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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALEXANDER SAMSON HIRSCH
and KARIN CALLAHAN

Appeal 2016-007910
Application 13/814,649
Technology Center 2600

Before JEFFREY S. SMITH, AMBER L. HAGY, and
AARON W. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1, 3–5, 8–18, and 20, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

The application is directed to “an apparatus for and method of displaying, for example, by previewing, at least one character associated with a physical key.” (Spec. ¶ 12.) Claim 1, reproduced below, is representative:

1. A method operable on an electronic device comprising:

detecting a first touch meeting a first threshold, the first touch detected on a first physical key;

displaying, at least a first character associated with the first physical key in an information entry field on a display of the electronic device in response to the detecting without entering the at least the first character; and

if the first touch moves to a second physical key, then displaying at least a second character associated with the second physical key in the information entry field in response to detecting a second touch on the second physical key meeting the first threshold without entering the at least the second character, the first physical key including a touch surface that is physically disconnected from a touch surface of the second physical key, the first physical key configured to preview the at least the first character upon the first touch on the touch surface of the first physical key meeting the first threshold and to enter the at least

¹ Appellants identify BlackBerry Limited as the real party in interest. (*See* App. Br. 2.)

the first character as input upon the first touch meeting a second threshold, and the second physical key configured to preview the at least the second character upon the second touch on the touch surface of the second physical key meeting the first threshold and to enter the at least the second physical character as input upon the second touch meeting the second threshold.

THE REFERENCES

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

Ording	US 2006/0053387 A1	Mar. 9, 2006
McKillop et al.	US 2007/0152983 A1	July 5, 2007
Wassingbo	US 2007/0165002 A1	July 19, 2007

THE REJECTIONS

1. Claims 1, 3–5, 8, 9, 11–16, 18, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over McKillop and Wassingbo. (*See* Final Act. 5–13.)

2. Claims 10 and 17 stand rejected under 35 U.S.C. § 103(a) as unpatentable over McKillop, Wassingbo, and Ording. (*See* Final Act. 14–15.)

ANALYSIS

The claims all require a “first physical key configured to preview [a] character upon [a] first touch . . . meeting [a] first threshold and to enter the . . . character as input upon the first touch meeting a second threshold” and a “second physical key configured to preview [a] character upon [a] second touch . . . meeting the first threshold and to enter the . . . second . . .

character as input upon the second touch meeting the second threshold,” where the touch surfaces of the two physical keys are “physically disconnected.” Essentially, the claims require two separate physical keys, each of which previews a character at one touch threshold and enters that character at a second touch threshold.

McKillop teaches connected physical keys that preview a character at one level of touch and enter the character at a second level of touch. (*See* Final Act. 5–7.) Thus, the difference between the subject matter sought to be patented and McKillop is that McKillop uses connected keys instead of separate keys. Wassingbo teaches separate physical keys that include surfaces that sense the level of coverage or contact with keys in order to determine which key (the one with the most coverage or contact) the user intends to select. (*See id.* at 7; Wassingbo ¶¶ 64–68.) The Examiner found that it would have been obvious to modify McKillop with the separate keys of Wassingbo. (Final Act. 7.)

Appellants allege error on the grounds that “the asserted combination of Wassingbo and McKillop renders the primary reference – Wassingbo [sic, McKillop] – inoperable.” (App. Br. 9.) In particular, Appellants assert that “the proposed modification of McKillop to incorporate the disclosure of Wassingbo that shows a switch or touch sensitive element that is operable solely [sic] to register an input to the electronic device, would render the configuration of McKillop inoperable because such a modified key would not permit character preview and input.” (*Id.* at 10.)

We are not persuaded of Examiner error. Appellants’ argument is premised on the idea that, in the combination, McKillop’s keys would be entirely replaced by Wassingbo’s keys, and would thus lose ability to

respond to multiple levels of touch as described in McKillop and as claimed. This is not an appropriate obviousness analysis because the “test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference” but “[r]ather, . . . what the combined teachings of the references would have suggested to those of ordinary skill in the art.” *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Here, while the combination does contemplate a substitution of Wassingbo’s separate keys for the connected keys of McKillop, it does not require that Wassingbo’s input detection be used, or that McKillop’s be discarded. Thus, for example, one of skill in the art could have used separate keys like that of Wassingbo, but not Wassingbo’s input mechanism, and could have had each key include a multi-level touch surface as in McKillop. Or, given that Wassingbo already teaches touch-sensitive input elements (*see* Wassingbo ¶ 64), one could have simply combined that with McKillop’s teaching that such elements may respond to multiple levels of touch, as claimed. Because the skilled artisan would have been “able to fit the[se] teachings . . . together like pieces of a puzzle,” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007), and the combination does no more “than yield a predictable result,” *id.* at 420, we sustain the rejection of claims 1, 3–5, 8–18, and 20.

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DECISION

The rejections of claims 1, 3–5, 8–18, and 20 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