



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 12/894,107 | 09/29/2010 | Ling Jun Wong | 200903017.01 | 5398 |
| 36738 | 7590 | 11/02/2016 | EXAMINER | |
| ROGITZ & ASSOCIATES 750 B STREET SUITE 3120 SAN DIEGO, CA 92101 | | | NGUYEN, AN V | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2426 | |
| | | | NOTIFICATION DATE | DELIVERY MODE |
| | | | 11/02/2016 | ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Noelle@rogitz.com
eofficeaction@apcoll.com
John@rogitz.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LING JUN WONG and TRUE XIONG

Appeal 2015-007138
Application 12/894,107
Technology Center 2400

Before THU A. DANG, JOHN D. HAMANN, and
ALEX S. YAP, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s Final Rejection of claims 12–15 and 17–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

According to Appellants, the invention is directed to “[t]echniques for developing a television user interface for a secondary device,” which include “creating a set of user interface rules and a plurality of user interface

objects,” wherein “[t]he set of user interface rules are applied to the plurality of user interface objects to create a mapping between the inputs and output of the user interface of the secondary device to television remote control commands” (Abstract).

B. EXEMPLARY CLAIMS

Claim 12 is exemplary:

12. A system comprising:
an extendable computing device for wirelessly controlling an appliance different than the extendable computing device, the extendable computing device including a configurable user interface associated with a set of user interface rules applied to a plurality of user interface objects to configure the device to be used as a remote commander for the appliance, with a mapping being defined between the input and output of the user interface objects to television remote control commands according to the user interface rules, one of the user interface objects being an accelerometer and a user interface rule associated with the accelerometer defining a command for the appliance based on an output of the accelerometer.

C. REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

| | | |
|---------------|--------------------|---------------|
| Lee | US 2010/0030549 A1 | Feb. 4, 2010 |
| Musschebroeck | US 2010/0271252 A1 | Oct. 28, 2010 |

Claims 12–15, and 17–20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Musschebroeck and Lee.

II. ISSUE

The principal issue before us is whether the Examiner erred in finding that the combination of Musschebroeck and Lee teaches or suggests “an extendable computing device for wirelessly controlling an appliance” including “a configurable user interface associated with a set of user interface rules applied to a plurality of user interface objects” wherein “one of the user interface objects being an accelerometer and a user interface rule associated with the accelerometer defining a command for the appliance based on an output of the accelerometer” (claim 12).

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Musschebroeck

1. Musschebroeck discloses a programmable remote control for controlling devices, which comprises a communication interface for receiving a control script and sending a control command to the devices, wherein, upon activation, the user executes the control script for generating the control command (Abstract). The remote control further comprises a display screen for providing feedback and/or instructions to the user (§ 17).

Lee

2. Lee discloses a mobile electronic device having a touch sensitive screen and an accelerometer (Abstract). The accelerometer provides information about the physical orientation or position of the device, as well as rotation or movement of the device about an axis, wherein the information is used to detect that the device is in a vertical (portrait) orientation, or in a

horizontal (landscape) orientation. The processing of the accelerometer data is performed by a driver program that translates raw data from the accelerometer into physical orientation information used by the various modules of the device (§ 24), one module being a communication module that manages or facilitates communication with external devices (§ 25).

IV. ANALYSIS

In reaching this decision, we consider all evidence presented and all arguments actually made by Appellants. We do not consider arguments that Appellants could have made but chose not to make in the Briefs, and we deem any such arguments waived. 37 C.F.R. § 41.37(c)(1)(iv).

Appellants contend Musschebroeck “has no accelerometer” and “Lee does nothing more with its accelerometer than present information on its local display ‘right side up’ without ever contemplating using the signal to control a different appliance” (App. Br. 3). Thus, according to Appellants, “it is clear that illegitimate hindsight reconstruction of the references is afoot, diligently using the claims as a template” (*id.*).

We have considered all of Appellants’ arguments and evidence presented. However, we disagree with Appellants’ contentions regarding the Examiner’s rejections of the claims. Instead, we agree with the Examiner’s findings, and find no error with the Examiner’s conclusion that the claims would have been obvious over the combined teachings.

The test for obviousness is what the *combined teachings would have suggested* to one of ordinary skill in the art. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Although Appellants contend Musschebroeck “has no accelerometer” and Lee does not contemplate

“using the [accelerometer] signal to control a different appliance” (App. Br. 3), we agree with the Examiner’s finding Lee’s accelerometer “defines the command to be performed based on the output of the accelerometer” (Ans. 4), and thus, “[w]hen properly combined with a remote control of Musschebroeck that remotely controls a local device” would “render obvious using the accelerometer to perform commands” (Ans. 5). That is, we agree with the Examiner that the *combination* of Lee and Musschebroeck *at least suggest* the contested limitations.

Musschebroeck discloses a programmable remote control for controlling different devices/appliances, which comprises a communication interface for receiving a control script and sending a control command to the devices, wherein, upon activation, the user executes the control script/rules for generating the control command (FF 1). We find no error with the Examiner’s reliance on Musschebroeck for teaching and suggesting “an extendable computing device for wirelessly controlling an appliance” including “a configurable user interface associated with a set of user interface rules” applied to a plurality of user interface objects, wherein “a user interface rule” associated with one of the user interface objects defines “a command for the appliance” based on an output of the one user interface object (claim 12). Thus, the only claim limitation missing from Musschebroeck is a specific teaching of “one of the user interface objects being an accelerometer.” (*id.*).

However, we find no error with the Examiner’s reliance on Lee for disclosing a user interface object for defining commands being an accelerometer (Ans. 4; FF 2). Even Appellants concede that Lee discloses using an accelerometer.

In Lee, the accelerometer data is processed by a driver program that translates raw data from the accelerometer into information used by the various modules of the device, one of which is a communication module that manages communication with external devices (FF 2). That is, Lee discloses use of the output of the accelerometer by various modules, such as a communication module that manages communication with external devices (*id.*). We agree with the Examiner’s finding that Lee discloses or at least suggests an accelerometer that “defines the command to be performed based on the output of the accelerometer” (Ans. 4), wherein the command includes a communication module command for managing communication with external devices. Thus, we find no error with the Examiner’s finding that the combination of Musschebroeck and Lee teaches or at least suggests defining a command to be performed by external devices/appliances based on the output of an accelerometer.

Although we are mindful of Appellants’ hindsight contentions (App. Br. 3), the Supreme Court has clearly stated the “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). That is, when considering obviousness of a combination of known elements, the operative question is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.* at 417. The skilled artisan is “a person of ordinary creativity, not an automaton.” *Id.* at 421.

Here, Appellants have presented no evidence that combining Lee’s accelerometer to Musschebroeck’s remote control for defining commands to external devices would have been “uniquely challenging or difficult for one

of ordinary skill in the art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418). Instead, we conclude that it would have been well within the skill of one skilled in the art to combine Lee’s accelerometer for defining commands (FF 1) with Musschebroeck’s remote control for defining commands to external devices (FF 2). Such a substitution/design choice would have been well within the skill of the art. *See KSR*, 550 U.S. at 417.

Here, we agree that one of ordinary skill in the art, upon reading Lee’s teaching of an accelerometer that “defines the command to be performed based on the output of the accelerometer” (Ans. 4; FF 2), would have found it obvious to modify Musschebroeck’s teachings of using user interface rules to define commands for external devices/appliances (FF 2) also to use an accelerometer to further define the commands. That is, we agree that Appellants’ invention is simply a modification of familiar prior art teachings (as taught or suggested by the cited references) that would have realized a predictable result, *KSR* 550 U.S. at 421. Minor differences between the prior art and a claimed device may be a matter of design choice absent evidence to the contrary. *See In re Rice*, 341 F.2d 309, 314 (CCPA 1965).

Although Appellants contend Lee does not contemplate “using the signal to control a different appliance” (App. Br. 3), we agree with the Examiner’s reliance on Musschebroeck (instead of Lee) for disclosing and suggesting defining commands for controlling an appliance different than the computer device (FF 1). In view of Lee’s teaching of using an accelerometer to provide output for use in providing commands by various modules, such as a communication module that manages communication with external devices (FF 2), we agree with the Examiner that the

combination thereof teaches or at least suggests the contested limitation (Ans. 4).

On this record, we are unconvinced of Examiner error in the rejection of independent claim 12 over Musschebroeck and Lee. Appellants do not provide separate arguments for the other pending claims, and thus, we summarily affirm the rejections of these claims.

V. CONCLUSION AND DECISION

We affirm the Examiner's rejection of claims 12–15 and 17–20 under 35 U.S.C. § 103(a).

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