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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/011,548	03/07/2011	6020929	003597-0003-504	6509
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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90/011,236	09/15/2010	6020929	003597-0003-502	3277
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte UNITED VIDEO PROPERTIES, INC.

Appeal 2012-010809
Reexamination Control 90/011236 & 90/011548
Patent 6,020,929
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 1, 2, 4-14, and 16-28. Claims 3 and 15 have been

¹ This appeal is related to Appeal No. 2012-010796, Control No. 90/011231 and Appeal No. 2012-010801, Control No. 90/011237.

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

We affirm.

Invention

The '929 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. 37-55.

Figure 9 of the '929 patent is reproduced below.

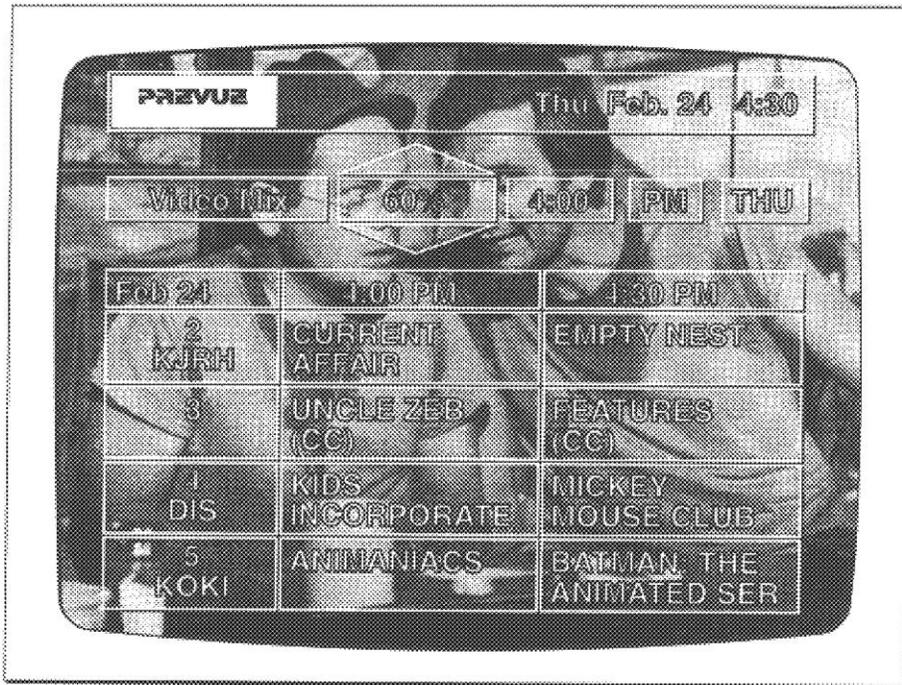


Fig. 9

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 Claim

1. A system for displaying interactive program guide data with television programming that is displayed on a viewer's display screen, comprising:

a superimposing circuit for displaying the interactive program guide data in an interactive program guide data display wherein at least a portion of the interactive program guide data display has a perceived partial transparency so that the television programming can be at least partially perceived by a television viewer through the portion of the interactive program guide data display.

Prior Art

Reiter	US 4,751,578	June 14, 1988
Young	US 5,479,268	December 26, 1995
Okura ²	JP 04291582	October 15, 1992
Yoshio	EP 0 342 803 B1	November 23, 1989

Brugliera, Digital On-Screen Display: A New Technology for the Consumer Interface, 18 Int'l Television Symposium and Tec. Exhibition, Symposium Record Cable Sessions 571 (June 10-15, 1993).

Jerrold Communications Cable Television Equipment IMPULSE 7000 Series Model CFT 2000 User's Manual ("Jerrold").

² With English translation provided by USPTO, September 2011.

Examiner's Rejections

Claims 1, 8-10, 12, 13, 20-22, and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Reiter and Okura.

Claims 11 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Reiter, Okura, and Brugliera.

Claims 1, 2, 4-6, 8-14, 16-18, and 20-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Okura and Young.

Claims 7 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Okura, Young, and Jerrold.

Claim Groupings

Based on Appellant's arguments in the Appeal Brief, we will decide the appeal on the basis of representative claims 1, 14, and 27. *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.

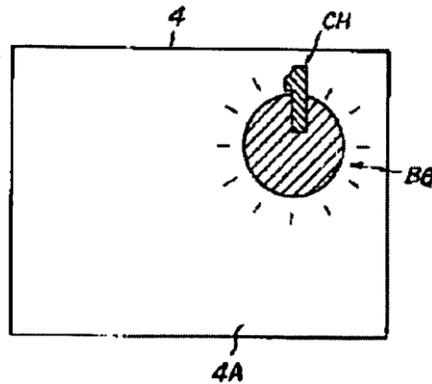


Figure 6: Conventional channel display

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.

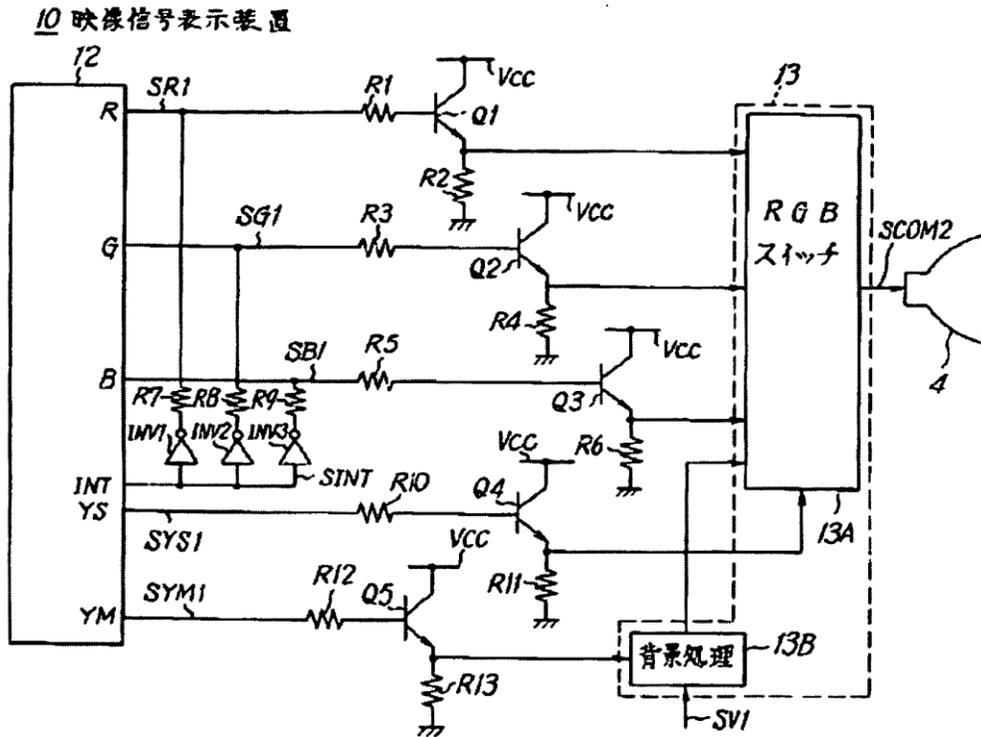


Figure 1: Configuration of application example

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.

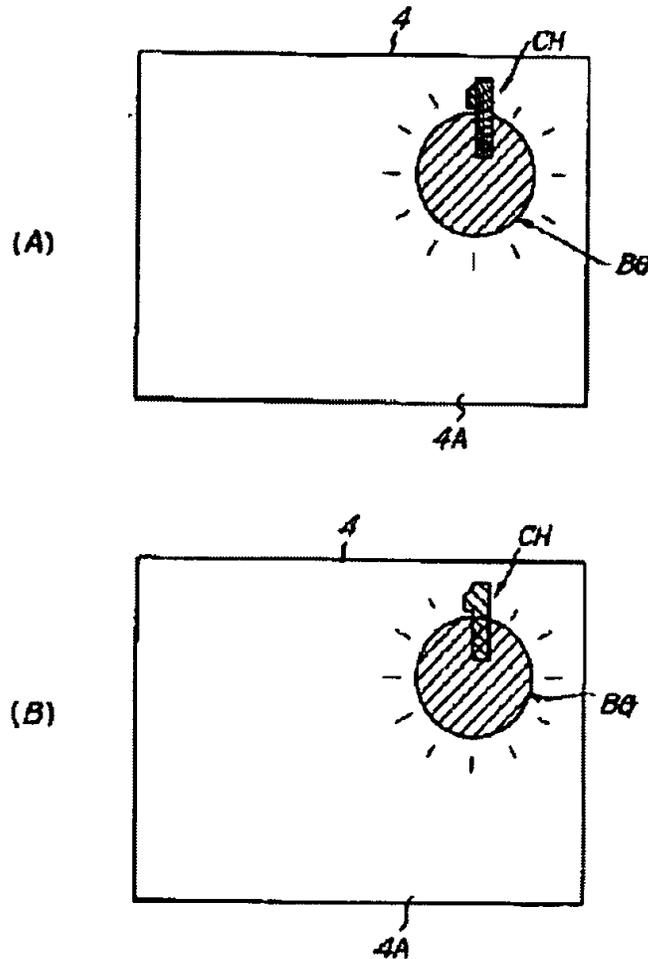


Figure 3: Halftone processing

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 1

Appellant contests the Examiner's findings with respect to what Okura teaches. App. Br. 6-11. Appellant contends that Okura describes "stippling" -- "interleaving" pixels of the background image and the display character such that the resulting display has pixels of the background image alternated with pixels of the character image -- as opposed to combining the background image and character image (e.g., on a pixel-by-pixel basis).

Although Okura does not use the term "stippling," Appellant contends that "halftoning" is synonymous with "stippling." However, Okura sets forth what is meant by "halftone processing" -- lowering image brightness and lightening the hue. FF 7; *see also* Okura ¶¶ [0023], [0046]. Okura's definition does not support the view that "halftoning" in the context of Okura's disclosure means outputting adjacent pixels of background image and character image.

In the Evidence Appendix of the Appeal Brief, Appellant provides a "First Supplemental Declaration" by Mr. Stephen D. Bistrow in support of the contention that the Examiner erred in findings with respect to Okura. Mr. Bistrow alleges that block 13A (Fig. 1) of Okura "switches" between the RGB (character) input and the external video provided by block 13B. Bistrow Decl. ¶ 8. However, no express disclosure of this "switching" is

pointed out in the reference. The Declaration does, however, point out that Okura refers to element 13A as a “switch.” *Id.*, ¶¶ 9-11.

However, the only input to element 13A (Fig. 1) that might trigger a “switching” operation appears to be the amplified signal SYS2 from character generator 12, which is raised to indicate to switch 13A to not display the program image in the synthesized portion where the channel number will be displayed. FF 6-7. Absent any disclosure of “switching” by element 13A between the RGB character input and the video signal, Okura can be read as “switching” between not displaying the program image in the portion of the output where the channel number will be displayed (FF 6), and displaying the program image in the portion of the output where the channel number will be displayed. *See* FF 13; Okura Fig. 3(B).

Although the Bistrow Declaration (¶ 14) recognizes there is a “cancellation signal for the video,” no explanation is provided as to why a “corresponding cancellation signal for the character” might be needed. The “character” is displayed at full brightness and hue when the corresponding program image is removed (Okura ¶¶ [0029]-[0030]) -- and at reduced brightness and hue when the corresponding program image is not removed, but is also present at reduced brightness and hue (*id.*, ¶¶ [0033]-[0034]).

We also observe that the Bistrow Declaration (¶ 14) quotes, ostensibly, from Okura as disclosing “multiplexing” of the character video signals SR2, SG2, SB2 on the red, green and blue primary “colour” signals of the video signal SV1. Mr. Bistrow appears to be quoting from what the Appeal Brief’s Evidence Appendix refers to as “Patent Owner’s” translation of Okura (Exhibit B). We consider the USPTO’s translation of Okura,

obtained from an outside contractor in September 2011, to be the more reliable. Exhibit B does not indicate who or what produced the English translation, for what purpose, and when. Moreover, Exhibit B (Appellant's translation) refers to character information being "superimposed" on the display video at page 1 (Abstract), page 2 (Claim 1), and at least at paragraphs [0010], [0011], and [0049] ("Benefit of the invention").³ Okura's use of the word "superimpose" is significant, because that is the word the '929 patent uses to describe how the program guide is combined with the video signal. Indeed, patent claim 1 calls for a "superimposing circuit."

Appellant also provides, as Exhibit A of the Evidence Appendix, a technical dictionary definition of "multiplexing." According to Appellant, "multiplexing" is understood in the art to mean "interleaving." However, Exhibit A defines "multiplex" as "[t]o interleave *or simultaneously transmit* two or more messages on a single channel." *IEEE Standard Dictionary of Electrical and Electronics Terms* (1993) at 829 (emphasis added). If Appellant puts forth the word "interleaving" to suggest that pixels of the background image are alternated with pixels of the character image, that would not be a *simultaneous* transmission of two or more messages on a single channel, but an output of first one pixel and then another. The definition provided by Appellant either indicates that "interleave" is synonymous with simultaneous transmission, or (more likely) that the word "multiplex" covers both of "interleaving" and "simultaneous transmission"

³ We also note that Exhibit E, purported to be an "Opponent's" translation of Okura, also uses the word "superimposes" rather than "multiplexing" in the corresponding section quoted by the Bistrow Declaration.

of two or more messages on a single channel. Neither alternative supports Appellant's apparent view that "multiplexing" is limited to transmitting one data item and then the other (i.e., adjacent, as opposed to combined). Moreover, the technical dictionary definition that Appellant has provided is directed to the field of communication or data transmission, not to the field of display devices. In view of the foregoing considerations, even if an action described by Okura could be translated to the English word "multiplexing," Appellant has not demonstrated that the term requires that adjacent pixels of background image and character image be output.

We acknowledge that Okura does provide a modicum of support for Appellant's position. Okura at paragraph [0035] states that the channel number character CH and program image BG can be simultaneously displayed "so that an effect *as though* program image BG is displayed through channel number CH can be obtained" (emphasis added). However, when read in context with the rest of the disclosure, the statement does not necessarily mean that program image BG cannot be seen through channel number character CH. The single sentence, more likely than not, indicates that program image BG is seen at reduced brightness and hue (¶ [0034]), rather than at its original brightness and hue.

We have considered all of Appellant's arguments and evidence, to the extent the evidence is relied upon in the briefs. We find the Bistrow Declaration lacking in credibility in its evaluation of the Okura reference. We are not persuaded that the Examiner erred in finding that Okura teaches combining a character image and a program image, such as on a pixel-by-pixel basis. Okura teaches a character image superimposed on a program

image such that the program image cannot be perceived through the character image (FF 1, 2, 9; Okura Fig. 3A). Okura also teaches, however, a character image superimposed on a program image such that the program image can be perceived through the character image (FF 12-13; Okura Fig. 3B). We therefore are not persuaded of error in the rejection of claim 1.

Claim 14

Claim 14 recites the method of base claim 13 further comprising causing the perceived partial transparency of the portion of the interactive guide data display to vary as a function of a weight of perceived partial transparency.

Okura discloses a 50 per cent 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 14 requires that varying the perceived partial transparency must occur during normal operation of the display. However, Okura not only teaches varying the perceived partial transparency, but also how one may do it. We note that claim 15 is not rejected, which further limits claim 14 in enabling the weight of perceived partial transparency “to be controlled by the television viewer.”

We therefore are not persuaded of error in the rejection of claim 14.

Claim 27

Claim 27 recites the system of claim 1 wherein a portion of the interactive program guide data display is displayed without transparency

such that the portion is opaque with respect to a portion of the television programming.

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. 14-15; FF 6-7, 10-11; Okura Fig. 3(A).

Base claim 1 calls for a “superimposing circuit” for displaying the interactive program guide data display with a perceived partial transparency and dependent claim 27 calls for a portion of the program guide data display 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. 14-17. We therefore are not persuaded that claim 27 has been rejected in error.

Even if the claims were to require simultaneous display of a perceived transparent portion and an opaque portion, 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. 12. “[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

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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 partial transparency and an opaque portion.

We therefore are not persuaded of error in the rejection of claim 27.

DECISION

The Examiner's decision to reject claims 1, 2, 4-14, and 16-28 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

Appeal 2012-010809
Reexamination Control 90/011236 & 90/011548
Patent 6,020,929

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