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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN BATHICHE, JESSE R. CHEATHAM III, PAUL H. DIETZ, MATTHEW G. DYOR, PHILIP A. ECKHOFF, ANOOP GUPTA, KENNETH P. HINCKLY, RODERICK A. HYDE, MURIEL Y. ISHIKAWA, JORDIN T. KARE, CRAIG J. MUNDIE, NATHAN P. MYHRVOLD, ANDREAS G. NOWATZYK, DANNY A. REED, CLARENCE T. TEGREENE, CHARLES WHITMER, LOWELL L. WOOD JR., AND VICTORIA Y. H. WOOD

Appeal 2017-005295
Application 14/095,623
Technology Center 2600

Before ERIC B. CHEN, MONICA S. ULLAGADDI, and SCOTT E. BAIN, *Administrative Patent Judges*.

ULLAGADDI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–57. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Claim 1, reproduced below with *emphasis* added to a disputed limitation, is illustrative of the claimed subject matter:

> 1. An apparatus comprising:
>
> a touch tracking circuit configured to detect a segment of a path defined by a user contact point moving across a touch sensitive display;
>
> a motion analysis circuit configured to determine a parameter descriptive of a motion of the user contact point during its movement across the detected segment of the path (hereafter "motion parameter");
>
> a predictive filter configured to predict, in response to the motion parameter, the next contiguous segment of the path defined by the user contact point;
>
> a latency compensation circuit configured to initiate a display, by the touch sensitive display, of the detected segment of the path and the predicted next contiguous segment of the path;
>
> an updating circuit configured to initiate an update of the detected segment of the path and the predicted next contiguous segment of the path as the user contact point moves across the touch sensitive display; and
>
> *a learning circuit configured to adaptively learn a motion parameter associated with a specific user based upon a history of at least two motion parameters determined in response to the path defined by a user contact point moving across the touch sensitive display.*

REJECTIONS

Claims 1, 13, 16, 17, 22–32, 38, 39, 41–46, 48, 49, 55, and 56 stand rejected under 35 U.S.C. § 103(a) as obvious over Santiago (US 2013/0181908 A1; July 18, 2013) and Schillings (US 2014/0204036 A1; July 24, 2014). Final Act. 7–20 (Jan. 22, 2016).

Claims 50 and 52 stand rejected under 35 U.S.C. § 103(a) as obvious over Santiago, Schillings, and DiVerdi (US 2013/0120237 A1; May 16, 2013). Final Act. 21–22.

Claim 51 stands rejected under 35 U.S.C. § 103(a) as obvious over Santiago, Schillings, and Oga (US 2013/0241837 A1; Sept. 19, 2013). Final Act. 22–23.

Claim 53 stands rejected under 35 U.S.C. § 103(a) as obvious over Santiago, Schillings, and Stoddard (US 2013/0234967 A1; Sept. 12, 2013). Final Act. 23.

Claim 54 stands rejected under 35 U.S.C. § 103(a) as obvious over Santiago, Schillings, and Mankowski (US 2014/0198080 A1; July 17, 2014). Final Act. 23–24.

Claims 14, 15, 33–37, 40, 47, and 57 stand rejected under 35 U.S.C. § 103(a) as obvious over Santiago, Schillings, and Singh (US 2014/0098072 A1; Apr. 10, 2014). Final Act. 24–31.

Claims 2–12 and 18–21 stand rejected under 35 U.S.C. § 103(a) as obvious over Santiago, Schillings, and Bau (US 2012/0017182 A1; Jan. 19, 2012). Final Act. 31–39.

ANALYSIS

Claims 1, 13, 16, 17, 22–32, 38, 39, 41–46, 48, 49, 55, and 56

Claim 1 recites, *inter alia,* "a learning circuit configured to adaptively learn a motion parameter associated with a specific user based upon a history of at least two motion parameters determined in response to the path defined by a user contact point moving across the touch sensitive display" ("learning circuit" limitation). The Examiner concludes that the learning circuit limitation encompasses learning of the motion parameter from a

current user's movement of the user contact point, and finds that Schilling teaches this limitation. Ans. 4; *see* Final Act. 8.

Appellants argue the Examiner erred in finding Schillings teaches the learning circuit limitation because Schillings does not teach or suggest that the disclosed touchscreen device "learns gestures associated with a *specific* user," as contrasted with "generally learning, for example, that a cursive loop will often be followed by the tail that together creates [a cursive 'a' letter] (no matter what user is writing)." App. Br. 29–30. Appellants further argue that the Examiner's claim interpretation unreasonably conflates the claimed "specific user" with which the motion parameter is associated and an unspecified user that moves the claimed "user contact point" (i.e., an implicit user thereof). Reply Br. 2–3.[1]

We are not persuaded that the Examiner erred. Appellants' argument is not commensurate in scope with claim 1. Claim 1 does not require the claimed "specific user" to be distinct from a user that moves the claimed "user contact point." We concur in the Examiner's conclusion that, under the broadest reasonable interpretation, claim 1 encompasses "a user contact point" moved by "a specific user." *See* Final Act. 8; *see* Ans. 4. The Specification discloses an embodiment in which "the learning circuit is further configured to store in a computer readable storage media 240 the adaptively learned motion parameter in an association with an identifier of

[1] Appellants' argument citing *Ethicon Endo-Surgery, Inc. v. US. Surgical Corp.*, 93 F.3d 1572 (Fed. Cir. 1996) in its Reply Brief is belatedly raised and, in any event, not persuasive because we apply the broadest reasonable interpretation standard in construing the claim, not the *Phillips* standard (*see Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–17 (Fed. Cir. 2005) (en banc) as applied in *Ethicon*.

the specific user." Spec. ¶ 46. Adopting Appellants' proffered interpretation of the learning circuit limitation would limit the claim to this narrower embodiment and improperly exclude the broader embodiment in which association with a specific user is not required. *See id.* ¶¶ 46, 67; *see In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

For the foregoing reasons, we are not persuaded the Examiner erred in finding the combination of Santiago and Schillings teaches or suggests the learning circuit limitation as recited in independent claim 1, the commensurate limitations recited in independent claims 17 and 23, and the limitations recited in dependent claims 16, 17, 22, 24–32, 38, 39, 41–46, 48, 49, 55, and 56, not separately argued. Therefore, we sustain the rejection of these claims.

Claims 2–12, 14, 15, 18–21, 33–37, 40, 47, 50–54, and 57

Claims 2–12, 14, 15, 18–21, 33–37, 40, 47, 50–54, and 57, which depend directly or indirectly from independent claims 1, 17, and 23, are rejected over various combinations of Santiago, Schilling, DiVerdi, Oga, Stoddard, Mankowski, Singh, and Bau. Appellants do not argue these claims with specificity. *See* App. Br. 31–42; *Cf.* 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."); *see In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) ("[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art."). Appellants' arguments (*see* App. Br. 31–32) are not responsive to the Examiner's detailed findings and conclusions (*see* Final Act. 21–39)

and are not supported by sufficient evidence to persuade us the Examiner erred. Accordingly, we sustain the rejections of these claims.

DECISION

We affirm the rejections of claims 1–57.

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