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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GREGORY PEKOFSKY

Appeal 2017-002701
Application 13/428,106¹
Technology Center 2100

Before CARL W. WHITEHEAD JR., KARA L. SZPONDOWSKI, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant is appealing the final rejection of claims 1, 5, 6, 8–11, 15, 16, 20, 21, and 23–28 under 35 U.S.C. § 134(a). Appeal Brief 4. We have jurisdiction under 35 U.S.C. § 6(b) (2012).

We affirm.

Introduction

The invention “is directed to a development mode system that activates a development mode of a software application that is executed on a mobile device.” Specification, ¶ 3.

¹ According to Appellant, the real party in interest is Oracle International Corporation. Appeal Brief 2.

Illustrative Claim

1. A non-transitory computer-readable medium having instructions stored thereon that, when executed by a processor, cause the processor to activate a development mode of a software application that is executed on a mobile device, the activating comprising:

detecting, at an acceleration measuring device operatively coupled to an application programming interface, an acceleration of the mobile device over a plurality of time periods;

calculating a delta acceleration by calculating a difference of the acceleration of mobile device during a current time period and the acceleration of the mobile device during a time period preceding the current time period;

repeating the calculating the delta acceleration for subsequent time periods to create a plurality of delta accelerations;

calculating a total delta acceleration by summing the plurality of delta accelerations;

determining that the total delta acceleration exceeds an acceleration threshold;

in response to the total delta acceleration exceeding the acceleration threshold, calculating a total duration by summing respective durations of the time periods of the plurality of delta accelerations;

determining that the total duration exceeds a duration threshold;

displaying a user interface within the mobile device in response to the determining that the total delta acceleration exceeds the acceleration threshold and in response to the determining that the total duration exceeds the duration threshold, wherein the user interface displays a message requesting confirmation to activate the development mode;

receiving a user interaction within the user interface, wherein the user interaction indicates the confirmation to activate the development mode; and

activating the development mode in response to the determining that the total delta acceleration exceeds the acceleration threshold, in response to the determining that the total duration exceeds the duration threshold, and in response to the receiving the confirmation to activate the development mode;

wherein the development mode provides access to one or more features of the software application that are not available during conventional execution of the software application.

Rejections on Appeal

Claims 1, 5, 6, 8–11, 15, 16, 20, and 24–28 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Spangler (US Patent Application Publication 2011/0087870 A1, published April 14, 2011), Yamamoto (US 2011/0124369 A1, published May 26, 2011), Nasiri (US Patent Application Publication 2009/0184849 A1, published July 23, 2009), Mucignat (US Patent 8,587,515 B1, issued November 19, 2013), and Rgbrn (“Filtering Accelerometer data noise” <http://stackoverflow.com/questions/1638864/filtering-accelerometer-data-noise>). Final Rejection 2–13.

Claims 21 and 23 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Yamamoto, Nasiri, Spangler, Mucignat, and Rgbrn. Final Rejection 13–20.

ANALYSIS

Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed August 5, 2016), the Reply Brief (filed December 6, 2016), the Final Action (mailed January 11, 2016) and the Answer (mailed October 16, 2016) for the respective details.

Appellant contends:

The Examiner expressly admits that *Spangler et al.* does not teach, *inter alia*, displaying a user interface within the mobile device ***in response to*** the determining that the total delta acceleration exceeds the acceleration threshold ***and in response***

to the determining that the total duration exceeds the duration threshold, wherein the user interface displays a message requesting confirmation to activate the development mode, and activating the development mode *in response to* the determining that the total delta acceleration exceeds the acceleration threshold, *in response to* the determining that the total duration exceeds the duration threshold, *and in response to* the receiving the confirmation to activate the development mode. *See* 01 /11 /16 Office Action at pages 2-8.

Each of the claimed features recited above describes the performance of a function (*e.g.*, displaying, and activating) in response to completion of an event (*e.g.*, exceeding various thresholds). Rather than address each of these individual features, the Examiner improperly parses these features and summarily alleges that it would have been obvious to combine the teachings of five references to achieve the claimed invention.

Appeal Brief 5–6; *see* Reply Brief 2-4. Appellant further argues the Examiner used impermissible hindsight in combining the references.

Appeal Brief 6–7; Reply Brief 3–4.

The Examiner responds to Appellant’s arguments regarding the “in response” claim limitations as follows:

Applicant argues that the Examiner has failed to address all features (described functions and events) of the independent claim and summarily alleges that it would have been obvious to combine the cited references to achieve the claimed invention. Applicant attacks references individually for not teaching claim limitations that the Examiner has admitted were not taught by each reference and therefore, did not rely upon the reference for teaching said limitations in the rejection of the independent claims.

Answer 2.

The Examiner finds “Spangler teaches activation of development mode based upon various switching methods (Spangler, FIGS. 3–5, paragraph 0031).” Final Action 3. Spangler’s switching methods include a “mode-selection input device,” a “barcode reader” or “other appropriate forms.” Spangler, ¶ 31. The Examiner further finds, “Yamamoto teaches mode activation based upon an acceleration input exceeding a threshold and a confirmation received through a user interface not expressly taught by Spangler.” Final Action 4. Yamamoto discloses in paragraph 98, “the CPU 100 repeats a series of processes at each acquisition of the acceleration α to calculate the cumulative acceleration α and compares the calculated cumulative acceleration α with the threshold value β 3.” Yamamoto also teaches a determining step based upon the accumulation acceleration α in paragraph 99. The Examiner concludes:

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify Spangler to include use of an intentional acceleration by a user and a confirmation input via a user interface to select a mode per Yamamoto for reasons taught by Yamamoto.

Final Action 6; *see also* Answer 3.

The Examiner further finds in regard to modifying the combination of Spangler and Yamamoto that:

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify Spangler and Yamamoto to include an application programming interface to couple an acceleration measuring device to higher level software processes per Nasiri for reasons taught by Nasiri. Nasiri teaches this architecture to allow easier development of application programs using complex motion sensor data, porting of application programs between different devices with different

hardware and operating systems and provides easier maintenance of systems (Nasiri, paragraph 0011).

Final Action 7; *see also* Answer 3–4.

The Examiner further modifies the combination of Spangler, Yamamoto and Nasiri:

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify Spangler in view of Yamamoto and Nasiri to include a motion determination based upon both acceleration data exceeding a threshold and the duration of an acceleration exceeding a duration threshold per Mucignat for reasons taught by Mucignat. Mucignat teaches this method to eliminate false positive detections of non-intentional motion based upon accelerometer data (Mucignat, column 3, lines 19-37).

Final Action 8; *see also* Answer 4.

The Examiner further modifies the combination of Spangler, Yamamoto, Nasiri and Mucignat:

It would have been obvious to one of ordinary skill in the art to use the first difference filtering algorithm in view of Rgbrn for the high pass filter taught by Mucignat. The rationale to support a conclusion that claim 1 would have been obvious in view of Rgbrn is that the substitution of one known element (first difference filter) for another (high pass filter) yields predictable results (motion detection method including calculated delta accelerations and total delta acceleration) which would have been recognizable to one of ordinary skill in the art at the time the claimed invention was made (see MPEP § 2143, KSR exemplary rationale B).

Final Action 9; *see also* Answer 5.

Additionally, the Examiner finds:

Spangler teaches activating development mode ‘in response to’ operation of a switch or some other appropriate means.

Yamamoto teaches controlling the mode of a mobile device ‘in response to’ a shake gesture or acceleration input exceeding a threshold. Mucignat also teaches the use of shake gestures to determine operations in a mobile device ‘in response to’ the detection of a shake input and improves the shake detection algorithm with the addition of a duration threshold determination to distinguish intended inputs from arbitrary motion of the device and a high pass filter to remove gravitational effects on acceleration data. All of the cited references perform actions ‘in response to’ user inputs. One of ordinary skill in the art would understand intentions of a user may be input to a mobile device in various ways; making it obvious to substitute one input method for another.

Answer 6–7.

We agree with the Examiner’s findings. The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987–88 (Fed. Cir. 2006), *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991) and *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). For the sake of brevity, we do not reproduce all of the Examiner’s findings, however, 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, except where noted. *See* Final Action 2–21; Answer 2–8. We find the Examiner has established a prima facie case of obviousness and once the Examiner has satisfied the burden of presenting a prima facie case of obviousness, the burden then shifts to Appellant to present evidence and/or arguments that persuasively rebut the Examiner’s prima facie case. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Appellant does not particularly point out errors in the Examiner’s reasoning to persuasively rebut the Examiner’s

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prima facie case of obviousness and therefore we sustain the Examiner's obviousness rejection of independent claims 1, 11, 16, and 21, as well as dependent claims 5, 6, 8–10, 15, 20, and 23–28 not separately argued. *See* Appeal Brief 8.

DECISION

The Examiner's obviousness rejections of claims 1, 5, 6, 8–11, 15, 16, 20, 21, and 23–28 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). *See* 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED