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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GEORGE FITZMAURICE, GORDON KURTENBACH, LYNN
MILLER, and JOE DI VITTORIO

Appeal 2016-001588
Application 12/004,432¹
Technology Center 2100

Before CAROLYN D. THOMAS, JEFFREY S. SMITH, and
TERRENCE W. MCMILLIN, *Administrative Patent Judges*.

MCMILLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 27–59. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is Autodesk, Inc. (App. Br. 3).

REJECTIONS ON APPEAL

Claims 27, 49, 51, 53, and 58 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Screen Dumps of Macromedia Flash MX (hereby "Macromedia Flash") and Appellants' Admitted Prior Art (Spec. ¶ 23, hereby "AAPA"). Ans. 2.

Claims 28–31, 42, 55, and 57 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Macromedia Flash, AAPA, and Buxton et al. (US 6,094,197, published July 25, 2000). Ans. 6.

Claims 32, 33, 37–39, and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Macromedia Flash, AAPA, and Bernstein et al. (US 2004/0093565 A1, published May 13, 2004). Ans. 12.

Claims 34, 36, 40, and 54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Macromedia Flash, AAPA, Buxton, and Bernstein. Ans. 14.

Claim 35 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Macromedia Flash, AAPA, Bernstein, and Tosey (US 2004/0125153 A1, published July 1, 2004). Ans. 16.

Claims 43–48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Buxton, Michaud et al. (US 7,139,970 B2, published Nov. 21, 2006), and Cohen et al (US 7,024,658 B1, published Apr. 4, 2006). Ans. 17.

Claim 50 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Macromedia Flash, Michaud, and Quartetti (US 6,606,105 B1, published Aug. 12, 2003). Ans. 20.

Claim 52 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Macromedia Flash and Buxton. Ans. 22.

Claim 56 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over AAPA, Buxton, Michaud, and Cohen. Ans. 24.

Claim 59 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Macromedia Flash, AAPA, Michaud, and Quartetti. Ans. 26.

THE CLAIMED INVENTION

The present invention generally relates to “layer editor for a pen-based computer” and more particularly to a “system where user identification of layers does not require text input, commands can be applied to the layers using a marking menu approach and where the invocation of the marking menus is facilitated by large ‘hit areas’ for the menu in the layer editor.” Spec. ¶ 2. Independent claims 27, 30, 32, 50, 51, 52, 53, and 54 are directed to interfaces; independent claims 42 and 55 are directed to editors; independent claims 43 and 56 are directed to methods; independent claims 48 and 57 are directed to non-transitory computer readable storage; independent claims 49 and 58 are directed to apparatus; and independent claims 50 and 59 are directed to computer readable data structures. App. Br. 21–28.

Claim 27 recites:

27. A layer editor interface, comprising:

layer representation graphic having layer options and a target area with target a size of at least $2e$ where e is a distance error accuracy of an input device; and

a pop-up menu control for each layer activatable from within the layer options by a computer, activating the pop-up control in association with a layer when detecting a cursor pressed over a target area of a layer option matching the layer,

and applying a command for the layer responsive to a selection of the command via the pop-up menu control.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments that the Examiner erred. We are not persuaded that Appellants identify 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 over the cited combination of references. 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. We provide the following explanation to highlight and address specific arguments and findings primarily for emphasis.

Appellants contend Paragraph 23 of Appellants' Specification, identified by the Examiner as Appellants' Admitted Prior Art, is not prior art. App. Br. 15–16. Specifically, regarding “a target area with target a size [sic] of at least $2e$ where e is a distance error accuracy of an input device,” as recited in claims 27, 32, 42, and 53–59, Appellants argue Paragraph 23's inclusion of a target being at least $2e$ in size to assure the cursor is within the target if the user points to the center of the target is a preferred embodiment and not prior art, and that nothing in Fitts Law teaches or suggests specific or particular target sizes. App. Br. 17–18. In response, the Examiner finds Paragraph 23 describes “pointing with a pen moves the cursor to that location $\pm e$, where e is the distance ‘error accuracy of the pen’” and “tablet pc pens or styli e is about 1-2mm, so the targets are preferably at least 4 mm high and wide,” showing the targets are $2e$, are typical and current teachings

and thereby prior art. Ans. 29, citing Spec. ¶ 23. We agree with the Examiner.

Paragraph 23 of Appellants' Specification discloses:

To make the layer editor 10 easier to use with a pen or stylus, the controls in the layer editor 10 should be relatively large or present relatively large targets for the pen user to hit. Large controls, in the context of a pen or stylus, relate to the accuracy of the pointing device. Typically, pointing with a pen moves the cursor to that location +/- e, where e is the distance "error accuracy of the pen." Preferably, a target has to be at least 2e in size to assure that if the user does point to the center of the target the cursor will be within the target. With current tablet pc pens or styli e is about 1-2mm, so target are preferably at least 4 mm high and wide. This of course is an extreme minimum: 10mm is much more acceptable and preferable. In addition, "Fitts Law" of pointing indicates that the ease of pointing is proportional to the width of the target, so bigger is generally better.

Spec. ¶ 23 (emphasis added). In other words, Paragraph 23 of Appellants' Specification describes Fitts Law and known techniques requiring larger target areas in order to provide ease and accuracy of pointing. As such, Paragraph 23 of Appellants' Specification, including known Fitts Law and known techniques regarding large targets for pen users to hit, teaches or suggests large targets that are bigger than the error distance e, and that larger targets are ideal and lead to fewer errors.

Appellants have not provided persuasive evidence that "a target area with target a size of at least 2e where e is a distance error accuracy of an input device," as recited in claims 27, 32, 42, and 53–59, is not taught or otherwise suggested by Appellants' Admitted Prior Art, specifically the portions of Paragraph 23 of Appellants' Specification disclosing that it is known that targets should be larger than the error e in order to provide ease

and accuracy of pointing. The idea that a designer would make a target area smaller than the known error range $\pm e$ of the input device which would predictably result in more errors, “makes little sense. A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 421 (2007).

Accordingly, we sustain the § 103 rejections of independent claims 27, 32, 42, and 53–59.

Appellants have provided no separate arguments towards patentability for claims 28–31, 33–41, and 43–52. Therefore, the Examiner’s § 103 rejections of claims 28–31, 33–41, and 43–52 are sustained for similar reasons as noted *supra*.

DECISION

The rejections of claims 27–59 are 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