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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DMITRIY SERGEYEVICH CHERKASOV
and JOHN P. McCARTHY

Appeal 2015-007940
Application 13/434,550
Technology Center 2600

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

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ seek our review under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of Claims 1, 2, 4–13, 16, and 21–27. App. Br. 1. Claims 3, 14, 15, and 17–20 are canceled. Claims Appx.

We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ The Appeal Brief identifies Hewlett-Packard Development Company, LP, as the real party in interest. App. Br. 1.

² Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed March 26, 2015, "App. Br."), the Reply Brief (filed August 27, 2015, "Reply Br."), the Examiner's Answer (mailed July 2, 2015, "Ans."), the Final Action (mailed November 3, 2014, "Final Act."), and the Specification (filed March 29, 2012, "Spec.") for their respective

STATEMENT OF THE CASE

The claims relate to an input device and sensor to detect hand gestures. *See Abstract.*

INVENTION

Claims 1, 9, and 26 are independent. An understanding of the invention can be derived from a reading of exemplary Claim 9, which is reproduced below

9. A method of a computing device comprising:

receiving, from a first sensor, a first input signal responsive to detection, by the first sensor, of repositioning by a hand gesture of an input module along an axis;

receiving, from a second sensor, a second input signal responsive to detection, by the second sensor, of a touch gesture across a touch sensitive surface of the input module; and

identifying, by the computing device, a combination input command for the computing device based on a combination of the first input signal and the second input signal.

References and Rejections

1. Claims 1, 2, 4–7, 9–11, 22, and 25–27 stand rejected under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Hyun (US 2007/0020992 A1, pub. Jan. 25, 2007). Final Act. 2–13.
2. Claims 8, 12, 13, 16, 21, 23, and 24 stand rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Hyun and Kim (US 2009/0197635 A1, pub. Aug. 6, 2009). Final Act. 14–20.

details.

ANALYSIS

We have reviewed the rejections of Claims 1, 2, 4–13, 16, and 21–27 in light of Appellants’ arguments that the Examiner erred. We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments which Appellants could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We are not persuaded that Appellants identified reversible error. Upon consideration of the arguments presented in the Appeal Brief and Reply Brief, we agree with the Examiner that all the pending claims are unpatentable. We adopt as our own the findings and reasons set forth in the rejection from which this appeal is taken and in the Examiner’s Answer, to the extent consistent with our analysis below. We provide the following explanation to highlight and address specific arguments and findings primarily for emphasis. We consider Appellants’ arguments *seriatim*, as they are presented in the Appeal Brief, pages 5–10.

CLAIMS 1, 2, 4–7, 9–11, 22, AND 25–27: ANTICIPATION BY HYUN

In the Final Rejection, the Examiner finds Hyun discloses a second housing (Element 20), the repositioning of which is sensed by a first sensor and results in a change of operational mode of the device. Final Act. 7. The Examiner finds the signal from this first sensor is the claimed first input signal. *Id.* The Examiner finds this first input signal is equivalent to the claimed sensing of a hand gesture of an input mode. *Id.* The Examiner finds Hyun discloses a touch-screen (Element 212) the touching of which is detected as a second input signal. *Id.* The Examiner finds the claimed combination input is

disclosed by the input of the second sensor being a function of the device mode as set by the first sensor. *Id.* at 8.

In the Appeal Brief, Appellants contend that Hyun does not disclose “identifying, by the computing device, a combination input command for the computing device based on a combination of the first input signal and the second input signal,” as recited in independent Claim 9. App. Br. 8. Appellants agree that repositioning the second housing 20, which the Examiner finds to be the “first input signal,” sets the mode of Hyun’s portable terminal. App. Br. 8. However, Appellants argue setting the mode depends only on the “first input signal,” but does not depend on any “second input signal.” *Id.*

Appellants further argue that touching Hyun’s touch screen results in an input signal, but Hyun does not teach that this touch-based input signal is **combined** with any other signal so as to form a “combination input command.” *Id.* Appellants argue, rather, once Hyun’s terminal is set to a particular mode, a touch-input produces a signal that is individually processed. *Id.*

In the Answer, the Examiner points out Hyun discloses an input from a third keypad is interpreted as a different input depending upon whether the device is open in a first or second mode. Ans. 22. Appellants reply Hyun does not disclose a “**combination** of the ‘first input signal’ and the ‘second input signal’.” Reply Br. 4.

As Appellants concede, in Hyun, once the terminal is set to a particular mode, a touch-input produces a signal that is individually processed (*see* App. Br. 8). We find that this is substantially the same as Appellants’

disclosure that “even though the position data and the touch data are shared in parallel, they are received by the controller sequentially.” Spec., ¶ 26. Moreover, we find Appellants’ algorithm in Figure 5 substantially tracks the Examiners findings regarding Hyun’s disclosure. Appellant argues Claims 9–11 and 25–27 as a group in view of independent Claim 9. *See* App. Br. 5, 8. Appellant contends independent Claim 1 and dependent Claims 2, 4–7, and 22 are allowable in view of the arguments advanced in favor of Claim 9. *Id.* at 9. Appellant contends dependent Claims 8, 12, 16, 21, 23, and 24 are allowable in view of the arguments advanced in favor of independent Claim 9. *Id.*

On this record, we are not persuaded of error with respect to Claims 1, 2, 4–7, 9–11, 22, and 25–27.

CLAIMS 8, 12, 13, 16, 21, 23, AND 24: OBVIOUSNESS OVER HYUN AND KIM.

Appellants argue Claims 8, 12, 16, 21, 23, and 24 are allowable because their base claims distinguish over Hyun. App. Br. 9. As discussed above, we are not persuaded of error.

CLAIM 13: OBVIOUSNESS OVER HYUN AND KIM.

Appellants argue Claim 13 is allowable because its base claim distinguishes over Hyun. App. Br. 9. As discussed above, we are not persuaded of error.

Appellants further contend Kim discloses a left-tilt action applied to a mobile device results in an action equivalent to a left-click of a mouse, but such action is not equivalent to a re-positioning of a cursor. *Id.* at 10.

The Examiner finds Kim teaches “**The user input unit 130 generates**

input data responsive to user manipulation of an associated input device or devices. Examples of such devices include a keypad, a dome switch, a touchpad (e.g., static pressure/ capacitance), **a touch screen panel**, a jog wheel and a jog switch.” Ans. 25 (citing Kim, ¶ 145). The Examiner finds a person of ordinary skill in the art would understand that moving a finger on a touch screen would be used to reposition a pointer on a screen. *Id.*

Appellants argue a “person of ordinary skill in the art would clearly understand that a touch screen panel would **not** include a **pointer rendered** on a user interface.” Reply Br. 7.

We are not persuaded of error.

DECISION

The rejection of Claims 1, 2, 4–7, 9–11, 22, and 25–27 under 35 U.S.C. § 102(b) is AFFIRMED.

The rejection of Claims 8, 12, 13, 16, 21, 23, and 24 under 35 U.S.C. § 103(a) is AFFIRMED.

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