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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOSHUA ALLEN and MARK ALAN PECKINPAUGH

Appeal 2015-006532
Application 13/409,524
Technology Center 2600

Before JOSEPH L. DIXON, CATHERINE SHIANG, and JOYCE CRAIG,
Administrative Patent Judges.

SHIANG, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–20, which are all the claims pending and rejected in the application. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Introduction

The present invention relates to displaying data. *See generally* Spec.

1. Claim 1 is exemplary:

1. A method of presenting an electronic illustration of a retail environment comprising:
 - providing a table surface with a sensor;
 - providing model elements moveably placed on the table surface, the model elements including a plurality of retail model

elements, each model element a three dimensional shape having a tag identifiable by the sensor for establishing a location and an orientation of each of the model elements on the table surface, each retail model element representing a respective one physical retail environment element selected from a set comprising a store gondola with shelving, a wall with shelving, a department, or a checkout location;

associating at least one of a product image and a graphics image with each retail model element, the product and graphic images illustrating products for sale, store signage or color schemes;

providing an electronic display in human scale that creates a partially surrounded space;

determining a point of view with respect to each of the plurality of retail model elements;

calculating a field of view showing the retail model elements and the product and graphic images associated with the retail model elements viewable from the point of view; and displaying the field of view on the electronic display.

References and Rejections¹

Claims 1, 2, 7, 9, 11, 14, 16, 19, and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Guidi (Virtual Reality for Retail, 2010), Do-Lenh (Task Performance vs. Learning Outcomes: A study of a Tangible User Interface in the Classroom, 2010), and Kim (A Tangible User Interface System for CAVE Applications, 2006).

¹ The rejection under 35 U.S.C. § 101 is moot because the Examiner entered the amendment remedying the situation. *See* Advisory Act. mailed Nov. 13, 2014.

Claims 3, 4, 8, 10, 15, and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Guidi, Do-Lenh, Kim, and Kenney (US 6,026,376, Feb. 15, 2000).

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Guidi, Do-Lenh, Kim, Kenney, and Dietz (DiamondTouch: A Multi-User Touch Technology, 2003).

Claims 6, 12, 13, and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Guidi, Do-Lenh, Kim, Kenney, and Wilson (PlayTogether: Playing Games across Multiple Interactive Tabletops, 2007).

ANALYSIS

We disagree with Appellants' arguments, and agree with and adopt the Examiner's findings and conclusions in (i) the action from which this appeal is taken and (ii) the Answer to the extent they are consistent with our analysis below.²

Claims 1, 2, 7, 9, 11, 14, 16, 19, and 20

Issue A

Appellants contend "Applicant claims the display of information upon a human scale display. Nothing in the Guidi, et al., reference teaches or suggests a human scale display." App. Br. 5.

² To the extent Appellants advance new arguments in the Reply Brief without showing good cause, Appellants have waived such arguments. *See* 37 C.F.R. § 41.41(b)(2).

Appellants' general assertion that “[n]othing in the Guidi, et al., reference teaches or suggests a human scale display” (App. Br. 5) is unpersuasive of error. *See* 37 C.F.R. § 41.37(c)(1)(iv) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim”); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (holding that “the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art”).

Issue B

Appellants contend:

[T]he Tinker Lamp system of the Do-Lenh is not presented or described in a manner suggesting that it could possibly serve as an input device for the Guidi et al., system. The Tinkerlamp system functions by having users arrange elements upon a physical table, then having a camera recognize the arrangement of elements and project additional information upon the physical layout of elements. *Nothing in this reference suggests that information from the physical arrangement of the 3D elements may be digitized and passed to the design system of Guidi.* The elements necessary for this interface have been called into existence for the purpose of supporting the combination of references in making this rejection and do not otherwise exist. A rejection may not be properly supported using elements called into existence solely to support the rejection.

The stated motivation for combining Do-Lenh with Guidi, is: to provide an interactive tabletop space simulation using tangible inputs. *This motivation fails as there is no means provided in the references for information transfer from the tangible interface to the design system of Guidi, et al.*

There is no likelihood of success that the stated combination may perform the claimed method

The Guidi - Do-Lenh – Kim combination also fails to teach or suggest each limitation of the claimed invention and *there is also no proper motivation for combining the references.*

App. Br. 5–6 (emphases added).

First, Appellants’ mere assertion that “[t]he . . . combination . . . fails to teach or suggest each limitation of the claimed invention” (App. Br. 5–6) is unpersuasive of error. *See* 37 C.F.R. § 41.37(c)(1)(iv); *Lovin*, 652 F.3d at 1357.

Second, the U.S. Supreme Court has held “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007). Further, “[i]n determining whether the subject matter of a patent claim is obvious, neither the particular motivation nor the avowed purpose of the patentee controls.” *Id.* at 419.

The Examiner has provided articulated reasoning with a rational underpinning as to why one skilled in the art would have found it obvious to combine the teachings of Guidi, Do-Lenh, and Kim. *See* Final Act. 11 (“providing an interactive tabletop space simulation using tangible inputs” and providing better user experience); Ans. 4–6. Appellants do not persuasively show why such reasoning is incorrect. In particular, Appellants’ assertion that “[n]othing in this [Do-Lenh] reference suggests that information from the physical arrangement of the 3D elements may be digitized and passed to the design system of Guidi” (App. Br. 5)—without citing any supporting evidence or providing persuasive analysis—is unpersuasive of error. Contrary to Appellants’ argument, “[i]f the claim

extends to what is obvious, it is invalid under § 103” and “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418–19. In any event, the Examiner finds—and Appellants do not offer any persuasive substantive argument to dispute—digitizing and passing information from Do-Lenh’s system to a processing system is taught by or would have been obvious in light of Do-Lenh’s teachings. *See* Ans. 5–6 (finding in Do-Lenh, “[t]he figure . . . shows in order to display various simulation results, the physical arrangement (e.g., position information) of the 30 elements need to be digitized and processed via a computer system”); *In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court [or this Board] to examine the claims in greater detail than argued by an appellant, looking for [patentable] distinctions over the prior art.”).

The Examiner’s findings are reasonable because the skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle” since the skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 420–21. Appellants do not present adequate evidence that the resulting arrangements would have been “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418–19). Appellants’ mere assertion that “[t]here is no likelihood of success that the stated combination may perform the claimed method” (App. Br. 5) is insufficient for showing Examiner error.

Accordingly, we agree with the Examiner that applying the Do-Lenh and Kim techniques in the Guidi method would have predictably used prior art elements according to their established functions—an obvious improvement. *See KSR*, 550 U.S. a 417.

Because Appellants have not persuaded us of error, we sustain the Examiner’s rejection of claims 1, 2, 7, 9, 11, 14, 16, 19, and 20.

Claims 3, 4, 8, 10, 15, and 17

Appellants assert there is no motivation to combine the teachings of Guidi with Kenney, and requests the Examiner to find a reference for “motivating the addition of Kenney.” *See App. Br. 8.*

Similar to the discussions above with respect to claim 1, the Examiner has provided articulated reasoning with a rational underpinning as to why one skilled in the art would have found it obvious to combine the teachings of Guidi, Do-Lenh, Kim, and Kenney. *See Final Act. 11, 18; Ans. 4–7* (“allowing a customer to view the contents of a particular shopping facility in a format that provides the feeling of shopping for the items in that particular facility”). Appellants do not persuasively show why such reasoning is incorrect. Contrary to Appellants’ assertion, the Examiner does not need to find a reference for “motivating the addition of Kenney” (*App. Br. 8*). *See KSR*, 550 U.S. at 418–19 (“If the claim extends to what is obvious, it is invalid under § 103” and “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”).

Therefore, and for similar reasons discussed above with respect to claim 1, we sustain the Examiner’s rejection of claims 3, 4, 8, 10, 15, and 17.

Claim 5

Appellants assert there is no motivation to combine the teachings of Guidi with Dietz. *See* App. Br. 10.

Similar to the discussions above with respect to claim 1, the Examiner has provided articulated reasoning with a rational underpinning as to why one skilled in the art would have found it obvious to combine the teachings of Guidi, Do-Lenh, Kim, Kenney, and Dietz. *See* Final Act. 11, 18, 21 (“providing a touch sensitive surface [that] allows multiple, simultaneous users to interact in an [i]ntuitive fashion”); Ans. 4–7. Appellants do not persuasively show why such reasoning is incorrect. Appellants’ assertion that “[n]othing in the Guidi reference suggests that a benefit will be achieved if only multiple users could simultaneously interact with the design interface through touch. There is no motivation in the references for the addition of Dietz” (App. Br. 10) is unpersuasive. *See KSR*, 550 U.S. at 418–19.

Therefore, and for similar reasons discussed above with respect to claims 1 and 3, we sustain the Examiner’s rejection of claim 5.

Claim 6, 12, 13, and 18

Appellants assert there is no motivation to combine the teachings of Guidi with Wilson, and the “teachings of Wilson cannot be seen as including colors assigned to the respective retail environmental elements of the invention.” *See* App. Br. 10.

Similar to the discussions above with respect to claim 1, the Examiner has provided articulated reasoning with a rational underpinning as to why one skilled in the art would have found it obvious to combine the teachings of Guidi, Do-Lenh, Kim, Kenney, and Wilson. *See* Final Act. 11, 18, 22 (“providing capabilities to create an interesting and engaging way to blend the virtual and real environment”); Ans. 4–7. Appellants do not persuasively show why such reasoning is incorrect. Appellants’ assertion that “[the stated] motivation [is] starkly absent in origin from within the references themselves” (App. Br. 12) is unpersuasive. *See KSR*, 550 U.S. at 418–19.

Further, Appellants’ assertion that the “teachings of Wilson cannot be seen as including colors assigned to the respective retail environmental elements of the invention” (App. Br. 10) is unpersuasive. As pointed out by the Examiner (Ans. 9–10), the Examiner relies on Guidi, Do-Lenh, Kim, Kenney, and Wilson collectively to teach claim 6, Appellants cannot attack Wilson individually. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Therefore, and for similar reasons discussed above with respect to claims 1 and 3, we sustain the Examiner’s rejection of claims 6, 12, 13, and 18.

DECISION

We affirm the Examiner’s decision rejecting claims 1–20.

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