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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* NIKHIL BHATT

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Appeal 2014-009532  
Application 13/182,409  
Technology Center 2600

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Before HUNG H. BUI, JON M. JURGOVAN, and  
ADAM J. PYONIN, *Administrative Patent Judges*.

JURGOVAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> seeks review under 35 U.S.C. § 134(a) from a rejection of claims 1–33. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.<sup>2</sup>

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<sup>1</sup> Appellant identifies Apple Inc. as the real party in interest. (App. Br. 1.)

<sup>2</sup> Our decision refers to the Specification filed July 13, 2011 (“Spec.”), the Non-Final Office Action mailed Sep. 19, 2013 (“Non-Final Act.”), the Appeal Brief filed Feb. 14, 2014 (“App. Br.”), the Examiner’s Answer mailed July 3, 2014 (“Ans.”), and the Reply Brief filed Sep. 3, 2014 (“Reply Br.”).

### STATEMENT OF THE CASE

The claims are directed to zooming to faces depicted in images. (Spec. Title.) Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method performed by one or more processes executing on a computer system, the method comprising:
  - presenting, on a user interface viewable on a display coupled to the computer system, one or more digital images;
  - receiving user input requesting to zoom to faces depicted in the one or more digital images, where the faces include either human faces or animal faces; and
  - in response to receiving the user input and for each of the one or more digital images, automatically presenting on the user interface a zoomed view of the digital image that displays an enlarged representation of a portion of the digital image showing an instance of a face depicted in the displayed portion of the digital image, the zoomed view of the digital image covering an area of the user interface configured to present the one or more digital images, the zoomed view being presented at a zoom-level that is selected to maximize a fraction of the displayed portion of the digital image occupied by the face.

(App. Br. 26 – Claims App’x.)

### REJECTIONS

(1) Claims 18 and 30 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

(Non-Final Act. 2–3.)

(2) Claims 1–5, 10, 14–17, 24–26, and 29–33 stand rejected under 35 U.S.C. § 103(a) based on Shiratani (US 2002/0181784 A1, publ. Dec. 5, 2002), Nose (US 2008/0205869 A1, publ. Aug. 28, 2008), and *In re Venner*, 262 F.2d 91, 95 (CCPA 1958). (Non-Final Act. 3–11.)

(3) Claims 6–8 stand rejected under 35 U.S.C. § 103(a) based on Shiratani, Nose, Bourdev (US 7,813,526 B1, iss. Oct. 12 2010), and *In re Venner*. (Non-Final Act. 11–14.)

(4) Claims 11, 12, 19, 27, and 28 stand rejected under 35 U.S.C. § 103(a) based on Shiratani, Nose, *In re Venner*, and Bourdev. (Non-Final Act. 14–19.)

(5) Claim 13 stands rejected under 35 U.S.C. § 103(a) based on Shiratani, Nose, *In re Venner*, Bourdev, and Okamura (2008/0226140 A1, publ. Sep. 18, 2008). (Non-Final Act. 19.)

(6) Claim 18 stands rejected under 35 U.S.C. § 103(a) based on Shiratani, Nose, *In re Venner*, and Official Notice. (Non-Final Act. 19–20.)

(7) Claim 20 stands rejected under 35 U.S.C. § 103(a) based on Shiratani, Nose, *In re Venner*, and Okamura. (Non-Final Act. 20.)

(8) Claims 21 and 22 stand rejected under 35 U.S.C. § 103(a) based on Shiratani, Nose, *In re Venner*, and Xiao (US 2007/0053585 A1; publ. Mar. 8, 2007). (Non-Final Act. 20–22.)

(9) Claim 23 stands rejected under 35 U.S.C. § 103(a) based on Shiratani, Nose, *In re Venner*, Xiao, and *KSR Intern. Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). (Non-Final Act. 22.)

## ANALYSIS

### *§ 112, First Paragraph*

The Examiner finds the Specification does not provide a written description to support the limitation of claim 18 reciting “where the object comprises a non-human animal face.” (Non-Final Act. 3.) Appellant notes the Specification recites “a portion of an image that depicts a human or

animal face” (§ 1), “faces include either human faces or animal faces” (§ 5), and “the object can be a human face. As another example, the object can be an animal face.” (§ 11). (App. Br. 9–10, Reply Br. 1.) On the basis of these disclosures, we agree with Appellant the Specification provides adequate written description for claim 18.

The Examiner also finds the Specification fails to provide adequate written description for claim 30. (Non-Final Act. 3.) Appellant cites to the Specification which states “displayed in the predetermined region of the user interface at a zoom-level that is selected (i) to be no larger than a predetermined zoom-level.” (§ 13). (App. Br. 10, Reply Br. 2.) We further note that the Specification provides “the predetermined zoom-level can be 100%.” (§ 14.) We find these disclosures adequately support claim 30 for purposes of the written description requirement.

*§ 103(a)*

*Argument Concerning Examiner’s Failure to Respond*

Appellant argues the Examiner’s Non-Final Office Action was not responsive to Appellant’s Response filed Aug. 19, 2013. (App. Br. 10–12.) Matters concerning the propriety or completeness of an Examiner’s Office Action are reviewable by Petition to the Commissioner under 37 C.F.R. § 1.181. Further, the Appeal Brief should not reference previous responses by Appellants. *See* Manual of Patent Examining Procedure § 1205.02. Accordingly, we do not address this argument further in this appeal.

*Arguments Concerning Claims 1, 10, 15, and 29*

Appellant argues the rejection of claims 1, 15, and 29 should be reversed because Shiratani, Nose, and Venner do not teach or suggest the following features of the claim 1:

receiving user input requesting to zoom to faces depicted in the one or more digital images . . . presenting on the user interface a zoomed view of the digital image . . . showing an instance of a face . . . the zoomed view of the digital image covering an area of the user interface configured to present the one or more digital images . . . presented at a zoom-level that is selected to maximize a fraction of the displayed portion of the digital image occupied by the face.”

(App. Br. 12, 26 – Claims App’x.) Claims 15 and 29 recite similar limitations. Appellant argues *inter alia* that Nose describes zooming while photographing images by half-pressing the shutter button, causing zooming of the face, before full-press to capture an image. (App. Br. 14–15 citing Nose ¶¶ 26, 27, 153, 155, Figs. 6, 7A, 7B, 8, 10.) Because Nose zooms before capturing an image, Appellant argues Nose fails to teach the claimed “receiving user input requesting to zoom to faces depicted in the one or more digital images” that are presented “on a user interface viewable on a display coupled to the computer system,” as recited in claim 1. Appellant further argues claim 15 and 29 recite similar limitations to claim 1 and are distinguishable from the combined references for similar reasons.

We agree with Appellant that Nose fails to describe “receiving user input requesting to zoom to faces depicted in the one or more digital images” that are presented “on a user interface viewable on a display coupled to the computer system” in light of the Examiner’s finding that Shiratani is silent regarding receiving user input and zooming in response to the user input.

(Non-Final Act. 4.). Nose’s zooming by half-pressing a shutter button occurs before capture of an image with its “image taking device,” whereas the claims are directed to post-capture processing of images with a computer system. As we find this argument persuasive, we do not reach Appellant’s remaining arguments concerning claims 1, 15, and 29. Thus, we do not sustain the Examiner’s prior art rejections of claims 1, 15, and 29, or the claims that depend therefrom.

Appellant argues the rejection of claim 10 should be reversed because Shiratani and Nose fail to show “in response to receiving the first user input, automatically presenting . . . concurrent zoomed views of the two or more digital images . . . includes an instance of the first face” and “receiving a second user input; and in response to receiving the second user input, switching to automatically present . . . other concurrent zoomed views of the two or more digital images . . . including an instance of the second face,” as recited in claim 10. (App. Br. 17; Reply Br. 4–5.)

Reviewing the cited sections of Shiratani and Nose, we agree with Appellant the claimed limitation is not shown in those references, particularly as neither reference teaches each image depicts both first and second faces. (*See* Reply Br. 4.) As Venner does not show the deficiencies of the references, we do not sustain the rejection of claim 10. Our decision on this basis renders it unnecessary to consider Appellant’s remaining arguments concerning claim 10.

Thus, we do not sustain the Examiner’s prior art rejection of claim 10 or the claims that depend therefrom.

*Argument Concerning Claim 6*

Appellant argues *inter alia* that Shiratani, Nose, Bourdev, and Venner fail to teach or suggest the following limitations of claim 6:

in response to receiving the first input, automatically presenting . . . a first zoomed view . . . at a zoom-level that is selected to maximize a fraction of the displayed first portion of the digital image occupied by the first face; receiving a second user input; and in response to receiving the second user input, switching from the first zoomed view to automatically presenting . . . a second zoomed view . . . at a different zoom-level that is selected to maximize the fraction of the displayed second portion of the digital image occupied by the second face.

(App. Br. 19, 27 – Claims App’x, Reply Br. 3–4.)

We agree with Appellant’s argument because the cited references do not mention any capability to switch between automatically-presented zoomed views of first and second faces based on first and second user inputs, as recited in claim 6. Accordingly, we do not sustain the rejection of claim 6, or the claims that depend therefrom.

*Argument Concerning Claims 21 and 22*

Claims 21 and 22 depend from independent claim 15. Because we do not sustain the rejection of claim 15, we likewise do not sustain the rejection of claims 21 and 22 for the reasons stated with respect to claim 15.

DECISION

We reverse the rejections of claims 1–33 under 35 U.S.C. § 112, first paragraph and 35 U.S.C. § 103(a) for the reasons stated.

REVERSED