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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TIMO KOSONEN, KAI HAVUKAINEN,
JUKKA HOLM, and ANTTI ERONEN

Appeal 2015-006772
Application 12/227,313¹
Technology Center 2100

Before ALLEN R. MacDONALD, MICHAEL M. BARRY, and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1, 2, 4–16, and 18–23, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Technology

The application relates to “changing an appearance of a graphical user interface in response to music.” Spec. 1:7–10.

Representative Claim

Claim 1 is representative and reproduced below with the limitations at issue emphasized:

¹ Appellants state the real party in interest is Nokia Corporation. App. Br. 2.

1. A method comprising:

providing an audio control signal to an audio output device of an apparatus to cause the audio output device to play audible music;

obtaining music information that defines at least one characteristic of the audible music wherein the music information is obtained by processing the audible music; and

controlling changes to an appearance of a graphical user interface of the apparatus using the music information by changing the appearance of a graphical menu item, wherein the graphical menu item enables access to functions of the apparatus.

Rejections

Claims 1, 2, 4–7, 12–16, and 18–23 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Tsujimoto (US 5,969,719; Oct. 19, 1999), Georges et al. (US 2004/0089141 A1; May 13, 2004), and Thomas et al. (US 2002/0042920 A1; Apr. 11, 2002). Final Act. 4.

Claims 8–11 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Tsujimoto, Georges, Thomas, and Kalish (US 2004/0201603 A1; Oct. 14, 2004). Final Act. 19.

ISSUES

1. Did the Examiner err in finding the combination of Tsujimoto and Georges teaches, suggests, or otherwise renders obvious “obtaining music information that defines at least one characteristic of the audible music,” as recited in claim 1?

2. Did the Examiner err in finding the combination of Tsujimoto and Thomas teaches, suggests, or otherwise renders obvious “the music information is obtained by processing the audible music,” as recited in claim 1?

3. Did the Examiner err in finding the combination of Tsujimoto and Georges teaches, suggests, or otherwise renders obvious “changing the appearance of a graphical menu item,” as recited in claim 1?

4. Did the Examiner err in finding Tsujimoto teaches, suggests, or otherwise renders obvious “the graphical menu item enables access to functions of the apparatus,” as recited in claim 1?

5. Did the Examiner err in finding a person of ordinary skill in the art would have combined Tsujimoto with Georges and Thomas?

ANALYSIS

According to Appellants, all of the independent claims “recite similar features to those of Claim 1.” App. Br. 13–14. Appellants therefore rely on the arguments against claim 1 for all claims on appeal. *Id.*

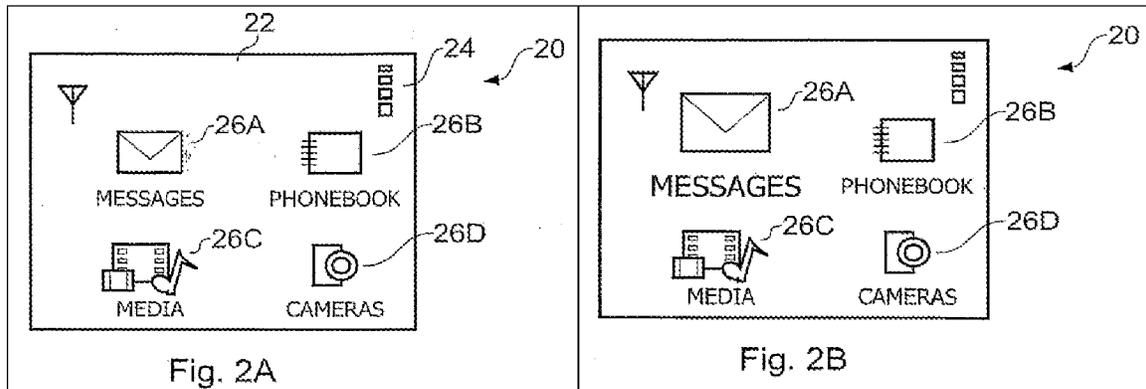
“obtaining music information that defines . . . the audible music”

Appellants contend Tsujimoto does not teach or suggest obtaining information defining the *audible* music because the relevant audio signal in Tsujimoto is *not* played by the speaker. App. Br. 8. “But one cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). Here, the Examiner also relies on Georges for teaching this limitation. Ans. 24–25. Specifically, Georges teaches “a visual representation of a speaker that preferably is pulsing in time with the music being played.” Georges ¶ 96, FIG. 7A. Appellants have not addressed Georges for this limitation and have not persuaded us of error in the Examiner’s findings.

“changing the appearance of a graphical menu item”

Appellants argue Tsujimoto teaches “an animated icon,” which “has no relation to a graphical menu item.” App. Br. 9. This argument, however, is contradicted by the present application’s Specification.

Figures 2A and 2B from the present application are reproduced below.



Figures 2A and 2B “illustrate a GUI 20 that changes appearance in response to and in time with the tempo of the beats in audible music,” including “a number of graphical menu items 26A, 26B, 26C and 26D.” Spec. 3:28–31. “[T]he graphical menu item 26A is animated. It pulsates in size with the beat of the music.” *Id.* at 4:3–4. Thus, “[t]he graphical menu item 26A . . . has an increased size S2 in Fig 2B.” *Id.* at 4:4–5.

As can be seen in Figures 2A and 2B, graphical menu item 26A is an icon labeled “MESSAGES” that pulsates with the music. Appellants have failed to meaningfully distinguish this from the teaching in Tsujimoto that “an icon image is made to change its size” with the music. Tsujimoto 7:49–53, FIG. 2 (label 14); *see also* Spec. 4:30–5:2 (“The graphical items . . . may include, for example, . . . icons”). Thus, we agree with the Examiner’s finding that Tsujimoto teaches this limitation. Ans. 26.

Appellants’ arguments regarding Georges for this limitation are moot given the Examiner’s reliance on Tsujimoto. App. Br. 10; Ans. 28.

“the graphical menu item enables access to functions of the apparatus”

We agree with the Examiner that “the features upon which applicant relies (i.e., the changed graphical menu item enables access to function[s] of the apparatus) are not recited in the rejected claim.” Ans. 27. Here, Appellants concede that in Tsujimoto, “the operator can activate the icon image to display the hidden window.” App. Br. 10; Tsujimoto 3:26–30. As the Examiner notes, “Appellants did not state how or why reopening a window . . . do[es] not teach accessing functions.” Ans. 28. We therefore agree with the Examiner that Tsujimoto teaches or suggests this limitation.

“the music information is obtained by processing the audible music”

Appellants contend Thomas “provides” information such as “the title of the song” by “retrieving or downloading supplemental content rather than processing an audible signal.” App. Br. 11–13. We are not persuaded of error. Although claim 1 recites “the music information is obtained by processing the audible music,” dependent claim 2 further recites “the music information is metadata for the audible music.” The Specification explains “[t]his metadata may indicate characteristics of the music such as, for example, the music genre, keywords from the lyrics, time signature, mood (danceable, romantic) etc.” Spec. 6:1–3. Appellants have not sufficiently persuaded us of any patentable distinction between the metadata disclosed in the Specification and Thomas’ teaching of metadata in the form of “information relating to the song playing in the background,” such as “the title of the song, the artist, a clip of the music video, a picture of the artist, or any other suitable media.” Thomas ¶ 111; Ans. 31.

Moreover, the Examiner does not rely on Thomas alone and instead also combines Thomas with Tsujimoto. Tsujimoto teaches two audio

signals, one of which is output through the speaker while the other has real-time information extracted for visual display (rather than audio output). App. Br. 7 (citing Tsujimoto 5:58–6:6); Tsujimoto FIG. 2. Specifically, Tsujimoto teaches that “from the . . . audio signal which is not currently output in the form of a sound through the loudspeaker, real-time information is extracted, such as the level of volume . . . and a pair of a pitch and a length.” Tsujimoto 2:67–3:6; Ans. 31. Applying Tsujimoto’s identical processing to the audio signal that is being played, e.g., based on Thomas’ teaching that “the user may indicate a desire to obtain information relating to the song playing in the background of the selected media by selecting button 912,” would yield only the predictable result of providing the volume level and pitch/length for the song being played. Ans. 31–32. We are not persuaded by Appellants’ conclusory attorney argument that the processing of the audio signal provided to the speaker “would require considerable inventive activity,” particularly since Appellants have not shown any way in which the processing of either audio signal would differ. Reply Br. 4.

Thus, we find no error in the Examiner finding “the combination of Tsujimoto and Thomas teaches the argued limitations.” Ans. 32.

Combining Tsujimoto with Georges and Thomas

Appellants also contend that Georges and Thomas are not analogous art to Tsujimoto. App. Br. 10–11, 13; Reply Br. 5, 7.

Prior art is analogous if either (A) “the art is from the same field of endeavor, regardless of the problem addressed” or (B) regardless of field of endeavor, the reference is “reasonably pertinent to the particular problem with which the inventor is involved.” *Innovention Toys, LLC v. MGA Entm’t, Inc.*, 637 F.3d 1314, 1321 (Fed. Cir. 2011) (quotation omitted). “A

reference is reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *Id.* (quotation omitted). "If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem, and that fact supports use of that reference in an obviousness rejection." *Id.* (quotation omitted). However, "[t]he pertinence of the reference as a source of solution to the inventor's problem must be recognizable with the foresight of a person of ordinary skill, not with the hindsight of the inventor's successful achievement." *Sci. Plastic Prod., Inc. v. Biotage AB*, 766 F.3d 1355, 1359 (Fed. Cir. 2014).

In *Innovention*, the patentee argued the references "describ[ed] computer-based, chess-like strategy games" and were "non-analogous art because the [asserted] patent's inventors were concerned with making a non-virtual, three-dimensional, laser-based board game, a project that involves mechanical engineering and optics, not computer programming." 637 F.3d at 1316, 1321. The Federal Circuit found "an *electronic*, laser-based strategy game, even if not in the same field of endeavor, would nonetheless have been reasonably pertinent to the problem facing an inventor of a new, *physical*, laser-based strategy game" because both "relate to the same goal: designing a winnable yet entertaining strategy game." *Id.* at 1322.

Given the limited record before us, we are not persuaded by Appellants' argument. Appellants too narrowly interpret both the fields of endeavor of the prior art and the particular problems they try to address. For example, Appellants limit Georges to "the generation or modification of a musical composition." App. Br. 10. Yet Georges describes its disclosure more broadly: "[t]he present invention relates to systems and methods for

. . . playing music.” Georges ¶ 2. More specifically, “[w]hat is important to this aspect of the present invention [is] that the user be presented with a multi-lane *visual representation* . . . of the music that is being composed *or played*.” *Id.* ¶ 96 (emphasis added); *see also* Spec. 1:7–10 (broadly defining the field of the present application as “an adaptive user interface” in which “some embodiments relate to . . . changing an appearance of a graphical user interface in response to music”). Similarly, Thomas is related to the visual display of “music information,” such as “the title of the song, the artist, a clip of the music video, a picture of the artist, or any other suitable media” of “the song playing in the background.” Thomas ¶ 111, FIG. 18; Ans. 34. Given a problem addressed by Tsujimoto is how to visually display an audio signal, we are not persuaded that Georges or Thomas are not “reasonably pertinent” to the problem with which Tsujimoto is involved. Nor are we persuaded by Appellants’ conclusory assertions that a person of ordinary skill would be unable or unmotivated to combine the three references.

Accordingly, we sustain the Examiner’s rejection of claim 1, and claims 2, 4–16, and 18–23, which Appellants argue are patentable for similar reasons. *See* App. Br. 13–14; 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

For the reasons above, we affirm the Examiner’s decision rejecting claims 1, 2, 4–16, and 18–23.

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

AFFIRMED