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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHARLES J. PISULA, NITIN K. GANATRA, and
IMRAN CHAUDHRI

Appeal 2018-002721
Application 12/566,673
Technology Center 2100

Before MAHSHID D. SAADAT, ERIC B. CHEN, and
CARL L. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 6–8, 10–13, and 15–30, which constitute all pending claims. We have jurisdiction under 35 U.S.C. § 6(b). Appellant waived an Oral Hearing that was scheduled for November 5, 2019.

We REVERSE.

¹ Throughout this Decision, we use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies Apple Inc. as the real party in interest. Appeal Br. 4.

STATEMENT OF THE CASE

The invention relates to variable scrolling with a display and a touch-sensitive surface. Abstract; Spec. ¶¶ 258, 363–368, Figs. 5A, 5B, 5BBB, 5CCC. Claim 1, reproduced below, is exemplary of the subject matter on appeal (emphases added):

1. A method, comprising:
 - at an electronic device with a display and a touch-sensitive surface:
 - displaying a progress icon in a predefined area on the display, wherein the progress icon is configured to move in a first predefined direction on the display;
 - providing a first piece of content with the electronic device;
 - indicating a current position within the first piece of content with the progress icon;
 - concurrently displaying with the progress icon a multi-purpose content navigation icon at a first location on the display;* and,
 - while providing the first piece of content with the electronic device:
 - detecting a first contact* with the touch-sensitive surface at a first location on the touch-sensitive surface that corresponds to the first location of the multi-purpose content navigation icon on the display for at least a predetermined time period;
 - while continuing to detect the contact at the first location on the touch-sensitive surface, moving the current position within the first piece of content at a predefined scrubbing rate;*
 - detecting movement of the contact*, wherein movement of the contact comprises a first component of movement on the touch-sensitive surface in a direction that corresponds to movement on the display parallel to the first predefined direction;
 - and,
 - in response to detecting the movement of the contact:
 - while continuing to detect the contact and while detecting the first component of movement increasing, moving the current position within the first piece of content at a variable scrubbing*

rate, wherein the variable scrubbing rate varies at least in part in accordance with the first component of movement on the touch-sensitive surface; and
maintaining display of the multi-purpose content navigation icon at the first location on the display.

Appeal Br. 46 (Claims App.).

THE REJECTIONS

Claims 1, 6–8, 11–13, 17–19, 21–25, 26, and 28–30 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Anzures et al. (US 2008/0055264 A1; pub. Mar. 6, 2008) (“Anzures”) in view of Mudd et al. (US 2008/0222546 A1; pub. Sept. 11, 2008) (“Mudd”), and Kuzmin (US 2008/0075368 A1; pub. Mar 27, 2008) (“Kuzmin”). Final Act. 12–24.

Claims 10, 20, and 27 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Anzures, Mudd, Kuzmin, and Kim (US 2009/0077491 A1; pub. Mar. 19, 2009) (“Kim”). Final Act. 24–26.

ANALYSIS

Appellant argues:

First, Anzures, Mudd, and Kuzmin, either alone or in combination, do not teach or suggest varying a scrubbing rate “while continuing to detect the contact and while detecting the first component of movement increasing,” as recited in representative independent claim 1.

Second, those cited references do not teach or suggest, alone or in combination, varying a scrubbing rate “at least in part in accordance with the first component of movement on the touch-sensitive surface,” as recited in representative independent claim 1.

Third, even if, *arguendo*, those cited references disclosed each of those elements, as the Examiner argued, it would not

have been obvious to combine them in the manner argued by the Examiner.

Appeal Br. 13.

We focus initially on Appellant’s argument that Kuzmin does not teach the claim 1 limitations

concurrently displaying with the progress icon a multi-purpose content navigation icon at a first location on the display; and,

while providing the first piece of content with the electronic device:

detecting a first contact with the touch-sensitive surface at a first location on the touch-sensitive surface that corresponds to the first location of the multi-purpose content navigation icon on the display for at least a predetermined time period;

while continuing to detect the contact at the first location on the touch-sensitive surface, moving the current position within the first piece of content at a predefined scrubbing rate;

detecting movement of the contact, wherein movement of the contact comprises a first component of movement on the touch-sensitive surface in a direction that corresponds to movement on the display parallel to the first predefined direction; and,

in response to detecting the movement of the contact:

while continuing to detect the contact and while detecting the first component of movement increasing, moving the current position within the first piece of content at a variable scrubbing rate, wherein the variable scrubbing rate varies at least in part in accordance with the first component of movement on the touch-sensitive surface.

Appeal Br. 12–34; Reply Br. 3–23. (Emphasis added).

In particular, Appellant argues, *inter alia*, that Kuzmin (and Anzures, Mudd, and Kim) do not teach varying a scrubbing rate “while continuing to

detect the contact and while detecting the first component of movement increasing” and “varying a scrubbing rate” “at least in part in accordance with the first component of movement on the touch-sensitive surface.” (Also referred to as the “disputed limitations”). *Id.*

The Examiner finds Kuzmin teaches dynamically changing the play speed according to the speed of the input object over the input surface, instead of according to the duration of the actuation (as the Examiner finds is taught by Mudd). Final Act. 13. The Examiner finds

Kuzmin teaches “. . . . to input a NEXT/FORWARD command, a user may stroke a finger from a second input element 808 of a first horizontal bar input surface 802 to a third input element 810 of a second horizontal bar input surface 804 play speed the value of the incremental change is dynamic and depends upon at least one of the following parameters (ii) length of the input sequence, (iii) duration of the sweep, and (iv) speed of the input object over the input surface ” (Paragraphs 52, 64, 87, 94-95; Figure 18; Claims 19, 26-27, 43-50). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Anzures and Mudd with the teachings of Kuzmin with the motivation to provide a compact data entry system (Paragraph 15).

Final Act. 14.

In the Answer, the Examiner reiterates the findings in the Final Action and finds that Appellant misinterprets Kuzmin. Ans. 2–6. According to the Examiner, Kuzmin teaches that “the sweep begins when an input object (e.g. finger) interacts with an input surface and ends when an input object stops or discontinues interaction with an input surface (Paragraph 52).” *Id.* at 3. The Examiner finds

[i]n other words, *user can begin the sweep from a first input element 806 to a second input element 808 (a complete input*

sequence 814) to activate the PLAY function and then continues the sweep from a second input element 808 to a third input element 810 (a complete input sequence 818) to activate NEXT/FORWARD function and the sweep can continue to activate other function until user stops or discontinues interaction with an input surface to end the sweep. Therefore, Kuzmin does teach a single sweep performs multiple functions. Kuzmin then further teaches the function is an incremental change of parameter entered by the input sequence wherein the value of the incremental change is dynamic and can depend upon at least one of (i) a current value of the parameter, (ii) length of the input sequence, (iii) duration of the sweep, and (iv) speed of the input object over the input surface. (Claims 43-50).

Kuzmin's incremental change, in the example of the play speed, is dynamic and depends upon at least the speed of the input object (e.g. user's finger) over the input surface is used to teach the variable play speed that varies in accordance with the speed of the input object (user's finger) over the input surface. In other words, the speed of user's finger sweeping over the input surface containing the input elements (806 to 808) is the speed for playing the content and as user sweeping further to the right toward element 810 but not yet reaching element 810, the play speed is increased in accordance with user's finger sweeping movement further to the right until after user sweeping pass element 810 to activate forward function which will have a play speed faster than the previous play speed of the play function. This is similar to scrubbing except Kuzmin did not used the word scrub. However, it would have been obvious to modify Mudd with Kuzmin's teaching to replace the time based pressing and holding button method with the speed based sweeping over input elements to control the play speed of the content with the motivation to provide a compact data entry system and to prevent accidental input of a command which typically occurs with a single touch command such as pressing a single button or input element (Paragraphs 15, 95).

Ans. 3–4. (Emphasis added).

Appellant argues Kuzmin teaches performing functions (commands) by entering specified sequences through inputs. Appeal Brief 19–34 (citing

Kuzmin Figs. 17, 18; ¶¶ 15, 18, 52, 58, 71, 94, 95). According to Appellant, Kuzmin's sequence is initiated by selecting the appropriate inputs and the specified sweep of the appropriate inputs to perform the desired function, e.g., PLAY or NEXT/FORWARD. *Id.* at 19–30. Appellant argues that Kuzmin's function is not completed/performed until the sequence (single continuous sweep) is completed and the input is released. *Id.* at 24–28 (citing Kuzmin, Fig. 18; ¶¶ 94, 95; claim 1). According to Appellant, Kuzmin teaches using a sequence of input elements to avoid accidental input and this is accomplished by a system in which the sweep must be completed before executing any function or command. *Id.* at 28 (citing Kuzmin ¶¶ 61, 94, 95; claim 1).

In the Reply Brief, Appellant reiterates arguments and argues that the Examiner relies on a lack of description in Kuzmin to find that additional sequences do not rely on the input elements of Figure 18. Reply Br. 5–9. Appellant argues that the plain reading of Kuzmin supports that paragraph 95 and Figure 18 rely on the identified input elements for sweeps, and the Examiner's finding to the contrary is based on improper assumptions. *Id.* at 8–12.

We are persuaded by Appellant's arguments because, on the record before us, the Examiner presents insufficient evidence that Kuzmin (and the other cited references) teach the limitations of claim 1. In particular, there is insufficient evidence to support the Examiner's finding that Kuzmin teaches performing a sweep that would, for example, perform the PLAY *and* NEXT/FORWARD function. Instead, the teaching of Kuzmin teaches PLAY is one sweep and NEXT/FORWARD is a different sweep. If, as suggested by the Examiner, these sweeps were performed in succession, without

removing the contact until the completion of the NEXT/FORWARD sweep, *only* the NEXT/FORWARD function would be performed. *See* Kuzmin Fig. 18; ¶¶ 94, 95. The claim recites “while continuing to detect the contact . . . moving the . . . at a predefined scrubbing rate” and “while continuing to detect the contact and while detecting . . . movement increasing, moving . . . at a variable scrubbing rate.” However, Kuzmin does not teach varying a scrubbing rate from a predefined scrubbing rate to a variable scrubbing rate *while continuing to detect the contact*. Therefore, Kuzmin does not teach varying a scrubbing rate “while continuing to detect the contact and while detecting the first component of movement increasing” and “varying a scrubbing rate” “at least in part in accordance with the first component of movement on the touch-sensitive surface.”

In view of the above, we do not sustain the rejection of claim 1, independent claims 15 and 16, which are commensurate in scope with claim 1, and dependent claims 2–13, and 17–30. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“[D]ependent claims are nonobvious if the independent claims from which they depend are nonobvious . . .”).

Because our decision with regard to the disputed limitation is dispositive of the rejections, we do not address additional arguments raised by Appellant.

DECISION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 6–8, 11–13, 17–19, 21–25, 26, and 28–30	103(a)	Anzures, Mudd, and Kuzmin		1, 6–8, 11–13, 17–19, 21–25, 26, and 28–30
10, 20 and 27	103(a)	Anzures, Mudd, Kuzmin, and Kim		10, 20, and 27
Overall Outcome				1, 6–8, 10–13, and 15–30