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EXAMINER
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TSENG, CHARLES

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* PETRI LUOMALA, JANNE V. KYLLONEN,  
JARI LAHDENPERA, and MARKKU RYTIVAARA

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Appeal 2017-003079  
Application 13/250,286  
Technology Center 2600

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Before MICHAEL J. STRAUSS, KARA L. SZPONDOWSKI, and  
AARON W. MOORE, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1, 2, 4, 6–9, 11, 13–16, and 18–24. Claims 3, 5, 10, 12, and 17 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## THE INVENTION

The claims are directed to providing an overview of a plurality of home screens. Spec., Title. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method comprising:

causing a display of a first home screen;

causing, with a processor, the display to zoom out from the first home screen to a canvas overview representing a plurality of home screens including the first home screen, wherein the canvas overview is configured to present the plurality of home screens in a continuous arrangement and to group items accessible via a respective home screen in proximity to one another;

causing an item to be moved from one home screen to another portion of the canvas overview designated for creating a new home screen and not associated with an existing one of the plurality of home screens; and

in response to the movement of the item from one home screen to the another portion of the canvas overview designated for creating the new home screen and determining the item is a first item to be moved to the another portion of the canvas overview, causing creation of the new home screen.

## REFERENCES

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

Moosavi

US 2009/0187840 A1

July 23, 2009

Shin	US 2010/0295789 A1	Nov. 25, 2010
Filippov	US 2012/0081356 A1	Apr. 5, 2012

### REJECTIONS

The Examiner made the following rejections:

Claims 1, 2, 8, 9, 15, 16, and 24 stand rejected under 35 U.S.C.

§ 103(a) as being unpatentable over Shin. Final Act. 5–9.

Claims 6, 7, 13, 14, and 19–23 stand rejected under 35 U.S.C.

§ 103(a) as being unpatentable over Shin and Filippov. Final Act. 9–13.

Claims 4, 11, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shin and Moosavi. Final Act. 13–14.

### APPELLANTS' CONTENTION

Appellants contend Shin discloses creation of a new home screen and subsequent movement of a widget (i.e., item) onto the newly created home screen, not the creation of a new home screen in response to the movement of the item as recited by claim 1. App. Br. 7–13; Reply Br. 1–4.

### ANALYSIS

Appellants' arguments are unpersuasive of reversible Examiner error. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 2–14) and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief (Ans. 2–6) and concur with the conclusions reached by the Examiner. We highlight the following for emphasis.

The Examiner finds Shin's disclosure of a page edit screen providing for creation of a new page and the movement of widgets into the new page

teaches or suggests designation of a blank space (e.g., WP11 prior to being populated) for creating a new home screen (e.g., WP11 when populated) that is not associated with the existing home screens (WP1 and WP3). Final Act 2 (citing Shin Fig. 2, ¶¶ 31–34). The Examiner further finds Shin’s disclosure of moving of a widget (i.e., item) from an existing page to the blank page (i.e., the initially empty WP11 prior to being populated) teaches or suggests movement of items causing the creation of a new home screen (e.g., the populated WP11) as recited by claim 1. *Id.* (citing Shin Fig. 2, ¶ 40). The Examiner relies on Shin’s disclosure of “mov[ing] a widget W7 from home screen WP3 . . . to create a new home screen WP1 with widgets W1, W2 and W7” for teaching or suggesting “the movement of an item from one home screen to another portion of the canvas overview as a determined first item to cause the creation of a new home screen.” Final Act. 3 (citing Shin Fig. 5, ¶ 58). The Examiner concludes the embodiment depicted in Shin’s

Fig. 2 may be predictably modified with the page editing as disclosed in the embodiment of Fig. 5 to facilitate the movement of a widget, as a determined first item, from an existing home screen within its page edit screen to the blank space, as . . . another portion of the canvas overview, to cause creation of the new home screen for the blank space.

*Id.*

Appellants argue Shin discloses creating a new page WP11 by the manual action of touching a page addition button or a boundary between pages, not by moving an item from a home screen to another portion designated for creating a new home screen as required by claim 1. App. Br. 10. Appellants argue Shin’s new page WP11 does not teach the claimed “another portion of the canvas overview designated for creating a new home

screen” because it is already a home screen when initially created and, therefore, fails to satisfy the requirement that it “not [be] associated with an existing one of the plurality of home screens” as required by claim 1. *Id.* Appellants further argue “[t]he Office has not demonstrated how the ‘home screen edit’ functionality depicted in Figure 5 [of Shin] could be combined with the ‘add new home screen’ functionality depicted in Figure 2 to deem the pending claims obvious.” App. Br. 13.

Appellants’ arguments are not persuasive of reversible Examiner error. Although Shin discloses eleventh page WP11 as a “new page,” it nonetheless satisfies the requirements for the claimed “another portion of the canvas overview.” We are not persuaded WP11 fails to teach the recited another portion of the canvas overview simply because Shin refers to the region as a new page rather than as a region for creating a new page. That is, whether Shin’s region WP11 is called “another portion” or a “a new home screen” does not defeat a finding that the region is designated for creating a new home screen and thereby teaches or suggests the disputed limitation.

Appellants’ Specification discloses a two-step process in which “a new home screen may be created by [(1)] presenting a user with a blank screen and then [(2)] permitting the user to populate the screen with various items.” Spec. ¶ 3. Appellants do not direct attention to and we are unable to identify any additional or alternative disclosure of what is meant by “causing creation of the new home screen” that would further limit an interpretation of the disputed limitation. Similar to the method of claim 1, Shin discloses a portion of a screen between WP3 and WP1 (i.e., WP11, Shin ¶¶ 33–34) into which widgets can be dragged (Shin ¶ 40) thereby populating WP11 with, for example, widgets from other home screens (Shin

¶ 58). Although Shin discloses an initial step of creating a blank or empty screen region (e.g., WP11) using page addition button 213 (Shin ¶ 33), claim 1 does not exclude such a manual step. Furthermore, consistent with Appellants' Specification, determining an item is a first item to be moved into region W11, i.e., populating the screen as per step 2 above, effectively creates a new home screen by completing the disclosed two-step new home screen creation process.

We further note Appellants fail to identify and we are unable to ascertain any disclosure or definition in the Specification describing what is meant by the argued "not associated" language used in connection with the limitation requiring the "another portion of the canvas overview . . . not [be] associated with an existing one of the plurality of home screens." *See App. Br. 13*. Accordingly, because WP11 is separate from WP1 and WP3, under a broad but reasonable interpretation we find Shin teaches or suggests the "not associated" limitation.

We are also not persuaded that the combination of features depicted by Shin's Figs. 2 and 5 is improperly based on hindsight reconstruction of the pending claims. *App. Br. 13*.

Any judgment on obviousness is . . . necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper.

*In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971); *see also Radix Corp. v. Samuels*, 13 USPQ2d 1689, 1693 (D.D.C. 1989) ("[A]ny obviousness inquiry necessarily involves some hindsight."); *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds . . . must

[include] some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”), *cited with approval in KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Herein the Examiner relies on various features described in a single reference, i.e., Shin. It is not clear why one skilled in the art at the time of the invention would have segregated Shin’s teaching of various aspects of the disclosed method for editing pages used for a home screen to exclude a combination of (i) adding a new home screen and (ii) screen editing functionalities used in connection with the new screen. Instead, we find the Examiner has articulated reasoning with rational underpinnings sufficient to justify the legal conclusion of obviousness. Final Act. 3; Ans. 3.

We also are not persuaded the combination is improper for lack of a showing the functionalities of Figs. 2 and 5 could be combined. App. Br. 13. Mere attorney arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984). Attorney argument is not evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Nor can such argument take the place of evidence lacking in the record. Furthermore, contrary to Appellants’ contention, we note the skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle” because the skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 420–21; *see also Boston Scientific Scimed, Inc. v. Cordis Corp.*, 554 F.3d 982, 991 (Fed. Cir. 2009) (“Combining two embodiments disclosed adjacent to each other in a prior art patent does not require a leap of inventiveness.”). Here, Appellants have not demonstrated the Examiner’s



proffered combination in support of the conclusion of obviousness would have been “uniquely challenging or difficult for one of ordinary skill in the art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418).

For the reasons discussed above, we are unpersuaded of Examiner error. Accordingly, we sustain the rejection of independent claim 1 and, for the same reasons, the rejection of independent claims 8 and 15 under 35 U.S.C. § 103(a), together with the rejections of dependent claims 2, 4, 6, 7, 9, 11, 13, 14, 16, and 18–24 which are not argued separately with particularity.

#### DECISION

We affirm the Examiner’s decision to reject claims 1, 2, 4, 6–9, 11, 13–16, and 18–24 under 35 U.S.C. § 103(a).

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED