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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BARRY A. KRITT and SARBAJIT K. RAKSHIT¹

Appeal 2017-005131
Application 13/751,899
Technology Center 2100

Before DENISE M. POTHIER, JOHNNY A. KUMAR, and
JASON J. CHUNG, *Administrative Patent Judges*.

KUMAR, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek review under 35 U.S.C. § 134(a) from the Final Rejection of claims 1 and 3–21. We have jurisdiction over the appeal of these claims pursuant to 35 U.S.C. § 6(b).

We AFFIRM.

¹ Appellants identify International Business Machines Corporation as the real party in interest. App. Br. 4.

Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (“App. Br.,” filed July 29, 2016), the Examiner’s Answer (“Ans.,” mailed Dec. 13, 2016), and Appellants’ Reply Brief (“Reply Br.,” filed Feb. 13, 2017). We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments which Appellants could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

STATEMENT OF CASE

An understanding of the invention can be derived from a reading of illustrative claim 1, which is reproduced below (bracketed matter added):

1. A method comprising:
 - [a] extracting information from two or more active applications;
 - [b] identifying an activity associated with the extracted information, including analyzing current activity associated with one or more of the active applications;
 - [c] ranking the active applications in a hierarchy responsive to the analysis of the current activity;
 - [d] visually displaying the ranked applications in a first visual interface, including assigning each of the active applications to a separate section in the first interface responsive to the ranking, wherein the first interface displays at least two applications;
 - [e] selecting one of the ranked applications from the first interface, and extracting information from all open files associated with the selected application;
 - [f] ranking the open files based on the extracted information;and
 - [g] displaying the ranked files in a second visual interface,

[g1] including assigning each of the ranked files to a separate section in the second interface in response to the ranking,

[g2] wherein the second interface is displayed tangentially to the first interface.

REJECTIONS

Weber	US 2006/0074929 A1	Apr. 6, 2006
Pettiross	US 2006/0224989 A1	Oct. 5, 2006
Russo	US 2007/0180392 A1	Aug. 2, 2007
Jarrett	US 2009/0193364 A1	July 30, 2009
Chmielewski	US 2011/0066981 A1	Mar. 17, 2011
Bauermeister	US 8,230,355 B1	July 24, 2012

Claims 1, 4–7, 13, and 15–18 are unpatentable over Jarrett in view of Weber and Chmielewski. Final Act. 5–15.

Claims 3, 9–11, 14, 19, and 20 are unpatentable over Jarrett in view of Weber, Chmielewski, and Russo. *Id.* at 16–26.

Claims 8 and 12 are unpatentable over Jarrett in view of Weber, Chmielewski, and Bauermeister. *Id.* at 26–28.

Claim 21 is unpatentable over Jarrett in view of Weber, Chmielewski, and Pettiross. *Id.* at 28–29.

Claim 6 is rejected under 35 U.S.C. § 112(b) or § 112, second paragraph (pre-AIA) as being indefinite. Final Act. 4–5.²

² Although indicating the indefiniteness rejection of claim 6 has been overcome by the proposed amendment, the Examiner states this rejection is maintained because the after-final amendment has not been entered. March 30, 2016 Advisory Action 2 (indicating the Examiner lacks the authority to enter the after-final amendment in part).

ISSUE AND ANALYSIS³

Based on Appellants' arguments, the principal and dispositive issue is whether the Examiner erred in combining Jarrett, Weber, and Chmielewski to teach or suggest all the limitations of claim 1 because the references are not properly combinable. In particular, Appellants contend that the Examiner erred in rejecting the claims as obvious over at least Jarrett, Weber, and Chmielewski because Weber teaches away from the claimed invention, and the proposed combination is based on impermissible hindsight. App. Br. 19–20.

We have reviewed the Examiner's rejections in light of Appellants' contentions that the Examiner has erred. Further, we have reviewed the Examiner's response to the contentions of claim 1 argued by the Appellants. *Id.* at 11–33; Reply Br. 2–14.

We disagree with Appellants' conclusions. 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 Appellants' Appeal Brief. Ans. 3–10. We concur with the conclusions reached by the Examiner. We highlight and address specific findings and arguments for emphasis as follows.

The Examiner finds that Jarrett teaches elements [a] to [g] of claim 1 (Ans. 4; Jarrett, Fig. 4; Final Act. 5–8), Weber teaches element [g1] (Ans. 3–

³ Separate patentability is not argued for rejections of claims 4–6, 13, and 15–18. Except for our ultimate decision, these claims are not discussed further herein.

4; Weber ¶ 2; Final Act. 8–9), and Chmielewski teaches element [g2] (Final Act. 9–10; Chmielewski ¶ 103).

In particular, the Examiner properly identifies the relevant teachings in Jarrett, Weber, and Chmielewski and states how each claimed element is met by those teachings (*see* Final Act. 5–10).

Specifically, the Examiner finds, and we agree that in Jarrett’s FIG. 4, a plurality of open files 442–448 are presented in thumbnail display area 440 (the second visual interface) adjacent to application menu 420, in response to selecting application 424 in Jarrett’s application menu 420. (*See also* Final Act. 7 (providing the foregoing finding in the bottom half of the page)).

Jarrett already teaches displaying a plurality of ranked files in a file menu adjacent to an application menu.[] The only meaningful difference between Jarrett and this aspect of the claim is that Jarrett displays *some* of the ranked files (e.g. 442–448) rather than *all* of the selected application’s ranked files. The teachings in Weber notwithstanding, the Examiner submits that a person of ordinary skill in this field—having learned from Jarrett to display some open files— could easily produce a variant of Jarrett’s disclosure that displays all of the files that are open in an application. After all, “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007).

However, the Final Office Action also provides Weber as cumulative proof that an artisan of ordinary skill would indeed have known to arrange Jarrett’s thumbnail display area to display *all* of the files open in Jarrett’s selected application 424 at the time of the claimed invention.

Ans. 4–5; *see also* Final Act. 8 (citing Weber ¶¶ 55–57).

The Appellants contend that

Weber *teaches away* from adjacently positioned application and open file interfaces, which inherently visually depicts the

associated relationship between a selected active application and its corresponding open files without distraction from the focus of the display. At the same time, Weber *teaches away* from the non-overlapping display requirement of Appellant[s], since the tab channel of Weber must be displayed within its user interface. Accordingly, there is no motivation within either Jarrett or Weber with respect to tangentially displaying a first visual interface associated with active applications and a second visual interface associated with open files.

App. Br. 18 (emphasis added).

The Examiner responds that

the existence of an alternative solution in Weber (e.g., the overlapping of two interfaces) does not obliterate Jarrett and Chemielewski's [sic] disclosures of arranging the two interfaces adjacent and/or tangential to one another

Ans. 5.

We agree with the Examiner. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *Ricoh Co., Ltd. v. Quanta Computer Inc.*, 550 F.3d 1325, 1332 (Fed. Cir. 2008) (citations and internal quotation marks omitted). Teaching an alternative or equivalent method, however, does not teach away from the use of a claimed method. *See In re Dunn*, 349 F.2d 433, 438 (CCPA 1965). A reference does not teach away if it merely expresses a general preference for an alternative invention from amongst options available to the ordinarily skilled artisan, and the reference does not discredit or discourage investigation into the invention claimed. *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

Additionally, Appellants' argument amounts to an individual attack on Weber, which is insufficient to demonstrate nonobviousness, where as is here, the rejection is based on a combination of references. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981), *cited in* Ans. 5. The rejection relies on Weber for the limited purpose of demonstrating displaying each file is known (Final Act. 8) and when combined with Jarrett, the teachings predictably result in displayed each of the ranked files to a separate section (*id.* at 9). Furthermore, the rejection cites to Chmeilewski to teach displaying a second interface tangentially to a first interface is known (*id.* at 9) and, when combined with Jarrett and Weber, the teachings predictably yield the recited second interface displayed tangentially to the first interface (*id.* at 9–10).

We also disagree with Appellants' argument that the proposed combination of Jarrett, Weber, and Chmeilewski is motivated by impermissible hindsight. It has been held that where the claimed subject matter involves more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, a holding of obviousness must be based on "an apparent reason to combine the known elements in the fashion claimed." *KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 417–18 (2007). That is, "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Such reasoning can be based on interrelated teachings of multiple patents, the effects of demands known to the design community or present in the marketplace, and the background

knowledge possessed by a person having ordinary skill in the art. *Id.* at 417–18.

In the present case, the Examiner found that:

It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to modify the thumbnail display area 440 of Jarrett to display a ranked list of *all* of the files open in the corresponding location, as taught with Weber’s menu 620. One would have been motivated to combine Weber with Jarrett because “navigation through multiple files or documents can be rather cumbersome, particularly when working with a large number of resources at about the same time.” Weber, ¶ [0002].

...

[I]t would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to render Jarrett’s icon list area 420 and thumbnail display area 440 as the respective radial menus 1100 and 1110 of Chmielewski [sic], such that the thumbnail display area 440 would be displayed tangentially to the icon list area 420. One would have been motivated to combine Jarrett and Chmielewski [sic] because upon the user selecting an item from the first menu with the pointer, “it may be desirable to display cascading radial menus near a screen pointer to facilitate quick and efficient selection therefrom.” [Chmielewski] ¶ [0122].

Final Act. 9–10.

In other words, the proposed combination of Jarrett, Weber, and Chmielewski facilitates quick and efficient navigation of multiple files. We find this articulated rationale has a sufficient rational underpinning to support an obviousness conclusion. *See KSR*, 550 U.S. at 418. Moreover, the proposed combination would require merely the ordinarily skilled artisan to use common sense. *See KSR*, 550 U.S. at 421.

As to Appellants' contention in the Reply Brief, that "*Jarrett* does not teach or suggest displaying *all* the open files" (Reply Br. 2), we are not persuaded of Examiner error in the rejection because Appellants' arguments are not commensurate with the scope of the claims. Claim 1 requires "displaying the ranked files," not "displaying all the open files."

Therefore, we agree with the Examiner that the combination of *Jarrett*, *Weber*, and *Chmielewski* would have suggested all the recited limitations of independent claim 1 to one of ordinary skill in the art.

Regarding claims 3, 7–12, 14, and 19–21, while Appellants raised additional arguments for patentability of the cited claims (App. Br. 20–33), we find that the Examiner has responded in the Answer each and every one of those arguments with sufficient evidence. Ans. 7–10. Therefore, we adopt the Examiner's findings and underlying reasoning, which are incorporated herein by reference. Consequently, we find no error in the Examiner's rejection of claims 3, 7–12, 14, and 19–21.

As noted above, Appellants present no arguments for claims 4–6, 13, and 15–18 and their corresponding rejections. We refer to the above discussion and further adopt the Examiner's findings and conclusion concerning the rejections of these claims.

DECISION

The Examiner's decision rejecting claims 1 and 3–21 is affirmed.

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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