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DISNEY ENTERPRISES, INC. C/O FARJAMI & FARJAMI LLP 26522 LA ALAMEDA AVENUE, SUITE 360 MISSION VIEJO, CA 92691			HAILU, TADESSE	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JONATHAN ACKLEY

Appeal 2016-000914
Application 13/323,592¹
Technology Center 2100

Before ALLEN R. MacDONALD, AMBER L. HAGY, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ This application is a continuation of application 10/960,385 filed October 6, 2004, now U.S. Patent 8,112,711, which claims benefit of application 60/509,174 filed October 6, 2003.

STATEMENT OF CASE

Introduction

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 21–28. App. Br. 2. Claims 1–20 have been cancelled. App. Br. 11. We have jurisdiction under 35 U.S.C. § 6(b).

Exemplary Claim

Exemplary claim 21 under appeal reads as follows (emphasis added):

21. A method of displaying scenes in a video navigation system, comprising:

playing a main video stream on a display connected to a media player;

displaying a user interface to navigate available scenes by ***displaying an image in each of selectable thumbnails*** on the display connected to the media player;

receiving a first user selection of a first one of the selectable thumbnails; and

in response to the first user selection, starting to ***play a thumbnail video stream*** of a scene portrayed by the image in the first one of the selectable thumbnails while playing the main video stream on the display, in response to the first user selection, wherein the ***thumbnail video stream*** is played within the first one of the selectable thumbnails.

Rejection on Appeal

The Examiner rejected claims 21–28 under 35 U.S.C. § 102(b) as being anticipated by Abecassis (US 2002/0097984 A1, published July 25, 2002).²

² Separate patentability is not argued for claims 22–28.

Appellant's Contentions

1. Appellant contends that the Examiner erred in rejecting claim 21 under 35 U.S.C. § 102(e) because:

Appellant respectfully submits that Abecassis fails to disclose “displaying a user interface to navigate available scenes by displaying an image in each of selectable thumbnails on the display connected to the media player,” as recited by independent claim 21.

App. Br. 7, emphasis omitted.

Abecassis discloses playing a video in a picture-in-picture (PIP) window, which is different than showing an image in a thumbnail.

App. Br. 7, emphasis omitted.

Unlike independent claim 21 of the present application, Abecassis does not disclose “displaying an image in each of selectable thumbnails.” As understood by one of ordinary skill in the art “Thumbnails are reduced-size versions of pictures, used to help in recognizing and organizing them, serving the same role for images as a normal text index does for words.” (See definition of “thumbnail” in Wikipedia, attached hereto in the Evidence Appendix.) Appellant respectfully submits that secondary windows in Abecassis, which are used for playing videos, do not disclose thumbnails for displaying images.

App. Br. 8, emphasis omitted.

2. Further, Appellant contends that the Examiner erred in rejecting claim 21 because:

Appellant respectfully submits that Abecassis merely discloses selecting a PIP feature for playing a video in a PIP window. Abecassis does not disclose a user selection of a thumbnail showing an image. Further, since Abecassis does not disclose a thumbnail with an image displayed therein, Abecassis does not disclose that the image in the thumbnail portrays a scene of a video. In addition, Abecassis does not disclose that the same

thumbnail that displays the image also plays the video after a user selects the thumbnail.

App. Br. 8–9.

Appellant respectfully submits that Abecassis discloses playing a video in a window, and not displaying an image in a selectable thumbnail. Realizing this deficiency, the Answer asserts that because a video is nothing but a series of images played in quick successions, a video and an image are one and the same. Appellant respectfully disagrees.

Reply Br. 3.

Issue on Appeal

Did the Examiner err in rejecting claim 21 as anticipated because Abecassis fails to describe the limitations required by claim 21?

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments (Appeal Brief and Reply Brief) that the Examiner has erred. We disagree with Appellant’s conclusions. Except as noted below, we adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellant’s Appeal Brief. We concur with the conclusions reached by the Examiner. We highlight the following points.

As to Appellant’s above contention 1, we disagree. Appellant’s argument relies on evidence in the form of a definition of “thumbnail” in Wikipedia which is dated March 11, 2015. The proper construction of a claim term is “the meaning that the term would have to a person of ordinary

skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed.Cir.2005) (en banc). Given the priority date of the application on appeal is October 6, 2003, we find Appellant to have presented the panel with no relevant evidence as to the meaning of the term as of the effective filing date of the patent application. Contrary to Appellant’s argument, we find that a person of ordinary skill in the art at the time of the invention would understand the secondary windows in Abecassis, which are used for playing videos, *do* disclose thumbnails for displaying images.

Although not necessary for our decision, we look to evidence of what was understood by of a person of ordinary skill in the art in question at the time of the invention. We find the following numerous references to be highly relevant (emphases added):

Hobrock (US 2004/0247122 A1); filed April 24, 2003 (¶ 42):

Another common application of modern set-top boxes, televisions, etc., is *Picture-In-Picture (PIP), where an inset (thumbnail) display of a first video stream is overlaid on a full-screen display of a second video stream.* Like simultaneous viewing and recording, PIP operates on two video streams simultaneously.

Norsworthy (US 6784945); filed October 1, 1999 (5:54–6:7):

In a typical EPG, the guide consists of segments of text arranged as a list that describes the program on each channel for a given time. An improvement to that scheme would be to show a *“thumbnail” video stream* adjacent to each channel description. In such an enhanced EPG, it is desirable to have a highly reduced representation of a television, the thumbnail video stream, next to the listing of each television channel. *Thus, several small PIPs are required to implement this feature* if prior art PIP methods are used. Using the invention disclosed herein,

the feature could be added with minimal cost by adding only one PIP tuner, demodulator and decoder, by rapidly switching between the multiple video streams and thereby sub-sampling them. The reduced frame rate of this sub-sampling would not be excessively detrimental to the viewer as they are merely thumbnail streams intended to give the viewer a general visual impression of what is on the channel. Motion would still be present in the thumbnail video streams, but with a minor amount of "jerkiness" as an artifact of the sub-sampling process

Barrett (US 2005/0071782 A1); filed September 30, 2003 (¶ 71):

Indeed, *this PIP-type UI may be used for this or for any other traditional uses of PIP technology*. However, here the user is not limited by the number of tuners of her multimedia system. Rather, she is only limited by the bandwidth available for sending *multiple thumbnail video feeds*. Furthermore, the user does not need to have a television system that is PIP capable. Rather, the receiver performs the function.

Duhault (US 6,456,334 B1); issued September 24, 2002 (2:36–51):

In accordance with the present application, *the term "thumbnail" will be used to refer to any smaller video image within a window*. For example, the video images 242-245 of FIG. 2 will be referred to as thumbnail images. Likewise, the images 141-149 of FIG. 1 would also be referred to as thumbnail images, in that they are considerably smaller than the window in which they are contained.

FIG. 3 illustrates a slightly different implementation of the video images of FIG. 2. Specifically, instead of having the thumbnail video images formed in the lower right quadrant of the window as illustrated in FIG. 2, the thumbnail images are maintained along an edge of the window. FIG. 3 illustrates the images along the bottom, however, the image can be supported along the top or either side of the window 330.

As to Appellant's above contention 2, we disagree. Instead, we agree with the Examiner that "playing video on a display requires displaying a series of consecutive images or frames on the display." Ans. 5. Therefore, contrary to Appellant's argument, with respect to claim 21, a video and an image are one and the same.

CONCLUSIONS

- (1) The Examiner has not erred in rejecting claims 21–28 as being anticipated under 35 U.S.C. § 102(b).
- (2) Claims 21–28 are not patentable.

DECISION

The Examiner's rejection under 35 U.S.C. § 102(b) of claims 21–28 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