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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AMEET KUMAR JAIN and
VIJAY PARTHASARATHY

Appeal 2018-000007
Application 14/364,336¹
Technology Center 3700

Before MURRIEL E. CRAWFORD, MICHAEL W. KIM, and
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellants appeal from the Examiner's Final rejection of claims 1–15. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ According to Appellants, Koninklijke Philips N.V. is the real party in interest. Appeal Br. 3.

According to Appellants, the invention “relates to an intra-operative quality monitoring of a calibration of a tracking system for an interventional tool during the interventional procedure.” Spec. 1, ll. 7–9. Claims 1 and 12 are the independent claims on appeal. Below, we reproduce claim 1 as illustrative of the appealed claims.

1. An interventional system, comprising:
 - an interventional tool having a tracking point;
 - an imaging system operable for generating at least one image of at least a portion of the interventional tool relative to an anatomical region of a body;
 - a tracking system operable for tracking any movements of the interventional tool and the imaging system within a spatial reference frame relative to the anatomical region of the body, wherein the tracking system is calibrated to the interventional tool and the imaging system; and
 - an interventional workstation in communication with the imaging system and the tracking system, wherein the interventional workstation includes a tracking quality monitor operable for monitoring a tracking quality of the tracking system as a function of a calibrated location error for each image between a calibrated tracking location of the tracking point within the spatial reference frame and an image coordinate location of the tracking point in the image.

REJECTIONS AND PRIOR ART

The Examiner rejects the claims as follows:

- I. Claims 1–5, 9, and 11–15 under 35 U.S.C. § 102(e) as anticipated by Graumann et al. (US 2013/0066196 A1, pub. Mar. 14, 2013) (hereinafter “Graumann”); and

- II. Claims 6–8 and 10 under 35 U.S.C. § 103(a) as unpatentable over Graumann and Bucholz et al. (US 2002/0035321 A1, pub. Mar. 21, 2002) (hereinafter “Bucholz”).

ANALYSIS

Rejection I

As set forth above, independent claim 1 recites, in relevant part,

an interventional workstation in communication with the imaging system and the tracking system, wherein the interventional workstation includes *a tracking quality monitor operable for monitoring a tracking quality of the tracking system as a function of a calibrated location error for each image between a calibrated tracking location of the tracking point within the spatial reference frame and an image coordinate location of the tracking point in the image.*

Appeal Br., Claims App. (Claim 1) (emphases added). Restated, and as understood by both Appellants and the Examiner (*see, e.g.,* Appeal Br. 12; *see also, e.g.,* Answer 4), the claim recites that the tracking quality monitor (the “monitor”) checks the tracking system’s tracking quality based on *each image’s* calibrated location error (e.g., all of the images taken during use of an intervention tool during a surgical or other procedure, and not only from images taken during an initial calibration that occurs before use of the intervention tool).

Further, it appears that both Appellants and the Examiner agree that Graumann discloses a monitor that checks a tracking system’s tracking quality based on *a plurality of image’s* calibrated location error *taken during calibration*, but does not expressly disclose that that the monitor checks tracking quality based on *each image taken* (e.g., images taken during surgery). *See, e.g.,* Appeal Br. 11–13; *see also, e.g.,* Reply Br. 13–14; *and*

e.g., Answer 2, 4. Nonetheless, the Examiner finds that Graumann discloses the claimed recitation under discussion because

a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim, and that Graumann’s monitor is capable of monitoring tracking quality based on each image. Answer 4. Conversely, Appellants argue that the Examiner’s anticipation rejection is in error because Graumann does not disclose a monitor that checks a tracking system’s tracking quality based on *each image’s* calibrated location error. Appeal Br. 12–13. For the following reasons, we agree with Appellants that the Examiner errs, and, therefore, we do not sustain the rejection.

Claim 1 recites “a tracking quality monitor *operable for* monitoring a tracking quality of the tracking system as a function of a calibrated location error for each image between a calibrated tracking location of the tracking point . . . and an image coordinate location of the tracking point in the image.” Appeal Br., Claims App. (Claim 1) (emphasis added). The issue is whether we should interpret the claim recitation “operable for” narrowly, as akin to specifically “configured to,” or broadly, as merely “capable of.” *See Aspex Eyewear, Inc. v. Marchon Eyewear, Inc.*, 672 F.3d. 1335, 1349 (Fed. Cir. 2012) (The court indicated that claim language “configured to” is construed more narrowly than “capable of,” and held that where claim language is to be construed consisted with “configured to” language it requires that the structure must be “designed or configured to accomplish the specified objective, not simply that [it] can be made to serve that purpose.”) We look to Appellants’ Specification to see how Appellants describe

operation of the monitor. *See In re Giannelli*, 739 F.3d 1375 (Fed. Cir. 2014) (The court looked to the application’s written description to determine whether the phrase “adapted to” should be broadly construed as “capable of” or narrowly construed as “designed to.”).

Based on our review of Appellants’ Specification, we interpret claim 1’s recitation of “operable for” as “configured to” rather than “capable of.” This is because the Specification describes the actual comparison of the calibrated tracking location of the tracking point, with the image coordinate location of the tracking point in the image, throughout the use of the intervention tool. *See, e.g.*, Spec. 4, l. 17–6, l. 6.

Thus, inasmuch as the Examiner does not find that Graumann discloses a monitor that is designed to check a tracking system’s tracking quality based on *each image’s* calibrated location error, we do not sustain claim 1’s anticipation rejection. We also do not sustain the Examiner’s anticipation rejection of independent claim 12 based on Graumann, because claim 12 includes a recitation similar to that discussed above in claim 1. Further, we do not sustain the anticipation rejection of claims 2–5, 9, 11, and 13–15 that depend from the independent claims.

Rejection II

Claims 6–8 and 10 depend from claim 1. The Examiner does not rely on Bucholz to remedy the above-discussed deficiency in the rejection of independent claim 1. Thus, we do not sustain the obviousness rejection of the dependent claims.

Appeal 2018-000007
Application 14/364,336

DECISION

We REVERSE the Examiner's rejections of claims 1–15.

REVERSED