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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS HENRY ALPHIN III, MAVERICK J. VELASCO, and CHRISTOPHER J. MCGUIRE

Appeal 2017-009036
Application 13/563,351
Technology Center 2100

Before ROBERT E. NAPPI, THU A. DANG, and JAMES W. DEJMEK, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants[1] appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1–14 and 16–21. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm. The decision does not address any issue concerning subject matter eligibility.

A. INVENTION

According to Appellants, the invention is directed to techniques and apparatuses "enabling a tailored operating system learning experience"

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[1] According to Appellants, the real party in interest is Microsoft Technology Licensing, LLC. App. Br. 3.

which "can tailor a learning experience to a user's computer device or a user's specifications." Abst.

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary:

> 1. A computer-implemented method comprising:
>
> receiving, as part of an initial login event at a computing device, a hardware characteristic of the computing device other than from a user of the computing device, the computing device associated with an operating system (OS), the hardware characteristic affecting use of an OS gesture;
>
> identifying and retrieving, responsive to receiving the hardware characteristic and as part of the initial login event, an OS training tutorial subset IO corresponding to the hardware characteristic;
>
> receiving, as part of the initial login event, a specification of an OS environment affecting an appearance or operation of the OS gesture;
>
> tailoring, responsive to receiving the specification of the OS environment and as part of the initial login event, the OS training tutorial subset to the specification; and
>
> presenting, as part of the initial login event, the tailored OS training tutorial subset effective to demonstrate the use of the OS gesture according to the hardware characteristic of the computing device and with the appearance or operation of the specification.

C. PRIOR ART

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

C. Stephanidis et al., *Adaptable and adaptive user interfaces for disabled users in the AVANTI project*, 1430 LECTURE NOTES IN COMPUTER SCIENCE 153 (1998) ("Stephanidis").

Alexandros Paramythis et al., *Adaptive Learning Environments and e-Learning Standards*, 2 ELECTRONIC JOURNAL OF E-LEARNING 181–94 (Feb. 2004) ("Paramythis").

The Mac OSX Setup Assistant, https://www.informit.com/library/content.aspx?b=Mac_OS_X_Unleashed&seqNum=27 ("OSX").

Siefert et al. (US 6,732,358 B1; published May 4, 2004) ("Siefert")

Burkhardt et al. (US 6,823,508 B1; published Nov. 23, 2004) ("Burkhardt").

YOCHAY KIRIATY ET AL., INTRODUCING WINDOWS 7 FOR DEVELOPERS (2009) ("Windows 7").

D. REJECTIONS

1) Claims 1–5 and 21 stand rejected under 35 U.S.C. § 103(a) over Stephanidis, Paramythis, and Siefert.

2) Claim 6 stands rejected under 35 U.S.C. § 103(a) over Stephanidis, Paramythis, Siefert, and OSX.

3) Claims 7–11 stand rejected under 35 U.S.C. § 103(a) over Stephanidis, Paramythis, and Burkhardt.

4) Claims 12–14, 16–18, and 20 stand rejected under 35 U.S.C. § 103(a) over OSX, Stephanidis, Paramythis, and Burkhardt.

5) Claim 19 stands rejected under 35 U.S.C. § 103(a) over OSX, Stephanidis, Paramythis, Burkhardt, and Windows 7.

II. ISSUE

The principal issue before us is whether the Examiner errs in combining Stephanidis, Paramythis, and Siefert, OSX, Burkhardt, and/or

Windows 7 in the rejection of the claims. In particular, the issue turns on whether the Examiner set forth sufficient motivation to combine the references, and whether the proposed combinations change a principle operation of Paramythis.

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Stephanidis

1. Stephanidis discloses a user interface component, which tailors itself to the abilities, skills, requirements, and preferences of individual users. Stephanidis, Abst. An additional Device Software Layer (DSL) provides a way to uniformly control and communicate with hardware and software. *Id.* at 4. Specific interaction techniques facilitate use of special devices by disabled users. *Id.* at 5. For example, switch interaction can be achieved through scanning and on-screen keyboards; gesture recognition permits use of a joystick by blind users; and tactile presentation in braille is augmented with special symbolic annotations. *Id.* Lexical level adaptations can include scanning, font, color, size, speech, sound, and presentation parameters. *Id.* at 7.

Paramythis

2. Paramythis discloses e-Learning standards for facilitating and supporting adaptive techniques. Paramythis, Abst. According to Paramythis, the motivation behind the analysis is to attain interoperability between adaptive learning systems; reuse of adaptive learning materials; and facilitating adaptively supported distributed learning activities. *Id.*

Adaptivity can be used in the context of computational learning environments. *Id.* at 181. A learning environment is considered adaptive if it is capable of: monitoring the activities of its users; interpreting these on the basis of domain-specific models; inferring user requirements and preferences out of the interpreted activities, appropriately representing these in associated models; and, finally, acting upon the available knowledge on its users and the subject matter at hand, to dynamically facilitate the learning process. *Id.* at 182.

Siefert

3. Siefert discloses a system for storing information that allows a user to search the information. Siefert, 2:20–46. A tutorial that explains to the user how to use the system is automatically shown when the user logs on for the first time. *Id.* at 22:32–38.

OSX

4. OSX discloses a setup assistant for a Mac OS. OSX at 1. When the OS X boots for the first time, it will prepare several system files. *Id.* During this setup process, the user will configure his or her first user account. *Id.* at 2.

Burkhardt

5. Burkhardt discloses a software program, such as an operating system, that is automatically customized to a specific user. Burkhardt, Abst. The user-specific information can be integrated into the OS upon initial boot of the computer by the user. *Id.*

IV. ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments presented in this appeal. Arguments which Appellants could have made, but did not make in the Brief are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015). On the record before us, we are unpersuaded the Examiner has erred. We adopt as our own the findings and reasons set forth in the rejections from which the appeal is taken and in the Examiner's Answer, and provide the following for highlighting and emphasis.

Claims 1–6, and 21

As to independent claim 1, Appellants contend that the combination of "Paramythis's 'adaptive learning' with Stephanidis 'receipt of hardware characteristics' and 'specification of an OS environment' . . . alters an operating principle of Paramythis." Br. 16. In particular, Appellants argue that Paramythis provides a learning environment that is "adaptive based on monitoring the activities of its users," wherein the combination with Stephanidis, would instead be "adapting based on a hardware characteristic of the computing device," not a user, thus altering the operating principle of Paramythis. *Id.* at 15–16 (quoting Paramythis, 182 (emphases added)).

Appellants further contest the Examiner's rationale for combining Siefert with Stephanidis and Paramythis as insufficient to support a conclusion of obviousness. *Id.* at 17–20. The rationale based on the combination "yield[ing] predictable results," Appellants argue, is "so sweepingly broad" as to encompass different fields of endeavor (*id.* at 18), does not show why a skilled artisan would have selected particular components for combination (*id.* at 18–19), is based on hindsight

reconstruction (*id.* at 19), lacks rational underpinning (*id.*), and does not show how monitoring user activities "after an initial login event" is logical with a tutorial "initiated at a first login event" (*id.* at 19–20).

We have considered all of Appellants' arguments and evidence presented. However, we are unpersuaded by Appellants' contentions regarding the Examiner's rejections of the claims. On this record, we find no error with the Examiner's combination of references and ultimate conclusion that the claims would have been obvious over the combined references.

As to Appellants' contention that the operating principle of Paramythis is altered by its combination with Stephanidis, Appellants appear to have viewed the references from a different perspective than that of the Examiner. That is, this contention does not take into account what the collective teachings of the prior art would have *suggested to one of ordinary skill* in the art. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981)("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.") (citations omitted).

The issue here is not whether the adaptive learning of Paramythis (FF 2) would have been modified to receive "hardware characteristics" and "specification of an OS environment" (FF 1), as Appellants suggest (Br. 15–16). Rather, the issue is whether, in view of Paramythis's learning environment that is "adaptive based on monitoring activities of its users" (*id.*, FF 2), the ordinarily skilled artisan would have modified Stephanidis's adaptive user interface component (Br. 15–16, FF 1) to tailor itself based on

user activities. Here, the Examiner concludes that a person of ordinary skill, upon reading Paramythis, would find it obvious to include in Stephanidis, "adaptations that take place at the system's interface and are intended to facilitate or support the user's interaction with the system," and a training tutorial that "can be received and be adaptable." Ans. 16–17. Appellants do not point to any express support in the portions of Stephanidis and Paramythis for a teaching that would criticize, discredit or discourage one of ordinary skill from using the adaptable training tutorial to further support a user's interaction with a user interface system. *Id.*, s*ee In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

As to the Appellants' argument that the Examiner's motivation for combining Siefert was insufficient to support a conclusion of obviousness (Br. 18–20), we find no error with Examiner's conclusion that the "results would be predictable when combined" (Ans. 18). The Supreme Court has stated clearly the "combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007). As the Examiner points out, Siefert shows use of a tutorial when a user logs on the first time (Ans. 18; FF 3), and it would have been obvious "to utilize a tutorial initiated at a first login event since a combination of known methods would yield predictable results" (Final Act. 4; Ans. 18).

Here, Appellants have presented no evidence that providing a tutorial when a user logs on the first time 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). Instead, we find such a combination of references in the same

field of endeavor of providing user interfaces would have been well within the ordinary level of skill of the art. *See KSR*, 550 U.S. at 417. In particular, we find that Appellants' invention is simply a modification of familiar prior art teachings that would have realized a predictable result to the skilled artisan. The skilled artisan is "a person of ordinary creativity, not an automaton." *Id.* at 421.

On this record, we find no error in the Examiner's rejection of claim 1, and of claims 2–5 and 21, depending therefrom but not argued separately (Br. 33), over Stephanidis, Paramythis, and Siefert. For similar reasons, we also affirm the rejection of claim 6, depending from claim 1, but not argued separately, over Stephanidis, Paramythis, Siefert, and OSX. *Id.*

Claims 7–14, and 16–20

Appellants repeat the arguments for claim 1 with respect to independent claims 7 and 12. Br. 20–26, 28–32. In particular, Appellants repeat that the prima facie case of obviousness has not been established at least because of the asserted motivation to combine the references is not supported sufficiently by articulated reasoning with some rational underpinning (*id.* at 20–23, 28–31), and that the operating principle of Paramythis is altered by its combination with Stephanidis. *Id.* at 25–26, 31–32.

As discussed above with respect to claim 1, we are not persuaded by Appellants' arguments that the operating principle of Paramythis is altered by its combination with Stephanidis. *Id.* at 20–23, 25–26.

As for Appellants' arguments that the Examiner has set forth insufficient rationale for combining the references with Burkhardt, we agree with the Examiner that Burkhardt shows data can be integrated with a boot

up (Ans. 20; FF 5), wherein a skilled artisan would have recognized that "the results would be predictable" and that "Paramythis and Stephanidis will continue to gather and adapt their data, whether or not their data is adapted at boot up or at a later time" (Ans. 20).

Similarly, as for Appellants' arguments that the Examiner has set forth insufficient rationale for combining with OSX, we agree with the Examiner that OSX shows presenting a setup at the initial login event of an operating system and to customize parameters (*id.* at 21; FF 4), wherein a skilled artisan would have recognized that "[t]he results would be[] predictable" and that "whether the hardware is specified by a user, or analyzed and detected automatically, the functionality would be the same" (Ans. 21).

On this record, we find no error in the Examiner's rejection of claim 7, and of claims 8–11, depending therefrom but not argued separately (Br. 33), over Stephanidis, Paramythis, and Burkhardt; of claim 12, 13, 14, 16–18 and 20, over OSX, Stephanidis, Paramythis, and Burkhardt; and of claim 19, depending from claim 12, over OSX, Stephanidis, Paramythis, Burkhardt, and Windows 7. *Id.*

V. CONCLUSION AND DECISION

The Examiner's rejections of claims 1–14 and 16–21 under 35 U.S.C. § 103(a) 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)(iv).

AFFIRMED