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Paratus Law Group, PLLC 620 Herndon Parkway Suite 320 Herndon, VA 20170			JOHNS, ANDREW W	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RYO FUKAZAWA, YUSUKE KUDO, and TAKASHI KITAO

Appeal 2015-007212
Application 13/219,883
Technology Center 2600

Before, ROBERT E. NAPPI, LARRY J. HUME, and
STEVEN M. AMUNDSON *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of claims 1 through 15, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

The disclosed and claimed inventions are directed to image processing apparatus and methods which recognize a user identifying an image among plural images on a display, and drawing the selected image as a stereoscopic image and the other images as planer images. *See* Abstract.

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of the invention and reproduced below:

1. An image processing apparatus comprising:

an operation recognition unit for recognizing an operation signal for identifying a focused image among images displayed on a screen of an image display unit, wherein said identifying is based on at least one of head tracking of a user and eye tracking of the user indicating a user's attention on the focused image; and

an image drawing unit for drawing the focused image on the screen so as to display the focused image as a stereoscopic image on the screen based on the at least one of head tracking of the user and eye tracking of the user.

REFERENCES AND REJECTIONS AT ISSUE

The Examiner rejected claims 5, 6, 13, and 14 under 35 U.S.C. § 112 first paragraph as failing to comply with the written description requirement. Ans. 2–4.¹

The Examiner rejected claims 1, 2, 5, 6, 8, 9, 10, 13, and 14 under 35 U.S.C. § 103(a) as being unpatentable over Osaka and Surakka. Ans. 5–7.

The Examiner rejected claims 3, 4, 11, and 12 under 35 U.S.C. § 103 as being unpatentable over Osaka, Surakka, and Wikipedia. Ans. 7–8.

¹ Throughout this Opinion we refer to the Appeal Brief dated Feb. 27, 2015, Reply Brief dated July 27, 2015 and the Examiner's Answer mailed on May 27, 2015.

The Examiner rejected claims 7 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Osaka, Surakka, and Choo. Ans. 8–10.

ANALYSIS

We have reviewed Appellants’ arguments in the Briefs, the Examiner’s rejections and the Examiner’s response to Appellants’ arguments. Appellants’ arguments have not persuaded us of error in the Examiner’s rejection of claims 5, 6, 13, and 14 under 35 U.S.C. § 112 and of claims 1 through 15 of 35 U.S.C. § 103(a).

Rejection under 35 U.S.C. § 112, ¶ 1

The Examiner rejected claims 5, 6, 13, and 14 as Appellants’ Specification does not identify the image drawing unit as drawing the image on the screen to display the focused image as a stereoscopic image or a planar image on the basis of a size of an area occupied on the screen (claims 5, 13) or distance from the focused image in the screen to a center of the screen (claims 6, 14). Appellants argue that Figure 18 and the disclosure in paragraphs 67 and 68 provide support for the claims. App. Br. 10–12, Reply Br. 4. The Examiner in response identifies that paragraphs 67 and 68 discuss two alternative embodiments, a) identifying a focused image with only the focused image displayed as a stereoscopic image and b) determining whether an image is to displayed as a stereoscopic image based on the size of the area occupied by the image in the screen, or the distance from the image to the center of the screen. Answer 11–12. We concur with the Examiner. Claims 1 and 8 recite identifying a focused image based upon head tracking or eye tracking and drawing the focused image as a stereoscopic image based upon the head or eye tracking. Claims 5, 6, 13, and 14 are dependent upon claims 1 and 8, and further recite that the display

of the stereoscopic image is dependent upon either size or location on the screen. As the Examiner identifies, the paragraphs of Appellants' specification cited in Appellants' arguments identify two separate embodiments, and there is no disclosure of combining the embodiments. Accordingly, Appellants' arguments have not persuaded us of error, and we sustain the Examiner's rejection under 35 U.S.C. § 112.²

Rejection under 35 U.S.C. § 103

Appellants argue the Examiner's rejection of independent claims 1, 8, and 9 is in error as Surakka and Osaka do not teach display of a stereoscopic image on the screen based on the at least one of head tracking and eye tracking of the user. App. Br. 13. Further, Appellants argue that there is no reasonable basis to combine the references. App. Br. 15–16.

The Examiner in response finds that Osaka teaches a stereoscopic display which recognizes when a user uses a pointer to select an image and displays the selected image stereoscopically while the rest of the images are displayed in planar. Answer 14–15 (citing Figure 15 and col. 16 l. 65 to col. 17, l. 5). Further, the Examiner finds that Osaka teaches using gaze tracking to move a pointer. Answer 15. The Examiner considers that the skilled artisan would combine the gaze tracking to control the pointer of Osaka as it would allow the use of the system by persons with disabilities. Answer 15, 17–19. We have reviewed the Examiner's findings, the evidence relied upon

² We recognize that Appellants have alleged that the Examiner's Final Rejection is premature. These arguments are directed to a petitionable issue and not an appealable issue. See *In re Schneider*, 481 F.2d 1350, 1356–57 (CCPA 1973), and *In re Mindick*, 371 F.2d 892, 894 (CCPA 1967). See also *Manual of Patent Examining Procedure* (MPEP) (8th Ed., August 2001) § 1002.02(c), item 3(g), and § 1201.

by the Examiner, and we concur with the Examiner findings and conclusions. Thus, we are not persuaded of error in the Examiner's rejection of claims 1, 2, 5, 6, 8, 9, 10, 13, and 14 under 35 U.S.C. § 103(a).

Appellants' arguments directed to the Examiner's rejections of claims 3, 4, 7, 11, 12, and 15, assert that the additional references used in the rejections of these claims do not remedy the deficiency in the rejection of the independent claims as discussed above. App. Br. 18–19. As Appellants' arguments directed to the independent claims have not persuaded us of error, we sustain the Examiner's rejection of claims 3, 4, 7, 11, 12, and 15 for the same reasons as discussed with respect to claims 1 and 8.

DECISION

We sustain the Examiner's rejections of claims 1 through 15 under 35 U.S.C. § 103(a), and the Examiner's written description rejection of claims 5, 6, 13, and 14 under 35 U.S.C. § 112, first paragraph.

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