The relevant 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 image displayed without transparency such that the portion is opaque with respect to a portion of the television program, in combination with the subject matter of claim 15, 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. 10-11; 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. 5. Appellant’s allegation presupposes some kind of temporal restriction in claim 32, which we do not find to be a requirement of the claim. Base claim 15 calls for presenting the image, having a perceived partial transparency, and the television program simultaneously while dependent claim 32 calls for a portion of the image being displayed without transparency (i.e., opaque). Okura teaches a circuit (FF 4) that first displays a character image that is opaque (“Phase I”), and later a character image that is displayed with a perceived partial transparency (“Phase II”). *See App. Br. 10-13.* We therefore are not persuaded that claim 32 has been rejected in error.

Even if the claims were to require simultaneous display of a perceived partial 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. 8.* “[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 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 partial transparency and an opaque portion are simultaneously displayed represents no more than the predictable use of prior art elements according to their established functions, rendering the predictable result of a displayed image that simultaneously contains a perceived partial transparency and an opaque portion.

As the subject matter as a whole of claim 32 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 32.

Claim 21

Claim 21 recites the method of base claim 15 further comprising wherein the image has a weight of transparency with respect to the television program and the weight of transparency is variable.

Okura discloses a 50 per cent perceived partial transparency that may be changed to various levels by changing the voltage ratio of the resistors in the circuit. Okura ¶¶ [0042]-[0043]. Appellant seems to contend that claim 21 requires that varying the perceived partial transparency must occur during normal operation of the display. However, Okura not only discloses varying the perceived partial transparency, but also how one may do it. We note that

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claim 22 is not rejected, which further limits claim 21 in “further comprising receiving a user selection of the weight of transparency.”

We therefore are not persuaded of error in the rejection of claim 21, whether rejected under § 102(b) as being anticipated by Okura or under § 103(a) over the combination of Reiter and Okura.

DECISION

The Examiner’s decision to reject claims 8, 21, 28, and 30-32 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

ack

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