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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LINDA MEIBY

Appeal 2013-008031
Application 12/334,865
Technology Center 2600

Before ALLEN R. MacDONALD, MIRIAM L. QUINN, and JOHN D. HAMANN, *Administrative Patent Judges*.

HAMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1, 3–8, 10–15, and 17–19. We have jurisdiction under 35 U.S.C. § 6(b).

THE CLAIMED INVENTION

Appellant's claimed invention relates to user input displays, including displays that utilize touch-sensitive data and optical data to identify selected input keys. Spec. paras. 6 and 7. Of the claims on appeal, claim 1 is illustrative of the subject matter of the appeal, and is reproduced below, with emphasis added.

1. An electronic device comprising:

a user input display having a plurality of input keys on the input display, each of the plurality of input keys corresponding to an input function for the input display;

an optical detector configured to detect optical data comprising in a field of view comprising a user input device, wherein the user input device has an optical marker thereon; and

a user input management system coupled to the user input display and the optical detector, wherein the user input management system is configured to receive optical data from the optical detector and to identify a location of the optical marker of the user input device with respect to the user input display based on the optical data;

wherein the user input display further comprises **a touch-sensitive display configured to detect touch-sensitive data comprising positional information when the user input device contacts the user input display**, and wherein the user input management system is further configured to receive **touch-sensitive data comprising positional information** from the touchsensitive display unit, **to correlate the optical data and the touch-sensitive data comprising positional information and to identify a selected one of the plurality of input keys on the display responsive to the touch-sensitive data comprising positional information and the location of the optical marker**.

REJECTIONS ON APPEAL

1. The Examiner rejected claims 15, and 17–19 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.[1]

2. The Examiner rejected claims 1, 3–5, 7, 8, 10–12, 14, 15, 17, and 19 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Radivojevic et al. (WO 2007/144014 A1; Dec. 21, 2007) (hereinafter "Radivojevic") and Gudensen et al. (WO 2006/036069 A1; Apr. 6, 2006) (hereinafter Gudensen).[2]

3. The Examiner rejected dependent claims 6, 13, and 18 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Radivojevic, Gudensen, and Case Jr. (US 2009/0213081 A1; Aug. 27, 2009) (hereinafter Case).

ISSUES

Each of the § 103(a) rejections on appeal involves whether Radivojevic discloses "touch-sensitive data comprising positional information" in the context of claim 1.

Appellant asserts that "Radivojevic discusses touch sensitive data that does not include positional information, but rather is received by a

[1] Contemporaneously with the filing of this Appeal, Appellant filed an Amendment After Final to address this § 101 rejection, in lieu of presenting arguments here on appeal. The Examiner, however, did not enter this Amendment. Thus, corresponding § 101 arguments have been waived. *See Hyatt v. Dudas*, 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (the Board may treat arguments the appellant fails to make for a given ground of rejection as waived). We summarily affirm the Examiner's § 101 rejection.

[2] Separate patentability is not argued for claims 3–5, 7, 8, 10–12, 14, 15, 17 and 19 (all are grouped with claim 1). Except for our ultimate decision, these claims are not discussed further herein.

microphone or an accelerometer and is used to trigger or accept a function or command. See, e.g., page 2, line 30 - page 3, line 5." Br. 5. Appellant further argues that "the touch sensitive data . . . is apparently limited to an indication that the screen has been touched based on a noise detected by a microphone or movement of an accelerometer." *Id.*

As to the "positional information," Appellant asserts that it is "clearly limited to the optical sensor." Br. 5; *see also* Br. 6 ("Radivojevic clearly proposes that the positional information is generated by an optical sensor and not the acoustic or vibrational sensor or other touch sensor.").

The Examiner responds

> that the "microphone 6 can be used to register the sound of the impact as it travels through the solid materials between the **position of impact** and the microphone 6 and/or to register the sound as it travels through the air between the position of impact and the microphone 6. The accelerometer 57 can be used to register the vibrations traveling through the solid materials between the **position of impact** and the accelerometer 57. Therefore this clearly states and shows that the acoustic or vibration sensor includes positional information."

Answer 3.

As to the § 103(a) rejection for dependent claims 6, 13, and 18, Appellant asserts the alleged failings of Radivojevic provided above, and that Case does not disclose an optical marker or optical data. Br. 7. The Examiner, however, cited Gudensen in addition to Radivojevic for such disclosure rather than Case. Final Action 5.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's Appeal Brief arguments that the Examiner has erred.

As to Appellant's contention that the Examiner erred with respect to claim 1, we disagree. Radivojevic teaches that a microphone or accelerometer can register sound or vibration, respectively, as it travels in air or solid material between **the position of impact** and the microphone or accelerometer. Radivojevic p. 13 ll. 23–30; Final Action 5 (citing same). We agree with the Examiner that such disclosure teaches positional information for the touch-sensitive data, even if embodiments of Radivojevic do not rely on such positional information. *In re Mouttet*, 686 F.3d 1322, 1331 (Fed. Cir. 2012)("A reference may be read for all that it teaches, including uses beyond its primary purpose.") (citing *KSR Int'l. v. Teleflex Inc.*, 550 U.S. 398, 418–21 (2007)); *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907 (Fed. Cir. 1985) ("A reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect.").

Furthermore, Radivojevic teaches that "[t]he optimal position for the microphone 6 and the accelerometer 57 are is [sic] at the bottom of the chassis of the mobile phone 1." Radivojevic p. 13 ll. 20–22. Thus, Radivojevic also teaches positional information concerning the microphone or accelerometer, in addition to the positional information of the impact and the travel of sound or vibrations there between.

The preponderance of evidence supports the Examiner's factual finding that Radivojevic teaches touch-sensitive data comprising positional information.

As to Appellant's contention that the Examiner erred with respect to claims 6, 13, and 18, we disagree. Appellant's argument that Case does not disclose an optical marker or optical data is not relevant in light of the

Examiner's citation of Gudensen for these limitations. Further, Appellant fails to explain Case's alleged deficiency. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2013) ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.").

CONCLUSIONS

(1) The Examiner did not err in rejecting claims 15 and 17–19 under 35 U.S.C. § 101, as being directed to non-statutory subject matter.

(2) The Examiner did not err in rejecting claims 1, 3–8, 10–15, and 17–19 as being unpatentable under 35 U.S.C. § 103(a).

(3) The Examiner did not err in rejecting claims 6, 13, and 18 as being unpatentable under 35 U.S.C. § 103(a).

(4) Claims 1, 3–8, 10–15, and 17–19 are not patentable.

DECISION

The Examiner's rejection of claims 15 and 17–19 under 35 U.S.C. § 101, as being directed to non-statutory subject matter, is affirmed.

The Examiner's rejections of claims 1, 3–8, 10–15, and 17–19 as being unpatentable under 35 U.S.C. § 103(a) are affirmed.

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).

AFFIRMED