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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FÉRID ALLANI

Appeal 2018-000808
Application 13/585,065[1]
Technology Center 2100

Before SCOTT B. HOWARD, JOHN D. HAMANN, and STEVEN M. AMUNDSON, *Administrative Patent Judges*.

HAMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant files this appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–19. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] According to Appellant, the real party in interest is Férid Allani. Br. 2.

THE CLAIMED INVENTION

Appellant's claimed invention relates to "accessing information sources and services on the Web." Spec. 1, ll. 14–15. Claim 1 is illustrative of the subject matter on appeal and is reproduced below.

> 1. A communication device connectable to remote sources of information or services through a communication network, comprising a display, data storage, a processor, a controller and a plurality of icons locally stored in said data storage and selectively displayed on said display, provided to get access to a predetermined remote source or service among said remote sources of information or services through a locally performed preliminary search, wherein said plurality of icons includes at least one direct access icon capable of being selectively activated by a user of said communication device to connect said communication device to a predetermined web site among said remote sources of information or services so as to display on said display a page from said web site, and at least one selection icon capable of being selectively activated to display one or more additional selection or direct access icons on said display, said communication device being arranged to display, when starting, a first selection page locally stored in said storage device and including one or more of said direct access icons and one or more of said selection icons provided to access one or more second selection pages, at least one of said one or more second selection pages including one or more icons for directly accessing a predetermined remote source or service among said remote sources or services, wherein at least one of said one or more second selection pages includes a selection icon and an icon for directly accessing a Web site as a result of said locally preliminary search, wherein at least one of said one or more second selection pages includes an icon for directly accessing a remotely located document as result of a locally performed preliminary search comprising (i) an activation within said first selection page of a first icon for selecting a theme among a plurality of themes so as to display said selection page and (ii) an activation of said direct-access icon so as to display said remotely located document.

REJECTION ON APPEAL

The Examiner rejected claims 1–19 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Iki (US 6,816,172 B1; issued Nov. 9, 2004) and Fair (US 6,628,307 B1; issued Sept. 30, 2003).

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellant's contentions that the Examiner erred. In reaching our decision, we consider all evidence presented and all arguments made by Appellant. We disagree with Appellant's arguments and we incorporate herein and adopt as our own the findings, conclusions, and reasons set forth by the Examiner in (1) the June 13, 2016 Final Office Action ("Final Act." 2–8), (2) the December 16, 2016 Advisory Action ("Adv. Act." 2), and (3) the August 16, 2017 Examiner's Answer ("Ans." 2–10). We highlight and address, however, specific findings and arguments below for emphasis.

(1) Combination's teachings

Appellant argues[2] that certain limitations are missing from the combination of Iki and Fair, but does so while focusing on the teachings of these references individually rather than the *combination's* teachings. Br. 5–10. More specifically, Appellant argues Iki fails to teach or suggest (i) "multiple levels of pages, wherein each of the pages in the levels is locally stored"; (ii) "the selection of an icon on a first locally stored page to

[2] As to the specific arguments we address below, Appellant argues the rejected claims as a group. Thus, we decide the appeal on the basis of representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

access a second locally stored page that also has icons, and the further selection of an icon on the second page to access a yet third locally stored page"; and (iii) "that the icon that directs access from the first locally stored page to the second locally stored page has a 'theme.'" Br. 5 (citing Iki col. 4, ll. 45–56; col. 6, l. 51 – col. 7, l. 5; col. 8, l. 62 – col. 9, l. 3); *see also id.* (citing Iki Figs. 5–6 (arguing the GUI of Fig. 6 "does not appear to be 'previously locally stored', as it contains current (live) information being broadcasted")).

As to Fair, Appellant argues Fair "does not disclose the claimed 'directly accessing' a remotely stored web site or document throughout a progression of pages." Br. 6 (citing Fair col. 5, ll. 6–14). According to Appellant, Fair discloses that "the user navigates a series of previously stored pages, none of which have access to an outside network of information. Only at the last page is outside access provided when a purchase is to be executed." *Id.*

The Examiner finds that the *combination* of Iki and Fair teaches or suggests the disputed limitations. Ans. 8–9; Final Act. 3–5; Adv. Act. 2. For example, the Examiner finds that Fair teaches or suggests multiple locally pre-stored selection pages (i.e., Fair's "*hierarchy of selection pages*" that are "*locally stored*") wherein each page contains selection icons (i.e., Fair's "icon[s] linking to another page"). Ans. 8–9 (citing Fair col. 4, ll. 20–25; col. 5, ll. 6–14; col. 6, ll. 4–6, 50–54; col. 7, ll. 4–11, 50–59); *see also* Final Act. 3 (citing Fair col. 4, ll. 29–37; col. 6, ll. 48–61) (finding Fair teaches or suggests locally stored icons for accessing links associated with a category or theme, such as a grocery theme or bank theme). The Examiner also finds Fair teaches or suggests that the pages can include direct access

icons (i.e., Fair's "links to other sites on the Internet . . . and the ability to access data not pre-stored but available on the Internet through the use of search engine icons"). Ans. 9 (citing Fair col. 7, ll. 57–59; col. 8, ll. 16–35). As to Iki, the Examiner finds that Iki teaches or suggests pages having both direct access icons (i.e., Iki's multimedia identifiers linking to remote websites) and selection icons (i.e., Iki's entertainment selectable icons generating a second GUI that displays additional identifiers and entertainment selection data). Ans. 8 (citing Iki col. 6, l. 51 – col. 7, l. 5; col. 8, ll. 37–51).

We agree with the Examiner's findings and adopt them as our own. For example, Fair teaches or suggests (i) having multiple levels of pages, wherein each of the pages is locally stored (*see* Fair col. 4, ll. 20–25; col. 5, ll. 6–14; col. 6, ll. 4–6); (ii) selecting an icon on a first locally stored page to access a second locally stored page that also has icons, and the further selection of an icon on the second page to access a yet third locally stored page (*see* Fair col. 4, ll. 20–25 (teaching "[l]ower pages typically have links back to the previous page, or the original page"), 29–37; col. 5, ll. 6–14; col. 6, ll. 4–6, 50–54; col. 7, ll. 4–11); and (iii) having the icon that directs access from the first locally stored page to the second locally stored page have a theme, such as a grocery or banking theme (Fair col. 4, ll. 29–37; col. 5, ll. 6–14; col. 6, ll. 50–54; col. 7, ll. 4–11). As to Iki, it teaches or suggests, for example, direct access icons for accessing a remotely stored web site or document, as well as selection icons (i.e., entertainment selectable icons). *See* Iki col. 6, l. 51 – col. 7, l. 5; *see also id.* at col. 7, ll. 3–5 (teaching "multimedia identifier may be a hyper link to a remote web server or a link to a system component local to the graphical user interface"). Appellant

incorrectly focuses on the teachings of the individual references rather than their combined teachings, and also argues, in part, one reference lacks the relevant teaching, despite the Examiner relying on the other reference. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) ("Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references"); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (finding the relevant inquiry is whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the combined teachings of the references). Furthermore, we are not persuaded by Appellant's argument that "the alleged 'second screen [or selection] page' is not accessible from the alleged 'first screen [or selection] page' via a selection icon." Br. 10. Appellant again focuses too narrowly on the references' specific teachings without addressing how one of ordinary skill in the art would combine the teachings. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 420 (2007) ("[I]n many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle."); *see also id.* at 421 ("A person of ordinary skill is also a person of ordinary creativity, not an automaton.").

(2) Teaching away

Appellant argues that "*Fair* criticizes and teaches away from systems that allow extensive access to outside websites because it views such direct access as a problem to be solved." Br. 7; *see also id.* at 8 (citing Fair col. 1, ll. 15–17, 49–58; col. 2, ll. 9–20; col. 5, ll. 1–6). According to Appellant, "*Fair* actively seeks to limit and restrict a user's ability to directly access remotely stored websites and documents so as not to confuse the user." Br. 8. Appellant argues Fair, thus, "does not disclose the claimed 'directly

accessing' a remotely stored web site or document throughout a progression of pages." Br. 6. In fact, "[t]he lack of access to an outside network in all the various pages upstream from the final purchasing page is a main feature of the invention disclosed in *Fair* and is one of its purported benefits." *Id.*; *see also id.* at 6–7 (citing Fair col. 5, ll. 6–14; col. 6, ll. 4–6, 19–22; col. 7, ll. 47–49; Fig. 7).

We agree with the Examiner's finding that Fair and Iki are properly combined in that Fair does not teach away from accessing a remotely stored web site throughout a progression of pages. Ans. 10. Rather, Fair may teach or suggest a preference for having pages locally stored, but also teaches that remote sites can be accessed from hosted pages. *See, e.g.*, Fair col. 7, ll. 57–59 ("The hosted pages typically reside in local memory, but links to the other sites on the Internet are available through the Internet marketing system."); col. 8, ll. 16–35 (discussing providing Internet access from a page). Teaching a preference for locally stored pages does not teach away from having pages that allow for accessing remote websites. *See DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1327 (Fed. Cir. 2009) ("A reference does not teach away . . . if it merely expresses a general preference for an alternative invention but does not 'criticize, discredit, or otherwise discourage' investigation into the invention claimed.") (citations omitted); *Syntex (U.S.A.) LLC v. Apotex, Inc.*, 407 F.3d 1371, 1380 (Fed. Cir. 2005) ("Under the proper legal standard, a reference will teach away when it suggests that the developments flowing from its disclosures are unlikely to produce the objective of the applicant's invention. . . . A statement that a particular combination is not a preferred embodiment does not teach away absent clear discouragement of that combination.")

(citations omitted); *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994) ("A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use.").

CONCLUSION

Based on our findings and reasoning above, we sustain the Examiner's rejection of claims 1–19.

DECISION

We affirm the Examiner's decision rejecting claims 1–19 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)(1)(iv).

AFFIRMED