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Nokia Corporation and Alston & Bird LLP c/o Alston & Bird LLP Bank of America Plaza, 101 South Tryon Street Suite 4000 Charlotte, NC 28280-4000			POINTE, WHITNEY A	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER PARETTI and WILLIAM LINDMEIER

Appeal 2015-005284
Application 13/334,431
Technology Center 2600

Before JASON V. MORGAN, MELISSA A. HAAPALA, and
NABEEL U. KHAN, *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 1–21. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

REJECTIONS ON APPEAL

Claims 15–18 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 2.

Claims 1–4, 8–11, and 15–18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McDaniel (US 8,433,626 B1; April 30, 2013), Hemmings (US 7,315,312 B2; Jan. 1, 2008), and Shaffer (US 2010/0302278 A1; Dec. 2, 2010). Final Act. 3–14.

Claims 5–7, 12–14, and 19–21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McDaniel, Hemmings, Shaffer, and Liesaputra (V. Liesaputra, I.H. Witten: *Computer Graphics Techniques for Modeling Page Turning* (Working Paper: 08/2007), Dept. of Comp. Sci., Univ. of Waikato, Hamilton, New Zealand (Oct. 2007)). Final Act. 14–19.¹

35 U.S.C. § 101

The Examiner finds claims 15–18 are non-statutory under 35 U.S.C. § 101 because the claims encompass transitory storage media. Final Act. 2. Appellants amended claim 15 in an After Final Amendment (dated June 9, 2014) to recite the computer-readable storage medium is “non-transitory.” The claim amendment was entered by the Examiner; however, the section 101 rejection was not explicitly withdrawn or discussed. *See* Adv. Act. 1–2.

¹ The Final Action’s statement of rejection for dependent claims 5–7, 12–14, and 19–21 does not denote Hemmings and Shaffer, which are applied in the rejection of the respective base claims 1, 8, and 15. *See* Final Act. 14–15. Because the Examiner incorporates the findings and rationale presented in claim 1 in the rejection (Ans. 5) and these findings include Hemmings and Shaffer, (*see* Ans. 2–4), we understand the rejection to be over Hemmings and Shaffer in addition to McDaniel and Liesaputra.

We determine the amendment overcomes the rejection. Accordingly, we reverse the 35 U.S.C. § 101 rejection of claims 15–18.

35 U.S.C. 103(a)

Issue

Appellants’ contentions present us with the following issue: Did the Examiner set forth sufficient articulate reasoning, with a rational underpinning, to support combining the teachings of McDaniel, Hemmings, and Shaffer?

Analysis

We have reviewed the Examiner’s rejection in consideration of Appellants’ contentions and the evidence of record. We agree with Appellants that the Examiner has failed to establish the claims are unpatentable over the cited prior art.

For each of the independent claims, the Examiner relies on McDaniel, Hemmings, and Shaffer as follows. The Examiner relies on McDaniel’s Figure 3 rotation of element 253 to teach “provid[ing] for a visual transition from the origin screen to a destination screen representing a second, different interactive content in response to the input by applying a graphical effect to the display of the origin screen” (claims 1, 8, and 15). Final Act. 4. The Examiner relies on Hemmings’ Figure 4 page turn of element 5 to teach “the graphical effect comprises a translation aspect so as to cause the origin screen to move along an axis of a two-dimensional plane with respect to the viewing area” (claims 1, 8, and 15). Ans. 3–4; Final Act. 5. And, the Examiner relies on Shaffer’s Figures 7A–B rotation of element 710–730 (composing the interface) to teach “the graphical effect further comprises a

rotational aspect so as to cause the origin screen to rotate within the two-dimensional plane about the reference point” (claims 1, 8, and 15).

Ans. 2–3; Final Act. 4–5. The Examiner finds it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of McDaniel to include Hemmings’ teachings of the claimed translation aspect “in order to realistically depict a turning, flipping animation motion” and Shaffer’s teachings of the claimed rotational aspect “in order to realistically depict a turning, flipping animation motion.” Final Act. 5.

Appellants contend the Examiner has not identified a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed. App. Br. 8; Reply Br. 2–5. Appellants also contend no reason exists because there is no apparent manner of combining the cited features, stating:

Appellant’s argument with respect to the non-combinability of the references cited by the Examiner is that one skilled in the art would have no reason to combine a reference (McDaniel) regarding a 3-dimensional “flipping” from a first view to a second view in a region on a network page with a reference (Shaffer) regarding a 2-dimensional rotation of a single screen of displayed content to match a new orientation of the electronic device. Like McDaniel, Hemmings also relates to providing “a realistic 3-dimensional graphical representation.”

Reply Br. 4–5.

“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). We

agree with Appellants that the Examiner's reason to combine does not have the requisite rational underpinning required to support the legal conclusion of obviousness. The Examiner's rationale for combining McDaniel's flipping over of element 253, Hemmings' page turning of element 5, and Shaffer's dial-like rotating of element 710–730 essentially consists of a mere conclusion that the combination would “realistically depict a turning, flipping animation motion.” App. Br. 5. The Examiner never presents an underpinning reason and explanation for piecing these movements together. The Examiner, rather, only explains how these movement respectively teach the claim features quoted *supra*. See e.g., Ans. 3–4. Because the Examiner fails to present findings that show how the cited movements of McDaniel's, Hemmings', and Shaffer's would be combined, we cannot discern, *but for* the movements recited in the claimed invention, how the proposed combination pieces together the movements. In *KSR*, the Supreme Court guides that “[a] factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of argument reliant upon ex post reasoning.” *KSR*, 550 U.S. at 421. The Examiner's articulated reasoning is insufficient to support the combination because it improperly relies upon ex post reasoning.

For the reasons stated above, Appellants have persuaded us of error in the 35 U.S.C. § 103(a) rejection of the independent claims. Accordingly, we do not sustain the 35 U.S.C. § 103(a) rejections of: (1) independent claims 1, 8, and 15; and (2) their dependent claims 2–7, 9–14, and 16–23 also rejected over the deficient combination.

Appeal 2015-005284
Application 13/334,431

DECISION

We reverse the Examiner's decision to reject claims 1–21.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

REVERSED