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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PATTY JACKSON and CEDRIC CHENAL¹

Appeal 2014-008219
Application 11/576,494
Technology Center 3700

Before ERIC GRIMES, FRANCISCO C. PRATS, and
JACQUELINE WRIGHT BONILLA, *Administrative Patent Judges*.

GRIMES, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to an ultrasonic imaging system, which have been rejected as obvious. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

STATEMENT OF THE CASE

Claims 1–16 are on appeal. Claim 1 is illustrative and reads as follows (emphasis added):

1. An ultrasonic diagnostic imaging system having a probe for acquiring ultrasonic echo signals, an image processor coupled to the probe,

¹ Appellants identify the Real Party in Interest as Koninklijke Philips Electronics N.V. (Appeal Br. 3.)

and an image display on which an ultrasonic image produced from acquired ultrasonic echo signals is displayed, comprising:

a storage medium on which a body marker template comprising a graphical representation of anatomy being scanned is stored; and

a touchscreen display, coupled to the storage medium, on which a body marker template is displayed,

wherein *the touchscreen display is responsive to a manual touch of an imaging system operator to indicate on the body marker template a location of a region of the anatomy identified in an ultrasonic image as being or possibly being suspect.*

The claims stand rejected as follows:

Claims 1, 4, 5, 9, 10, 13, 15, and 16 under 35 U.S.C. § 103(a) as obvious based on Scott² and Wang³ (Final Rej.⁴ 2);

Claims 2, 3, 6–8, 11, and 14 under 35 U.S.C. § 103(a) as obvious based on Scott, Wang, and Teboul⁵ (Final Rej. 4); and

Claim 12 under 35 U.S.C. § 103(a) as obvious based on Scott, Wang, and Roundhill⁶ (Final Rej. 6).

I

This application was the subject of an earlier appeal and decision by the Board (Appeal 2011-009925, decided Aug. 8, 2012 (“Prior Decision”)), in which the rejections then on appeal were reversed. After the application was returned to the examining corps, Appellants filed a Request for Continued Examination and the Examiner entered new rejections.

² Scott et al., US 6,468,212 B1, issued October 22, 2002.

³ Wang et al., US 2003/0212327 A1, published November 13, 2003.

⁴ Office Action mailed Dec. 13, 2013.

⁵ Teboul, US 5,709,206, issued Jan. 20, 1998.

⁶ Roundhill et al., US 6,447,453 B1, issued September 10, 2002.

The claims are identical to those in Appeal 2011-009925. The new rejections add Wang to the references previously cited, on the basis that it teaches the limitation previously found to be lacking. Prior Decision at 8 (“Scott does not describe using either the body marker template or arrowheads 294 to indicate the location of a suspect region.”).

II

The Examiner has rejected claims 1, 4, 5, 9, 10, 13, 15, and 16 as obvious based on Scott and Wang. The Examiner finds that Scott discloses all of the limitations of claim 1, except for “using a touch screen to indicate a region of interest on the body marker template.” (Final Rej. 3.) The Examiner finds, however, that Wang provides evidence to use a touch screen as an alternative to a mouse (as disclosed in Scott), and that Wang “disclose[s] the use of a touch screen to mark or indicate a region of interest in a breast template (figure 4; item 408; figure 6; item 506; [0064]-[0065]).” (*Id.*) The Examiner concludes that it would have been obvious “to modify the teaching of an ultrasound diagnostic system as disclosed by Scott[] with the use of a touchscreen to indicate a region of interest as disclosed by Wang[] in order to provide an alternative method of region selection such as a touch screen for improved efficiency during a diagnostic exam.” (*Id.*)

Appellants argue that Wang does not disclose the limitation that the Board in the Prior Decision found to be missing from the previously cited references. (Appeal Br. 11.) Appellants argue that

Wang, in fact, does not show or suggest a body marker template at all. The Examiner points to paragraphs [0064] and [0065] as providing the missing teachings. In paragraph [0064] Wang is doing exactly what Scott does, annotating an ultrasound image,

not a body marker template. . . . The Examiner then mischaracterizes three-dimensional icon 506 in paragraph [0065] as a body marker template. It is not.

(*Id.* at 11–12.)

We agree with Appellants that Wang does not make up for the deficiency underlying our previous decision. In that case, claim 1 had been rejected as anticipated by Scott. (Prior Decision at 3.) We concluded that

Scott discloses displaying body marker templates in its Figures 17-19 and corresponding disclosure, but only for the purpose of marking them to indicate the positions and types of ultrasound scans that have been performed. . . . Scott does not describe using either the body marker template or arrowheads 294 to indicate the location of a suspect region.

(Prior Decision at 8.)

We also concluded that

Scott does provide a function for indicating a suspect region, and annotating it with a red or yellow label, as shown in its Figure 21 and corresponding disclosure. . . . Even if Scott intended to disclose circling the region by touching a touchscreen display, however, this disclosure fails to anticipate claims 1 and 10 because Scott’s Figure 21 shows annotation of an ultrasound image, not a body marker template as required by the claims on appeal.

(*Id.*)

Wang states that “a first selected location of a selected inverted thick-slice image” can be achieved “by pressing the touchscreen at position **408**.” (Wang ¶ 64.) However, an inverted thick-slice image is an ultrasound image, not a body marker template. *See id.* at ¶ 55 (“volumetric ultrasound scan data is obtained” and “thick-slice images are formed from the volumetric ultrasound data”). Appellants’ Specification makes a clear

distinction between ultrasound images and a body marker template. *See, e.g.*, Spec. 1:23–32 (marking the location of a lesion on the template enables it to be understood by those not familiar with reading ultrasound images).

Wang also discloses displaying “a three-dimensional icon **506** that roughly illustrates the thickness, location, and orientation of the thick-slice volume corresponding to the thick-slice image **502**.” (Wang ¶ 65.) As Appellants point out (Appeal Br. 12), however, Wang states that “the three-dimensional icon **506** does not provide any specific diagnostic information to be relied upon” (Wang ¶ 65), and therefore does not suggest using it to show the location of a suspect region. In any event, Wang does not describe using a touch screen to indicate the location of a lesion on icon **506**, only on thick-slice images.⁷

Claim 10 is the only other independent claim and, similarly to claim 1, requires “touching a location on the displayed body marker template to mark the location of the suspect anatomy.” For the reasons discussed above, we conclude that the references would not have made obvious this limitation.

In summary, Wang does not make up for the deficiency of Scott, because neither reference discloses or makes obvious using a body marker template, rather than an ultrasound image, to mark the location of a suspect region of anatomy.

⁷ Wang does show a dot **605** marking a location on icon **506**. (Wang, Fig. 6.) However, Wang makes clear that marker **605** shows “the location of range markers **606** and **608** relative to the raw ultrasound plane,” where **606** and **608** are “upper and lower range markers . . . [that] indicate the upper and lower ‘y’ for the thick slice image **502** previously being viewed.” (Wang ¶ 68.) Thus, **605** does not mark the location of a region of suspect anatomy.

III

The Examiner has rejected claims 2, 3, 6–8, 11, and 14 as obvious based on Scott, Wang, and Teboul, and has rejected claim 12 as obvious based on Scott, Wang, and Roundhill. The Examiner relies on Scott and Wang as disclosing all of the limitations of the independent claims and finds that Teboul and Roundhill disclose the additional limitations of the dependent claims.

As discussed above, however, we conclude that Scott and Wang would not have made obvious the limitations of the independent claims. Therefore, we reverse the rejections of the dependent claims for the same reasons.

SUMMARY

We reverse all of the rejections on appeal.

REVERSED