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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD H. KRUKAR, LUIS M. ORTIZ,
and KERMIT D. LOPEZ

Appeal 2016-005671
Application 13/371,602
Technology Center 2400

Before: DEBRA K. STEPHENS, JOSEPH P. LENTIVECH, and KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a Final Rejection of claims 10–29. We have jurisdiction under 35 U.S.C. § 6(b). Claims 1–9 have been cancelled.

We AFFIRM.

CLAIMED SUBJECT MATTER

According to Appellants, the claims are directed to a method and system for media annotation, selection, and display of additional information associated with a region of interest in video content (Spec. Abstract). Claim 10, reproduced below, is representative of the claimed subject matter:

> 10. A system, comprising:
>
> a processor; and
>
> a computer-usable medium embodying computer code, said computer program code comprising instructions executable by said processor and configured for:
>
> receiving a selection from a person wherein the person selected a region on a first display device and within a particular frame of video content to access additional information about an area of interest associated with said region within said particular frame; and
>
> displaying said additional information to said person on a second display device, in response to said person selecting said region associated with said particular frame of video content to access said additional information about said area of interest associated with said region within said particular frame.

REFERENCES

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

Thomas et al.	US 2002/0049975 A1	Apr. 25, 2002
Katcher et al.	US 2008/0066129 A1	Mar. 13, 2008
Touboul et al.	US 2010/0154007 A1	June 17, 2010

REJECTIONS

Claims 10–20 and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Katcher and Thomas (Final Act. 4–7).

Claims 21–28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Touboul and Thomas (Final Act. 8–12).

35 U.S.C. § 103(a): Claims 10–20 and 29

Appellants contend their invention, as recited in claims 10–20 and 29, is not obvious over Katcher and Thomas (App. Br. 12–15). The issues presented by the arguments are:

Issue 1: Has the Examiner shown the combination of Katcher and Thomas teaches or suggests "displaying said additional information to said person on a second display device," as recited in independent claim 10 and commensurately recited in independent claim 16?

Issue 2: Has the Examiner improperly combined the teachings and suggestions of Katcher and Thomas?

ANALYSIS

We disagree with Appellants' conclusions and 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 Answer in response to the Appeal Brief. With respect to the claims argued by Appellants, we highlight and address specific findings and arguments for *emphasis* as follows.

Initially, we note the Examiner relied on Katcher as disclosing the recited limitations except for "wherein the display to said person is done on a second display device" (Final Act. 5). The Examiner relies on Thomas as teaching the second display device as recited in claim 10 (*id.*).

Appellants argue "[a] user of Thomas' system can watch a video transmission of an event and bet on it via an interactive betting interface, but not by selecting any element within the video content because Thomas' interactive content is the betting interface itself" (App. Br. 9). The Examiner, however, is relying on Katcher as teaching the recited limitations except for displaying to a second device (Final Act. 5). Thus, Appellants' arguments regarding modification of Thomas' UI button and selecting additional information (App. Br. 10–11) are not persuasive as they do not address the Examiner's findings (*see* Final Act. 5–6). Additionally, Appellants' argument that no rational underpinning exists for expanding Thomas' relocatable betting interface to provisioning of any related content on a secondary display (App. Br. 11), is not persuasive as the Examiner is relying on Thomas for teaching displaying information on a second display, not provisioning of related content (Final Act. 5).

Similarly, Appellants argue "Katcher's interactive interface provides for selecting scene elements within the video content. Switching Katcher's interface to a second display leaves the video content without interactivity and the interactive interface with no video content and therefor no scene elements to select" (App. Br. 11). Appellants, however, are arguing limitations not recited in the claim and are not arguing the Examiner's articulated combination. More specifically, claim 10 recites "displaying said additional information to said person on a second display device." The

additional information is "about an area of interest associated with said region within said particular frame." Thus, the Examiner is not "switching Katcher's interface to a second display" (Final Act. 5).

Appellants further argue the proposed combination leaves Katcher unsuitable for its intended purpose because the proposed modification of Katcher uses and depends on additional information being displayed on the same screen and leaves Thomas unsuitable for its intended purposed because the proposed modification "seems awkward for dividing the gambler's attention between gambling information and gambling interface" (App. Br. 12). We are not persuaded by Appellants' argument. More specifically, Appellants have not proffered sufficient evidence or argument that displaying information to a second display would render Katcher unsuitable to provide the ability to interact with hyperlinks in a television broadcast (Katcher, Title, ¶¶ 2, 4). The test for obviousness is not whether the <u>entire</u> features of a secondary reference may be bodily incorporated into the structure of a primary reference, nor that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the <u>combined</u> teachings of the references would have suggested to those of ordinary skill in the art. *In re Keller*, 642 F.2d 414, 425 (CCPA 1981); *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991). (Underline added). Thus, Appellants have not persuaded us of Examiner error.

Lastly, Appellants argue the proposed rationale does not read on the proposed modification (App. Br. 12); however, again Appellants are not addressing the Examiner's combination or articulated motivation (Final Act. 6). Thus, Appellants have not persuaded us of Examiner error. Moreover, the skilled artisan would "be able to fit the teachings of multiple

patents together like pieces of a puzzle" since the skilled artisan is "a person of ordinary creativity, not an automaton" (*See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 420–21 (2007)). Furthermore, Appellants have presented no evidence that combining Thomas' teaching of using a second display with Katcher's system would have been "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art" (*See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418–19)).

Accordingly, Appellants have not persuaded us the combination of Katcher and Thomas fails to teach, suggest, or otherwise render obvious the limitations as recited in independent claim 10 and commensurately recited independent claim 16, not separately argued (App. Br. 9–12). Nor have Appellants persuaded the Examiner improperly combined the teaching and suggestions of Thomas. Dependent claims 11–15, 17–20 and 29, not separately argued (*id.* at 2), fall with their respective independent claims. Therefore, we sustain the rejection of claims 10–20 and 29 under 35 U.S.C. § 103(a) for obviousness over Katcher and Thomas.

35 U.S.C. § 103(a): Claims 21–28

Appellants contend their invention as recited in claims 21–28, is not obvious over Touboul and Thomas (App. Br. 12–15). The issues presented by the arguments are:

Issue 3: Has the Examiner shown the combination of Touboul and Thomas teaches or suggests "displaying additional information to the person on a second display device in response to the person choosing the scene element," as recited in claim 21?

Issue 4: Has the Examiner improperly combined the teachings and suggestions of Touboul and Thomas?

ANALYSIS

We disagree with Appellants' conclusions and 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 Answer in response to the Appeal Brief. With respect to the claims argued by Appellants, we highlight and address specific findings and arguments for emphasis as follows.

Appellants assert "substantially the same arguments apply with "*Touboul*" replacing "*Katcher*" (App. Br. 13). Similar to above, Appellants' arguments are directed to the references individually and are not addressed to the Examiner's proffered combination (Final Act. 8–12). Appellants' arguments directed to Thomas are not persuasive for similar reasons as set forth above. More specifically, the Examiner relies on Touboul to teach the recited invention, except "the display to said person is done on a second display device" on which the Examiner relies on Thomas to teach (*id*. at 9).

Appellants additionally argue "[t]he proposed combination of *Touboul* and *Thomas* would require substantial redesign and reconstruction of the primary reference whether that primary reference is *Touboul* or *Thomas* (App. Br. 14). Again, similar to our reasoning with respect to claim 10, Appellants are not addressing the Examiner's combination of teachings (Final Act. 8–12). Additionally, we are not persuaded an ordinarily skilled artisan would have found it uniquely challenging or difficult to combine Thomas' teaching of two displays with Touboul's teachings.

We are further not persuaded "[t]he proposed combination leave *Touboul* unsuitable for its intended purpose" as Appellants assert (App. Br. 14). Appellants further argue "[t]he proposed combination renders *Thomas* unsuitable for its intended purpose" (App. Br. 15). Appellants have not proffered sufficient evidence or argument to persuade us of Examiner error. Lastly, Appellants argue the Examiner's articulated rational is in error. We are not persuaded by Appellants' arguments for reasons as set forth with respect to claim 10 above.

Accordingly, Appellants have not persuaded us the combination of Touboul and Thomas fails to teach or suggest the limitations as recited in independent claim 21 and dependent claims 22–28, not separately argued (App. Br. 2). Nor have Appellants persuaded us the Examiner improperly combined the teachings and suggestions of Touboul and Thomas. Therefore, we sustain the rejection of claims 21–28 under 35 U.S.C. § 103(a) for obviousness over Touboul and Thomas.

DECISION

The Examiner's rejection of claims 10–20 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Katcher and Thomas is affirmed.

The Examiner's rejection of claims 21–28 under 35 U.S.C. § 103(a) as being unpatentable over Touboul and Thomas 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