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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SHUNSUKE TAKAMURA, MOEKO HAGIWARA,
TOSHIHIRO MOTOI, YOICHI KAWABUCHI,
YASUHIKO YAMAGUCHI, and KENTA HOSAKA

Appeal 2017-004467
Application 13/586,072
Technology Center 2100

Before JOSEPH L. DIXON, JOHN A. EVANS, and SCOTT B. HOWARD,
Administrative Patent Judges.

DIXON, *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, 5–10, and 14–18. We have jurisdiction under 35 U.S.C. § 6(b).

An Oral Hearing was held on January 17, 2019.

We affirm.

The claims are directed to a display data generation apparatus, display control system, and display control program. Claim 1, reproduced below, is illustrative of the claimed subject matter:

¹ According to Appellants, the real party in interest is Konica Minolta Business Technologies, Inc. *See* App. Br. 2.

1. A display data generation device which generates display data to display a plurality of objects on a shared image screen utilized by a plurality of users, comprising:

a memory section which stores information of an operation history of a user for each object; and

a hardware processor configured to:

identify a user who has conducted an operation to an object selected from any one of the objects when the operation to the object is detected,

judge whether or not the user who has conducted the operation to the object is a user who has conducted the operation to the object for the first time by referring to the information of the operation history stored in the memory section;

perform a judgment as to whether or not a display form of the object should be changed according to a change of the user who operated the object, wherein it is judged that the display form of the object should be changed when the user is judged as a user which conducted the operation to the object for the first time; and

generate display data in which the display form of the object has been changed, in accordance with a result of the judgment,

wherein the hardware processor is configured to adjust an amount of change in the display form of the object according to the number of users who have conducted the operation of the object, and

wherein a weighting factor by each type of operations is set to the operation of the object, and the hardware processor is configured to adjust the amount of change in the display form of

the object in accordance with the weighting factor according to each type of operations.

REFERENCES

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

Ratnakar et al.	US 2005/0024387 A1	Feb. 3, 2005
Liss et al.	US 2009/0070286 A1	Mar. 12, 2009
Koski	US 2010/0094730 A1	Apr. 15, 2010
Yasoshima	US 2010/0250252 A1	Sept. 30, 2010
Ooba	US 2011/0078573 A1	Mar. 31, 2011
Doig et al.	US 2012/0054440 A1	Mar. 1, 2012

REJECTIONS

The Examiner made the following rejections:

Claims 1, 5, 9, 10, 14, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Koski in view of Doig and further in view of Liss. (Final Act. 4.)

Claims 6 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Koski, Doig, and Liss as applied in the claim 1 rejection above, and further in view of Ratnakar. (Final Act. 12.)

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Koski, Doig, and Liss as applied in the claim 1 rejection above, and further in view of Ooba. (Final Act. 13.)

Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Koski, Doig, and Liss as applied in the claim 16 rejection above, and further in view of Yasoshima. (Final Act. 17.)

ANALYSIS

Arguments which Appellants could have made but did not make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

With regards to independent claim 1, Appellants contend that the online store illustrated in Figure 3 of the Koski reference does not provide “disclosure in Koski that these on-line visitors utilize the same shared screen since they independently choose what to do or not do with the interface.” (App. Br. 9.) Specifically, Appellants contend that “Koski does not disclose a display data generation device[,] which generates display data to display a plurality of objects on a shared image screen utilized by a plurality of users, as recited in Claim 1.” (App. Br. 9.)

Appellants note that the Examiner’s rejection does not rely upon the Koski reference for the judgment step and “does not perform a judgment as to whether or not a display form of the object should be changed according to a change of the user who operated the object” (App. Br. 9). Appellants contend that although the Doig reference discloses “the platform may want to determine whether a click or ad view has already been counted (paragraph [0294], lines 1-9),” “[the] Doig [reference] does not disclose how to associate a result of the determination (judgment) with the display form of the object.” (App. Br. 9.)

Finally, Appellants contend that the Examiner’s reliance upon the Liss reference does not cure the deficiency in the base combination of the Koski and Doig references. (App. Br. 10.) Appellants contend that the “Official Action does not describe how it is believed that the noted features regarding operations on a virtual pet correspond to or could be incorporated into an online shopping environment.” (App. Br. 10–11.)

In the Examiner's Answer, the Examiner further details the teachings of the prior art and the combination. (Ans. 17–21.) Appellants do not file a Reply Brief to respond to the Examiner's further clarifications.

We find the Examiner has provided an explanation of the prior art teachings and provided a reasoned motivation for the combination, which has not been sufficiently rebutted by Appellants.

Additionally, we note that the language of independent claim 1 sets forth a display data generation device with a processor configured to carry out process steps, but the two "wherein" clauses do not specifically tie into the other method steps and the "weighting factor by each type of operation" does not limit the prior method steps because only one (type of) operation is recited above.

As a result, we agree with the Examiner that the Liss reference teaches and suggests the well-known use of weighting factors with regards to user inputs and operations, and the Examiner has provided some articulated reasoning with some rational underpinning for the combination.

"The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference. . . . Rather, the test is 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); *see also In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983) ("[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review."); *In re Nievelt*, 482 F.2d 965, 968 (CCPA 1973) ("Combining the *teachings* of references does not involve an ability to combine their specific structures."). Rather, "if a technique has been used to improve one device,

and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). When considering the obviousness of a combination of known elements, the operative question is, thus, “whether the improvement is more than the predictable use of prior[-]art elements according to their established functions.” *Id.*

We find Appellants’ arguments to be based upon a bodily incorporation of each of the references and a general contention that each prior art reference does not teach or suggest the totality of the claimed invention. (App. Br. 10–11.)

The Examiner finds that Appellants are arguing the prior art references individually, and the Examiner further details the reliance upon the Koski reference and provides further discussion regarding the combination of prior art references. (Ans. 17–21.)

From our review of Appellants’ arguments, we find no specific argument for patentability beyond the general disagreement with the Examiner’s specific findings regarding the teachings of each of the prior art references.

We find no specific argument regarding a lack of combinability or lack of motivation for the combination as proffered by the Examiner. As a result, we find that Appellants have not identified any error in the Examiner’s factual findings or the Examiner’s conclusion of obviousness of representative independent claim 1.

With respect to independent claim 10, the Appellants rely upon the arguments advanced with respect to independent claim 1. (App. Br. 11.)

The Examiner finds that the claimed “display data generation device which generates display data to display a plurality of objects on a shared image screen utilized by a plurality of users” found only in the preamble and, therefore, does not carry patentable weight. (Ans. 16–17.)

We agree with the Examiner that the shared image screen is not limited in the body of the claimed invention and does not, therefore, distinguish over the prior art as applied by the Examiner.

Appellants do not provide a Reply Brief to further respond to the Examiner’s clarifications and claim interpretation. (Ans. 17–33.)

With regards to independent claim 10, Appellants generally discuss the prior art teachings and rely upon the arguments set forth with respect to independent claim 1. (App. Br. 11.) Again, we find Appellants’ general arguments for patentability to be unpersuasive of error in the Examiner’s factual findings and conclusion of obviousness.

With respect to independent claim 16, Appellants rely upon the arguments set forth with respect to independent claims 1 and 10. (App. Br. 11–12.)

Again, Appellants’ arguments are directed to a bodily incorporation of the prior art references and does not address the combination as proffered by the Examiner with respect to the Koski, Doig, and Liss references. The Examiner further responds to Appellants’ arguments with regards to independent claim 16. (Ans. 21–26.) Appellants do not file a Reply Brief to further respond to the Examiner’s clarifications.

As a result, Appellants’ argument does not show error in the Examiner’s factual findings and conclusion of obviousness.

With respect to dependent claims 6–8, 15, and 17, Appellants summarize the teachings of the additional prior art references and set forth a general contention that the Examiner has not established obviousness. (App. Br. 12–13.)

Merely reciting the language of the claim is insufficient. *See* 37 C.F.R. § 41.37(c)(1)(iv) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”). Merely alleging that the references fail to support an obviousness rejection is insufficient to persuade us of Examiner error. Attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984); *Ex parte Belinne*, Appeal No. 2009-004693, slip op. at 7–8 (BPAI Aug. 10, 2009) (informative) (*available at* <http://www.uspto.gov/web/offices/dcom/bpai/its/fd09004693.pdf>).

As a result, Appellants’ general contention does not show error in the Examiner’s conclusion of obviousness of claims 6–8, 15, and 17.

CONCLUSION

The Examiner did not err in rejecting claims 1, 5–10, and 14–18 based upon obviousness under 35 U.S.C. § 103(a).

DECISION

For the above reasons, we sustain the Examiner’s obviousness rejections of claims 1, 5–10, and 14–18.

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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