



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/742,759	01/16/2013	Kiyoshi MIZUKI	RYM-723-3630	1916
27562	7590	09/17/2019	EXAMINER	
NIXON & VANDERHYE, P.C. 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			LANEAU, RONALD	
			ART UNIT	PAPER NUMBER
			3715	
			NOTIFICATION DATE	DELIVERY MODE
			09/17/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOMAIL@nixonvan.com
pair_nixon@firsttofile.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KIYOSHI MIZUKI, HIDETO YUZAWA, and
SHUNSAKU KATO

Appeal 2017-010230
Application 13/742,759¹
Technology Center 3700

Before ANTON W. FETTING, MICHAEL C. ASTORINO, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–7 and 9–17. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ “The real party in interest is NINTENDO CO., Ltd.” Appeal Br. 3.

ILLUSTRATIVE CLAIM

1. A game system including a plurality of terminal devices and a predetermined server, the plurality of terminal devices being respectively used by a plurality of users, the game system comprising a processor system including at least one processor, the processor system being configured to:

perform interaction processing with at least one of a plurality of virtual game characters that exist in a predetermined virtual game space, based on an instruction input from the user of each terminal device;

generate posted information in connection with one virtual game character selected from the plurality of virtual game characters, based on an input of the user of each terminal device;

store the generated posted information in the server in association with identification information of the one virtual game character;

draw a virtual space image which is an image representing a virtual game space including a first virtual game character,

select one item of posted information for the first game character, from among a plurality of items of posted information stored in the server, the plurality of items of posted information being generated based on inputs by the plurality of users, and the selected item of posted information being associated with identification information of the first virtual game character;

composite the selected item of posted information in the virtual space image in association with the virtual game character that is indicated by the identification information associated with the selected posted information, a display position of the selected item of posted information being determined based on a display position of the first virtual game character;

present the composite image to the user in each terminal device, and

control movement of the virtual game character in the virtual game space,

wherein the display position of the posted information is changed according to the controlled movement of the virtual game character.

CITED REFERENCES

The Examiner relies upon the following references:

Cho	US 2007/0218997 A1	Sept. 20, 2007
Clanton et al. (hereinafter “Clanton”)	US 7,386,799 B1	June 10, 2008
Zalewski et al. (hereinafter “Zalewski”)	US 2010/0041475 A1	Feb. 18, 2010
Boutin	US 2013/0029767 A1	Jan. 31, 2013
Oshita	US 2013/0024544 A1	Jan. 24, 2013

REJECTIONS²

I. Claims 1–7 and 9–12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Zalewski and Clanton.

II. Claims 13–17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Boutin, Zalewski, Oshita, and Cho.

FINDINGS OF FACT

The findings of fact relied upon, which are supported by a preponderance of the evidence, appear in the following Analysis.

² In addition to the rejections identified herein, the Final Office Action (pages 2–3) rejects claims 1–7 and 9–12 under 35 U.S.C. § 101 as ineligible subject matter. This rejection is withdrawn. *See* Answer 2.

ANALYSIS

Claims 1–7 and 9–12

Among the arguments presented for claims 1–7 and 9–12, the Appellants contend that the rejection is erroneous, because the cited prior art does not adequately teach or suggest the following limitation of independent claim 1 (or the substantially similar limitations of independent claims 9–12):

select one item of posted information for the first game character, from among a plurality of items of posted information stored in the server, the plurality of items of posted information being generated based on inputs by the plurality of users, and the selected item of posted information being associated with identification information of the first virtual game character.

See Appeal Br. 20–28.

The Examiner relies upon Zalewski for this limitation, stating, in the Answer:

Zalewski, in para. [0037], discloses a submission engine to allow entry of posted information wherein the submission engine comprises drop down menus to allow identification of particular types of advice including defeating a particular enemies and similar identification may occur with respect to particular enemies. This implies that multiple users of the system would be able to submit advice for the same particular enemy, the advices being stored in a server. Hence, it would read on the claim limitation when one of the advices with respect to a particular enemy would be composited for posting.

Answer 13–14.

Yet, as the Appellants explain, the Examiner’s analysis does not account for the claimed “select[ion]” of “one item of posted information . . . from among a plurality of items of posted information” — a feature not disclosed by Zalewski. *See* Appeal Br. 27–28; Reply Br. 5–7.

Therefore, we do not sustain the rejection of independent claim 1 (along with claims 2–7 depending therefrom) and, for like reasons, independent claims 9–12 under 35 U.S.C. § 103(a).

Claims 13–17

The Appellants argue claims 13–17 as a group. *See* Appeal Br. 28–32. Independent claim 13 is selected for analysis herein. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Appellants argue that the rejection is erroneous, because the cited prior art references (Boutin, Zalewski, and Cho) do not teach or suggest the following limitation of claim 13 (emphasis added):

prompting a user to select a stage *while* a composite image including at least stored posted information generated by another user *is displayed* in the virtual space image, in association with the icon image of the stage that is indicated by the stage identification information of the posted information generated by another user.

See Appeal Br. 28–32, Reply Br. 7–12.

The Appellants’ argument hinges on whether the cited prior art teaches or suggests the temporal aspect of the identified claim limitation of claim 13 — i.e., the claimed “prompting” occurs “*while*” a “composite image” (having certain features) “*is displayed.*” (Emphasis added).

Indeed, regarding Boutin’s alleged deficiency, the Appellants assert: “Boutin . . . does not teach prompting a user to select any icon image of a game while comments is being displayed in association with the corresponding game.” Appeal Br. 30.

Similarly, the Appellants contend that the Zalewski reference lacks the claimed simultaneity of the “prompting” and “display[ing]” features:

Zalewski vaguely suggests displaying game play advice *after* the user has already entered certain points of game play related to certain levels or stages. Namely, in Zalewski, when the user is promoted to select a game stage, the game play advice has not yet been displayed. Zalewski thus fails to teach prompting a user to select a stage while any game play advice is being displayed in association with the corresponding stage.

Id.

Likewise, in the Appellants' assessment, Cho fails to provide the temporal relationship of "prompting" and "displaying" required in claim 13:

Cho only teaches displaying icon images in allowing a user to select a level to play, but not prompting a user to select a stage while game play advice is being displayed in association with a corresponding stage.

Id. at 31.

The Examiner regards the simultaneity of "prompting" and "displaying" as a modification of the combined teachings of Boutin, Zalewski, and Cho, wherein "[t]he motivation for presenting the user-generated comment during the stage selection is to inform players about the game from the perspective of other players." Answer 15.

Alternatively, the Examiner explains that the claim term "while" does not have a temporal meaning, in the context of the claim; rather, the word "while," in claim 13, merely means *whereas*:

[T]he conjunction "while" has several meanings, one of which is "at the same time as"; however "while" also means "whereas". Using broadest reasonable interpretation of "whereas" meaning of "while", the combination of Boutin, Zalewski and Cho would definitely read on the claimed language.

Id.

We agree with the Appellants' argument that, in the present context, the claim term "while" should not be construed to mean *whereas*. See Reply Br. 10–12. Interpreting "while" to mean *whereas* would not permit a logical reading of the claim language, because claim 13 affords no sense of contrast between the phrases "prompting a user to select a stage" and "a composite image . . . is displayed."

Yet, the Appellants do not address the Examiner's position that the combination of references may be modified to achieve the simultaneous "prompting" and "display[ing]," in order "to inform players about the game from the perspective of other players." Answer 15. Therefore, the Appellants do not present a reason for error in the Examiner's position that the teachings of Boutin, Zalewski, and Cho may be combined and modified to include the claimed "prompting" during the "display[ing]" the "composite image." *Id.* See *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) ("[I]t has long been the Board's practice to require an applicant to identify the alleged error in the examiner's rejections.") (citing *Ex parte Frye*, Appeal No. 2009-006013, at 9–10, 2010 WL 889747 (BPAI Feb. 26, 2010) (precedential)).

In view of the foregoing, we sustain the rejection of claims 13–17 under 35 U.S.C. § 103(a).

DECISION

We REVERSE the Examiner's decision rejecting claims 1–7 and 9–12 under 35 U.S.C. § 103(a).

We AFFIRM the Examiner's decision rejecting claims 13–17 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).

Appeal 2017-010230
Application 13/742,759

AFFIRMED-IN-PART