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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ZEENAT JETHA, and JOHANNES A. JANSEN

Appeal 2015-007337
Application 13/107,346
Technology Center 2100

Before MARC S. HOFF, CATHERINE SHIANG, and
ALEX S. YAP, *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 35–50, 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 graphic user interfaces. *See generally* Spec. 1. Claim 35 is exemplary:

35. A method of providing a menu display for a GUI, the method comprising acts of:

displaying a first menu in a rotatable window and, in the event of a second menu being selected by a user, displaying the second menu in place of the first menu by rotating the window to reveal the second menu on the flipside of the window, wherein

in a first mode the user is enabled to select the menu being displayed and not enabled to select an option that is displayed in the selected menu,

the user is enabled to switch to a second mode, and

in the second mode the user is enabled to select an option in the selected menu and not enabled to select the menu being displayed.

References and Rejections¹

Claims 35–40, 42–48, and 50 are rejected on the ground of non-statutory double patenting as being unpatentable over Jetha (US 7,966,575 B1; iss. June 21, 2011).

Claims 35–37, 39–45, and 47–50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ho (US 6,407,757 B1; iss. June 18, 2002), Anderson (US 6,680,749 B1, iss. Jan. 20, 2004), and Kato et al (US 6,297,795 B1; iss. Oct. 2, 2001).

Claims 38 and 46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ho, Anderson, Kato, and Levin (US 6, 154,201; iss. Nov. 28, 2000).

¹ The Examiner's objections to claims in the event of claim allowance (Final Act. 2) are not before us.

ANALYSIS

Non-Statutory Double Patenting

Because Appellants do not contest the merits of the Examiner’s rejection, we summarily affirm the Examiner’s rejection of claims 35–40, 42–48, and 50 on the ground of non-statutory double patenting in light of the claims of U.S. Patent No. 7,966,575.

Obviousness

On this record, we find the Examiner did not err in rejecting claim 35.

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

Appellants contend Ho, Anderson, and Kato do not collectively teach “in a first mode the user is enabled to select the menu being displayed and *not enabled* to select an option that is displayed in the selected menu . . . and in the second mode the user is enabled to select an option in the selected menu and *not enabled* to select the menu being displayed,” as recited in claim 35 (emphases added). *See* App. Br. 7–15. In particular, Appellants argue Anderson teaches the primary menu and the secondary menu are enabled at the same time, and Kato’s “Up/Down or Left/Right” options are also enabled at the same time. *See* App. Br. 10–11.

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 have not persuaded us of error. In response to Appellants' arguments, the Examiner provides further findings showing that Ho, Anderson and Kato collectively teach the disputed claim limitation. *See* Ans. 3–5. In particular, the Examiner explains instead of Kato's portrait mode argued by Appellants, the Examiner relies on Kato's teachings of horizontal and vertical scrolling. *See* Ans. 4. Specifically, the Examiner finds Kato teaches “mode switch disables vertical scrolling while enabling horizontal scrolling and vice versa.” *See* Ans. 4; Kato 7:2–4 (“the mode for the rotary switch must be switched, in advance, from vertical scrolling to horizontal scrolling”). Therefore, the Examiner finds Kato teaches (i) when the horizontal scroll is enabled, the vertical scrolling is “not enabled”; and (ii) when the vertical scrolling is enabled, the horizontal scrolling is “not enabled.”

Further, the Examiner finds—and Appellants do not offer substantive arguments to dispute—Ho, Anderson and Kato collectively teach “in a first mode the user is enabled to select the menu being displayed and [] to select an option that is displayed in the selected menu . . . and in the second mode the user is enabled to select an option in the selected menu and [] to select the menu being displayed,” as recited in claim 35. *See* Final Act. 6–9; Ans. 3–5.

Because Appellants do not challenge the propriety of combining the teachings of Ho, Anderson and Kato, the Examiner finds that the combination teaches “in a first mode the user is enabled to select the menu being displayed and *not enabled* to select an option that is displayed in the selected menu . . . and in the second mode the user is enabled to select an option in the selected menu and *not enabled* to select the menu being

displayed,” as recited in claim 35 (emphases added). Appellants fail to persuasively respond to the Examiner’s obviousness conclusion and, therefore, fail to show Examiner error. *See 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.”).

Because Appellants have not persuaded us the Examiner erred, we sustain the Examiner’s rejection of independent claim 35.

For similar reasons, we sustain the Examiner’s rejection of independent claim 43.

We also sustain the Examiner’s rejection of corresponding dependent claims 36–42 and 44–50, as Appellants do not argue them separately with substantive contentions.

DECISION

We affirm the Examiner’s decision rejecting claims 35–50.

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