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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAN OTTO BLOM

Appeal 2015-008126
Application 13/538,289
Technology Center 2100

Before DEBRA K. STEPHENS, DANIEL N. FISHMAN, and
IRWIN E. BRANCH, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a Final Rejection of claims 1–20. Claims 21–48 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE INVENTION

According to Appellant, the claims are directed to a method and apparatus for determining sensory data associated with a user (Abstract).

Claim 1, reproduced below, is representative of the claimed subject matter:

1. A method comprising facilitating a processing of and/or processing (1) data and/or (2) information and/or (3) at least one signal, the (1) data and/or (2) information and/or (3) at least one signal based, at least in part, on the following:

a processing of sensor data associated with at least one user to determine one or more activities;

a processing of the sensor data to cause, at least in part, a classification of the one or more activities into one or more primary activities, one or more secondary activities, one or more peripheral activities, or a combination thereof; and

a presentation of at least one user interface for interacting with at least one of the one or more activities, one or more content items, one or more applications, or a combination thereof based, at least in part, on the classification.

REFERENCES

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

Moon US 2009/0319899 A1 Dec. 24, 2009

Kevin Purdy, *The Best Android Apps for Your Car*, LIFEHACKER, <http://lifehacker.com/5626711/the-best-android-apps-for-your-car> (Sept. 2, 2010) (“Purdy”)

Zainul, *How to Create Geo-Reminders in Android with GeoNote*, www.howtogeek.com/howto/42023/how-to-create-geo-reminders-in-android-with-geonote, (last visited April 9, 2014) (“Zainul”)

REJECTIONS

Claims 1, 2, 9–12, 19, and 20 stand rejected under 35 U.S.C. §102(b) as being anticipated by Moon (Final Act. 3–6).

Claims 3–7, and 13–17¹ stand rejected under 35 U.S.C. §103(a) as being unpatentable over Moon and Purdy (Final Act. 6–9).

Claims 8 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Moon and Zainul (Final Act. 9–10).

ISSUES

Objections: Claims 1–20

Appellant argues the objections to claims 1 and 11 and claims 2 and 12, contending, because the objection is for indefiniteness, this issue is a question of law (App. Br. 5–12; Reply Br. 2, 4). Thus, Appellant contends the Examiner actually rejected the claims under 35 U.S.C. § 112 (*id.*). However, the Examiner did not make a rejection under 35 U.S.C. § 112; rather the Examiner objected to the claims for *informalities* and more specifically, for the use of “and/or” in the preamble and the use of “a method” and “an apparatus” when referring to independent claims (Final Act. 2). Objections are petitionable matter, not an appealable matter (*See* MPEP §§ 706.01, 1201 (9th ed., Rev. 9, March 2014)). Accordingly, this matter is not before us.²

¹ The Examiner includes claims 9 and 19 in the summary of claims rejected under § 103 but these claims are rejected under § 102 (Final Act. 6).

² Although the Examiner has issued objections to the claims, the Examiner interprets the “and/or” alternatives in the preambles of the claims to mean “at least one” (Final Act. 2). We agree with the Examiner’s interpretation.

35 U.S.C. § 102(b): Claims 1, 2, 9–12, 19, and 20

Appellant contends the invention as recited in claims 1, 2, 9–12, 19, and 20, is not anticipated by Moon (App. Br. 7–11). The issues presented by the arguments are:

Issue 1: Has the Examiner erred in finding Moon discloses “a processing of sensor data associated with at least one user to determine one or more activities” and “a presentation of at least one user interface for interacting with at least one of the one or more activities, one or more content items, one or more applications, or a combination thereof,” as recited in independent claim 1 and commensurately recited in independent claim 11?

Issue 2: Has the Examiner erred in finding Moon discloses “a categorization of the one or more content items, the one or more applications, or a combination based, at least in part, on an association with the one or more primary activities, the one or more secondary activities, the one or more peripheral activities, or a combination thereof” as recited in claim 2 and commensurately recited in claim 12?

ANALYSIS

Appellant argues the Examiner is unreasonably interpreting the term “activities” and as a result, incorrectly determines Moon’s content items disclose the recited “activities” (App. Br. 9). More specifically, Appellant contends content items, such as a digital file of an audio recording, are not “activities” (*id.*). As support, Appellant provides dictionary definitions that, according to Appellant, would be inconsistent with the Examiner’s interpretation of “activities” and finding Moon’s content items are activities

(*id.*). Appellant additionally argues Moon’s “playing songs” is not classified; rather, Moon describes only classifying content items (*id.*). Appellant further argues that due to the claim reciting “activities” as well as “content items,” Moon’s content items cannot be the recited activities (App. Br. 10).

Initially, we note Appellant has provided dictionary definitions from April 3, 2015. However, April 3, 2015 is well after the filing date of the application. As such, Appellant has not shown an ordinarily skilled artisan would have interpreted the terms as proffered, *at the time of the invention*. We further note Appellant has not explicitly defined the term “activities” in the Specification. The Examiner identifies descriptions of activities in Appellant’s Specification (Ans. 11 (citing Spec. ¶¶ 55, 73)).

Upon review of the Specification, we find the Specification describes “the sensors may capture an image and/or audio sample of the user and utilize one or more activity recognition algorithms to determine if the user is sitting, speaking, walking, looking at a computer monitor, typing at the computer keyboard, looking at a certain direction, user gestures, facial expressions of the user, and the like” (Spec. ¶ 38). The Specification provides further examples of activities such as talking on a phone, utilizing an application to check for emails, viewing an instant message notification, a phone call, taking part in a conversation, listening to music, eating at a restaurant, drinking at a bar, watching a movie or video, exercising, traveling, and “listening and waiting for a conference call to begin” (Spec. ¶¶ 41–42, 55, 57, 72–73).

We are not persuaded the Examiner's interpretation is unreasonable in light of the Specification. Furthermore, although the Examiner's rejection is not a model of clarity, we agree with the Examiner's findings.

The Examiner interprets the sensors as a touch screen interface that senses when a user presses or touches the screen (Ans. 10). The Examiner further finds Moon discloses multiple selectable activities, such as video playback, music playback, file browsing, and changing device settings (Ans. 11 (citing Moon, Figs. 2–3)). We agree with the Examiner's findings. More specifically, we agree Moon describes “a processing of sensor data” (data from the touch screen) “associated with at least one user to determine one or more activities” (video playback, music playback, etc.) (Ans. 11). Because Appellant's list of activities includes typing at a computer keyboard, utilizing an application to check for emails, and viewing an instant message notification, we agree the activities include video playback, music playback, etc. as described by Moon (Moon ¶ 48, Figs. 2 and 3). Indeed, Figure 2, Moon describes screens of a multi-media player, in which an activity may be selected.

Accordingly, Appellant has not persuaded us Moon fails to disclose “a processing of sensor data associated with at least one user to determine one or more activities,” as recited in independent claim 1 and commensurately recited independent claim 11.

Appellant further argues due to the claim reciting “activities” as well as “content items,” Moon's content items cannot be the recited activities (App. Br. 10). We are not persuaded as neither claim 1 nor claim 11 requires content items; rather, claim 1 recites “interacting with at least one of the one or more activities, one or more content items, one or more

applications, *or* a combination thereof” and claim 11 is commensurately recited. Thus, interacting with one activity satisfies the claim.

Moreover, we are not persuaded Moon fails to disclose “content items.” Specifically, we agree with the Examiner that Moon describes interacting with specific music (content items) (Moon, Figs. 2–3). Therefore, Appellant has not persuaded us Moon fails to disclose “a presentation of at least one user interface for interacting with at least one of the one or more activities, one or more content items, one or more applications, or a combination thereof,” as recited in independent claim 1 and commensurately recited independent claim 11.

Appellant argues “a categorization of the one or more content items, the one or more applications, or a combination based, at least in part, on an association with the one or more primary activities, the one or more secondary activities, the one or more peripheral activities, *or* a combination thereof,” as recited in dependent claim 2 (emphasis added), is not disclosed in Moon (App. Br. 13). According to Appellant, Moon does not describe a categorization based on an association with activities (*id.*).

The Examiner finds Moon “provides for numerous categorizations of content items” (Ans. 13–14). We are not persuaded by Appellant’s arguments. The Examiner has made specific findings and Appellant has not persuaded us these findings are in error. Indeed, Moon discloses in Figures 2 and 3, categorization of a content item based, at least in part, on an association with the primary activity. Thus, Appellant has not persuaded us Moon fails to disclose the limitation as recited in claim 2 and commensurately recited in claim 12.

The remaining dependent claims were not separately argued and, thus, these claims fall with their respective independent claims. Accordingly, we sustain the rejection of claims 1, 2, 9–12, 19, and 20 under 35 U.S.C. § 102(b) for anticipation by Moon.

35 U.S.C. § 103(a): Claims 3–7, and 13–17 and Claims 8 and 18

Appellant does not separately argue the rejection of dependent claims 3–7, and 13–17 or the rejection of claims 8 and 18. Therefore, for the reasons set forth above, we sustain the rejections of claims 3–7, and 13–17 under 35 U.S.C. § 103(a) for obviousness over Moon and Purdy and the rejection of claims 8 and 18 under 35 U.S.C. § 103(a) for obviousness over Moon and Zainul.

DECISION

The Examiner's rejection of claims 1, 2, 9–12, 19, and 20 under 35 U.S.C. § 102(b) as being anticipated by Moon is affirmed.

The Examiner's rejection of claims 3–7, and 13–17 under 35 U.S.C. § 103(a) as being unpatentable over Moon and Purdy is affirmed.

The Examiner's rejection of claims 8 and 18 under 35 U.S.C. § 103(a) as being unpatentable over Moon and Zainul 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED