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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN A. CARD II

Appeal 2012-010733
Application 12/263,163
Technology Center 2100

Before JASON V. MORGAN, JOHNNY A. KUMAR, and
MELISSA A. HAAPALA, *Administrative Patent Judges*.

HAAPALA, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1, 3, 5, 8–16, and 18–26.

We affirm-in-part.

CLAIMED INVENTION

Appellant's invention is directed to a technique for controlled modification of a current time value. Spec. 4. Claim 1, which is a representative independent claim, recites:

1. A method for employing a controlled-modification current time value, the method comprising:
 - maintaining the current time value;
 - receiving a request to modify the current time value;
 - tracking an amount of time of a countdown timer, wherein the countdown timer is set
 - in response to receiving a previous request to modify the current time value; and
 - processing the requested modification,
 - wherein the requested modification is immediately incorporated into the current time value if the countdown timer amount of time has expired, and
 - wherein the requested modification associated with the request is not immediately incorporated into the current time value if the countdown timer amount of time has not expired.

Claim 5, which is an illustrative dependent claim, recites:

5. The method of claim 1, wherein the amount of time of the countdown timer is based upon a function of a magnitude of the previous requested modification, wherein the amount of time of the countdown timer increases with an increasing amount of adjustment to the current time made in response to the previous request.

REJECTIONS ON APPEAL

Claims 1, 5, 10–13, 15, 16, and 21–25 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over the combination of Nakamura (US 7,065,679 B2; issued June 20, 2006) and Singer (US 2004/0117619 A1; published June 17, 2004). Ans. 6–8.

Claims 3 and 26 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over the combination of Nakamura, Singer, and either Parks (US 7,146,504 B2; issued Dec. 5, 2006) or Choi (US 2006/0156417 A1; published July 13, 2006). Ans. 8–10.

Claim 14 stands rejected as being unpatentable under 35 U.S.C. § 103(a) over the combination of Nakamura, Singer, and Davies (US 7,266,714 B2; issued Sept. 4, 2007). Ans. 10–11.

Claims 8 and 18 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over the combination of Nakamura, Singer, and Parks. Ans. 11–12.

Claims 9 and 19 stand rejected as being unpatentable under 35 U.S.C. § 103(a) over the combination of Nakamura and either Parks or Choi. Ans. 12–13.

Claim 20 stands rejected as being unpatentable under 35 U.S.C. § 103(a) over the combination of Nakamura and Parks. Ans. 13.

ISSUES

Appellant’s contentions present us with the following issues:

a) Whether Appellant’s arguments that Singer does not teach or suggest i) setting a countdown timer in response to receiving a request to modify a current time value (hereinafter the “setting countdown timer limitation”) and ii) immediately incorporating or not immediately incorporating the current time value based on expiration of the counter timer (hereinafter the “incorporate current time value limitation”), are sufficient to establish error in the Examiner’s 35 U.S.C. § 103(a) rejection of claim 1 over the combination of Nakamura and Singer?

- b) Would it have been obvious to an artisan of ordinary skill to combine Nakamura's system for managing clock adjustment and Singer's teaching of a countdown timer?
- c) Do the combined teachings of Nakamura and Singer teach or suggest wherein the amount of time of the countdown timer is based upon a function of a magnitude of a previous requested modification in which the countdown timer amount increases with an increasing amount of adjustment to the current time made in response to the previous request (hereinafter the "countdown timer function limitation") as recited in claim 5?
- d) Do the combined teachings of Nakamura and Singer teach or suggest delaying a requested modification for a period of time associated with expiration of a countdown timer ("delay modification limitation") as recited in claim 12?
- e) Do the combined teachings of Nakamura and Singer teach or suggest increasing the amount of time of a countdown timer in response to receiving a request to modify the current time value (hereinafter the "increase counter time limitation") as recited in claim 22?

ANALYSIS

We have reviewed the Examiner's rejections in consideration of Appellant's contentions. We disagree with Appellant's conclusions that the Examiner's rejections of claims 1, 3, 8-11, 13, 14, 16, and 18-26 are improper. Appellant has persuaded us that the Examiner has failed to establish that claims 5, 12, and 15 are unpatentable.

Claims 1

Claim 1 stands rejected under 35 U.S.C. § 103(a) over the combination of Nakamura and Singer. Ans. 6–7. The Examiner finds the use of a countdown timer is well known and uses Singer as an example of a reference that teaches a countdown timer. Ans. 7 (citing Singer ¶ 58). The Examiner explicitly states Singer is “solely relied upon for disclosure of the fact that a ‘countdown timer’ is old and well-known as a means for keeping track of a time value.” Ans. 15. The Examiner combines the teachings of Nakamura to manage the adjustment of a system clock with Singer’s countdown timer to find the combination of Nakamura and Singer teaches or suggests all of the limitations of claim 1, including both the countdown timer limitation and the incorporate current time value limitation. Ans. 6–7, 15–18.

Appellant contends Singer does not disclose the setting countdown timer limitation. Appeal Br. 5–8. Appellant further contends Singer does not disclose the incorporate current time value limitation. Appeal Br. 8–11. Appellant acknowledges that Singer teaches a decrementing timer and further acknowledges a countdown timer is well known. Appeal Br. 5; Reply Br. 4. Appellant does not present any contentions about the Examiner’s findings and conclusions regarding the teachings of Nakamura, other than to state Nakamura does not teach a countdown timer. *See* Appeal Br. 5–11.

Appellant’s contentions regarding Singer are not sufficient to persuade us of error in the Examiner’s rejection of claim 1. One cannot show non-obviousness by attacking an individual reference where, as here, the rejection is based on a combination of references. *In re Keller*, 642 F.2d

413, 426 (CCPA 1981). Appellant does not dispute any of the Examiner's findings and conclusions regarding Singer used to reject claim 1. Appellant does not present any arguments regarding error in the Examiner's findings and conclusions about the teachings of Nakamura. Because the rejection was based on the combination of Nakamura and Singer, Appellant's contentions that Singer does not teach or suggest the setting countdown limitation and the incorporate current time value limitation are insufficient to establish error in the Examiner's rejection of claim 1 over the combination of Nakamura and Singer.

Appellant further contends one skilled in the art would not be motivated to modify Nakamura using Singer. Appeal Br. 11. Appellant argues the purpose of Singer to disable or enable a license based on an expiration timer is unrelated to the problem solved by the present invention and the Nakamura system could not be modified to arrive at the present invention. *Id.*

In response, the Examiner reiterates that Singer is relied upon only for demonstrating the fact that a countdown timer is known for tracking a time value. Ans. 23. The Examiner finds that a countdown timer can be employed in Nakamura to track whether a request for time adjustment is within a reasonable time. *Id.*

We agree with the Examiner's findings and conclusions that combining the teachings of Nakamura and Singer would have been within the ability of the skilled artisan. To justify combining reference teachings in support of a rejection, it is not necessary that a device shown in one reference can be physically inserted into the device show in the other. *Keller*, 642 F.2d at 425. We therefore find unpersuasive Appellant's

contention there is no motivation for one of ordinary skill in the art to combine Singer's teaching of a countdown timer used to disable or enable a license with Nakamura's system for managing clock adjustment.

Appellant fails to persuade us of error in the rejection of claim 1. Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of claim 1 over the combination of Nakamura and Singer.

Claim 5

We have reviewed the Examiner's rejection of claim 5 in consideration of Appellant's contention that the combination of Nakamura and Singer does not teach or suggest the countdown timer function limitation. The Examiner relies on Nakamura to teach that a time adjustment range can be adjusted as a function of a previous time adjustment. Ans. 7 (citing Nakamura col. 5, l. 34–col. 6, l. 29).

In the portions cited by the Examiner, Nakamura teaches that a table of adjustable time ranges is used to determine whether a proposed new time for a system clock is reasonable. Nakamura col. 5, l. 49–col. 6, l. 3. A table of adjustable time entries includes entries related to periods of time from last adjustment and entries representing a maximum adjustable time range that can be made to the clock corresponding to the period of time entries. Nakamura col. 6, ll. 4–20; Fig. 3. The maximum permissible adjustable time range increases with the period of time from last adjustment. *See* Nakamura Fig. 3.

Nakamura's teaching that a maximum adjustable time range increases with an increasing amount of time from the last adjustment is not the same as a time amount increasing with *an increasing amount of adjustment* made to the clock (current time) *by a previous request*. Therefore, Appellant has

persuaded us the Examiner has not provided sufficient evidence showing how the combination of Nakamura and Singer teaches or suggests the countdown timer function limitation. Accordingly, we reverse the 35 U.S.C. § 103(a) rejection of claim 5.

Claims 12 and 15

We concur with Appellant's contention that the Examiner has not sufficiently shown how the combination of Nakamura and Singer teaches or suggests the delay modification limitation as recited in claim 12. The Examiner merely refers Appellant to the "discussion above" and does not address the specific limitations of claim 12 regarding delaying a requested modification. *See* Ans. 7. The cited portions of Nakamura teach adjustment of the clock is prevented if the proposed new time is unreasonable, not that the requested modification is delayed. *See* Nakamura col. 2, ll. 55–58; col. 6, ll. 20–33.

We conclude the Examiner has not established that either Nakamura or Singer teaches or suggests the delay modification limitation as recited in claim 12. Accordingly, we reverse the Examiner's rejection of claim 12 and its dependent claim 15.

Claim 22

Appellant contends the combination of Nakamura and Singer does not teach or suggest the increase counter time limitation of claim 22. Appeal Br. 13–14.

The Examiner finds Nakamura's system to manage clock adjustment as modified by Singer's teaching of a countdown timer teaches or suggests the increase counter time limitation. Ans. 8, 28. In particular, the Examiner directs the Appellant's attention to the findings and conclusions articulated

in the rejection of claims 1 and 5 (“discussed above”). Ans. 8. The Examiner finds that Nakamura teaches that a time adjustment range can be adjusted as a function of a previous time adjustment. Ans. 7 (citing Nakamura col. 5, l. 34–col. 6, l. 29). In particular, Nakamura teaches a table of adjustable time ranges that has a number of entries relating to periods *from last adjustment*. Nakamura col. 6, ll. 4–12. Thus, the Examiner finds the combination of Nakamura and Singer teaches or suggests increasing the amount of time of the countdown timer at the time of last adjustment to the amount of time before the next adjustment is permitted. *See* Ans. 8.

Therefore, we agree with the Examiner the combined teachings of Nakamura and Singer teach or suggest the increase counter time limitation. Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of claim 22.

Claims 3, 8–11, 13–14, 16, 18–21, and 23–26

Appellant’s contentions that the 35 U.S.C. § 103(a) rejection of independent claims 10¹ and 11 is improper rely on the same arguments made for claim 1, without any substantive arguments addressing the limitations of these claims. Appeal Br. 7–9. Accordingly, we sustain the rejection of claims 10 and 11 for the same reasons as claim 1.

Appellant’s contentions regarding dependent claims 23–25 amount to no more than a recitation of the claim language and an assertion that Singer

¹ Claim 10 recites “A computer-readable storage medium” In the event of further prosecution of claim 10, we leave to the Examiner to ascertain whether such claim is directed to statutory subject matter under 35 U.S.C. § 101. *See In re Nuijten*, 500 F.3d 1346, 1357 (Fed. Cir. 2007); *Ex parte Mewherter*, 107 USPQ2d 1857, 1862 (PTAB 2013) (precedential); David J. Kappos, *Subject Matter Eligibility of Computer Readable Media*, 1351 Off. Gaz. Pat. Office 212 (Feb. 23, 2010).

and Nakamura do not disclose the recited limitations. *See* Appeal Br. 14–15. A mere assertion the cited prior art does not disclose the claimed language is not a substantive argument for separate patentability. *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011). Accordingly, we sustain the rejection of these claims.

Claims 3, 8, 9, 13, 14, 16, 18–21, and 26 depend directly or indirectly from one of claims 1, 10, and 11. Appellant did not present any additional specific arguments regarding the limitations of these claims. Accordingly, we sustain the Examiner’s rejections of these claims.

DECISION

The Examiner’s rejections of claims 1, 3, 8–11, 13, 14, 16, and 18–26 under 35 U.S.C. § 103(a) are affirmed.

The Examiner’s rejection of claims 5, 12, and 15 under 35 U.S.C. § 103(a) is reversed.

AFFIRMED-IN-PART

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