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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMES D. BENNETT, NAMBIRAJAN SESHADRI,
JEYHAN KARAOGUZ, and ADIL JAGMAG¹

Appeal 2016-002255
Application 12/982,273
Technology Center 2400

Before MICHAEL J. STRAUSS, DANIEL N. FISHMAN, and
JAMES W. DEJMEK, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–11, 13, 14, 16–26, and 28–31. Claims 12, 15, and 27 have been cancelled. App. Br. A5, A9 (Claims App.). We have jurisdiction over the remaining pending claims under 35 U.S.C. § 6(b).

We affirm-in-part.

¹ Appellants identify Broadcom Corporation as the real party in interest. App. Br. 1.

STATEMENT OF THE CASE

Introduction

Appellants' invention is directed to "Eyewear With Time Shared Viewing Supporting Delivery Of Differing Content To Multiple Viewers." Spec. Title.

Claims 1 and 8 are exemplary of the subject matter on appeal and are reproduced below with the disputed limitations emphasized in *italics*:

1. An eye-wear architecture used by a first viewer and a second viewer to selectively display first video content and second video content, the eye-wear architecture comprising:

a screen being viewed by the first viewer and the second viewer;

display circuitry directing display of a first frame sequence of the first video content in a first area of the screen, while directing display of a second frame sequence of the second video content in a second area of the screen, and the first area of the screen and the second area of the screen having an area of overlap and having areas that do not overlap;

the screen displaying a combined video frame sequence in the area of overlap, the combined video frame sequence being constructed by mixing at least part of the first frame sequence within the area of overlap with at least part of the second frame sequence within the area of overlap;

a first lens assembly sized for wear by the first viewer;

a second lens assembly sized for wear by the second viewer; and

the first lens assembly blocking the at least part of the first frame sequence within the area of overlap, while the second lens assembly blocks the at least part of the second frame sequence within the area of overlap.

8. An eye-wear system configured for use by a first viewer of a screen in a display system, the display system configured to

produce visual representations of a video frame sequence on the screen, the video frame sequence including a first frame sequence of first video content mixed with a second frame sequence of second video content, the eye-wear system comprising:

a wearable lens assembly that corresponds to at least one eye of the first viewer, the wearable lens assembly having a first mode and a second mode, the first mode characterized by at least attempting to selectively pass the first frame sequence but not the second frame sequence from an area of the screen in which the first video content and the second video content overlap, and the second mode characterized by at least attempting to selectively pass the second frame sequence but not the first frame sequence from the area of the screen in which the first video content and the second video content overlap; and

processing circuitry that responds to a control signal to configure the wearable lens assembly in either the first mode or the second mode, wherein the control signal specifies a maturity that is associated with the first viewer; and

wherein the processing circuitry configures the wearable lens assembly in the first mode in response to the maturity that is associated with the first viewer being greater than a maturity threshold; and

wherein the processing circuitry configures the wearable lens assembly in the second mode in response to the maturity that is associated with the first viewer being less than the maturity threshold.

The Examiner's References and Rejections

Claims 1–5 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Shahraray et al. (US 2011/0090233 A1; publ. Apr. 21, 2011 (filed Oct. 15, 2009)) (“Shahraray”). Final Act. 5–8.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shahraray and Ko et al. (US 2010/0182407 A1; publ. July 22, 2010 (filed July 14, 2009)) (“Ko”). Final Act. 9–11.

Claims 8–11, 13, 14, 16–18, 23–25, 30, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shahraray and Hildreth (US 2009/0133051 A1; publ. May 21, 2009). Final Act. 11–15.

Claims 19–22 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shahraray, Hildreth, and Candelore et al. (US 2011/0093882 A1; publ. Apr. 21, 2011 (filed Oct. 21, 2009)) (“Candelore”). Final Act. 15–17.

Claim 26 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Shahraray, Hildreth, and Ko. Final Act. 11.²

Claim 29 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Shahraray and Joo (GB 2 454 771 A; publ. May 20, 2009). Final Act. 17–18.

ANALYSIS³

Only those arguments actually made by Appellants have been considered in this Decision. Arguments Appellants did not make in the

² In the header for the rejection of claim 26, the Examiner mistakenly omits Hildreth, which is relied upon in rejecting its base claim 23. *See* Final Act. 9. Appellants respond to the rejections as including Hildreth. App. Br. 10. Thus, for purposes of our review we include Hildreth in the rejection and treat the Examiner’s typographical error as harmless.

³ In this Opinion, we refer to Appellants’ Appeal Brief (“App. Br.,” filed July 27, 2015); Appellants’ Reply Brief (“Reply Br.,” filed December 15, 2015); the Final Office Action (“Final Act.,” mailed January 13, 2015); and the Examiner’s Answer (“Ans.,” mailed on October 15, 2015).

Briefs have not been considered and are deemed to be waived.

See 37 C.F.R. § 41.37(c)(1)(iv).

We have reviewed the Examiner's rejections in light of Appellants' arguments the Examiner has erred. App. Br. 4–17; Reply Br. 2–13. We agree with Appellants' conclusions in connection with the rejection of claims 1–7, 23–26, and 28–31. However, in connection with the remaining claims, we disagree with Appellants' conclusions and we adopt as our own the findings and reasons set forth by the Examiner in the Final Office Action from which this appeal is taken (Final Act. 2–18), and as set forth in the Examiner's Answer in response to arguments made in Appellants' Appeal Brief (Ans. 3–11). We highlight and address specific findings and arguments below.

Claims 1–7, 23–26, and 28–31

We agree with Appellants the Examiner erred by finding Shahraray discloses directing display of a first frame sequence in a first area of a screen, while directing display of a second frame sequence in a second area of the screen, and “the first area of the screen and the second area of the screen . . . having areas that do not overlap,” as recited in claim 1. App. Br. 6–10. In particular, we agree with Appellants' argument there is no area of the screen where the private and non-private images of Shahraray do not overlap because the areas of the screen where the private and non-private images overlap do so in their entirety. *Id.* at 7–8 (citing Shahraray ¶¶ 43–44 and Figure 4).

Here, we find the Examiner has failed to adequately explain how, nor are we able to ascertain that, Shahraray discloses a first area of a screen

representing a first frame sequence and a second area of a screen representing a second frame sequence, wherein the first and second areas possess areas that do not overlap, as claimed. Specifically, in explaining the rejection of claim 1, the Examiner relies on Figure 4 of Shahraray and finds images A and B of private image (420) correspond to the claimed “first frame sequence of first video content” and images A and C of public image (440) correspond to the claimed “second frame sequence of second video content.” Ans. 6; *see also* Final Act. 3. Figure 4 of Shahraray is illustrative and is reproduced below:

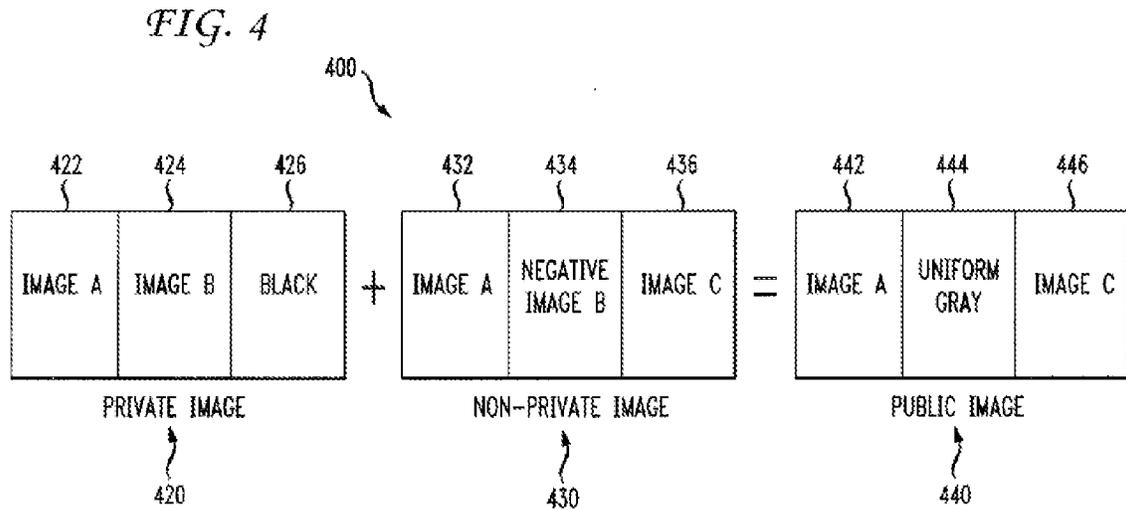


Figure 4 of Shahraray, reproduced above, depicts “a combination of a private and a non-private image to make a public image.” Shahraray ¶¶ 43–47. The Examiner finds “Figure 4 [of Shahraray] clearly illustrates . . . areas that do not overlap with respect to ‘video content.’” Ans. 6. In the Final Office Action, the Examiner finds “[a]s illustrated in Figure 4, Image B of the Private image is not included in the public image, whereas Image C of the Public image is not included in the private image. Therefore, it is reasonably interpreted that these regions correspond to ‘areas that do not overlap.’” Final Act. 6 (citing Shahraray ¶¶ 43–44 and Figure 4). In the

Answer, the Examiner finds Shahraray's image C of the public image (440) does not overlap with images A and B of the private image (420). Ans. 6. We disagree.

As illustrated in Figure 4, "[t]he private image [(420)] and the non-private image [(430)] should include the same boundaries between regions to enable the public image [(440)] to be properly viewable." Shahraray ¶ 44. Accordingly, Shahraray discloses image B of private image (420) occupies the same area as the uniform gray image of the public image (440), and image C of public image (440) occupies the same area as the black image of the private image (420). We find two images occupying the same area on a display overlap in their entirety and do not include areas that do not overlap. Thus, we agree with Appellants' conclusion that Shahraray does not disclose a first area of a screen representing a first frame sequence and a second area of a screen representing a second frame sequence having areas that *do not overlap*, as claimed.

Therefore, based on the record before us, and for the reasons discussed *supra*, we do not sustain the Examiner's rejection of independent claim 1 or the rejection of independent claim 23, which contains a similar limitation. For similar reasons, we do not sustain the Examiner's rejections of dependent claims 2–7, 24–26, and 28–31. Because we are persuaded of error with regard to the issue discussed *supra*, which is dispositive as to the rejection of the indicated claims, we do not reach the additional issues raised by Appellants in connection with those claims.

Claims 8–11, 13, 14, and 16–22

Appellants contend the Examiner erred in finding the combination of Shahraray and Hildreth teaches or suggests configuring a wearable lens assembly “in the first mode in response to the maturity that is associated with the first viewer being greater than a maturity threshold; and . . . in the second mode in response to the maturity that is associated with the first viewer being less than the maturity threshold,” as recited in claim 8.

App. Br. 11–14. In particular, Appellants assert Shahraray teaches making a decision as to whether a goggle will display private or public images based on what the goggle’s display screen is currently displaying, but argues Shahraray does not teach that the decision has any bearing on a mode of the goggle. *Id.* at 12–13 (citing Shahraray ¶¶ 10, 38, 39, and 43; Figure 3).

Further, Appellants assert Hildreth teaches denying the display of the entirety of a mature program upon identifying a user is too young to view the mature program. *Id.* at 13–14 (citing Hildreth ¶¶ 40–46). Appellants argue Hildreth does not teach blocking portions of a frame sequence displayed on the display based on the maturity of the user because an entire program will not display if the user is not mature enough to view the program. *Id.* at 14.

Appellants’ contentions are not persuasive. Appellants consider the teachings of Shahraray and Hildreth in isolation and fail to rebut specifically the Examiner’s ultimate legal conclusion of obviousness that is based on the combination of Shahraray and Hildreth. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Specifically, the Examiner relies on Shahraray to teach

goggles that block portions of a frame sequence displayed on a display when a user selects a switch on the goggles. Final Act. 12–13 (citing Shahraray ¶¶ 21, 24, 40, and 42–46; Figure 4); *see also* Ans. 9. The Examiner relies on Hildreth to teach a control signal from an apparatus that decides whether to display mature program content based on a mode of the apparatus. Thus, the Examiner finds *the combination* of Shahraray and Hildreth teaches or suggests the disputed limitations of independent claim 8. We agree with the Examiner’s findings and conclusions and adopt them as our own.

Appellants further assert, for the first time in the Reply Brief, paragraph 24 of Shahraray teaches a user manually selecting a viewing mode of a goggle, but argue Shahraray does not teach “processing circuitry that responds to a control signal to configure the wearable lens assembly in either the first mode or the second mode, wherein the control signal specifies a maturity that is associated with the first viewer,” as recited in claim 8. Reply Br. 9–10.

These arguments are untimely and waived. 37 C.F.R. § 41.41(b)(2); *see also Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative) (“the reply brief [is not] an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner’s rejections, but were not”). Further, Appellants’ arguments are not responsive to the Examiner’s rejection discussed *supra*. In particular, the Examiner finds, and we agree, the combination relies on Hildreth’s control signal from an apparatus, not Shahraray’s manual user selection as argued.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner’s rejection of independent

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claim 8. Additionally, we sustain the Examiner's rejections of dependent claims 9–11, 13, 14, and 16–22, which were not argued separately.

See App. Br. 14.

DECISION

We affirm the Examiner's decision to reject claims 8–11, 13, 14, and 16–22.

We reverse the Examiner's decision to reject claims 1–7, 23–26, and 28–31.

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. § 41.50(f).

AFFIRMED-IN-PART