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NBCUniversal Media, LLC c/o Fletcher Yoder, P.C. PO Box 692289 Houston, TX 77269-2289			BOYD, ALEXANDER L	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ARTURO VERMOLEN and SHEAU NG

Appeal 2018-003653
Application 14/463,138
Technology Center 2400

Before ROBERT E. NAPPI, ERIC S. FRAHM, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–27. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

INVENTION

Appellant's invention "relates generally to video technologies, and particularly to techniques for blending and coordinating standard video

¹ We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. "The word 'applicant' when used in this title refers to the inventor or all of the joint inventors, or to the person applying for a patent as provided in §§ 1.43, 1.45, or 1.46." 37 C.F.R. § 1.42(a). According to Appellant, NBCUniversal Media, LLC is the real party in interest (Appeal Br. 2).

content with immersive video content” (Spec. ¶ 2; *see also* Fig. 1).

Immersive video is a technique whereby “a number of cameras are used to capture various points of view during a scene,” and then those camera videos are combined “to provide viewing points of view that may be seamlessly stitched to allow a viewing audience to pan or move the desired view” (Spec. ¶ 5). “In some scenarios, ‘movement’ commands from the audience may be sent to a service provider” to perform combination, blending, and processing on the server-side or in the cloud, providing “a rich and diversified experience, while allowing for the use of and combination with conventional standard video” (Spec. ¶ 7). Independent method claim 1 is illustrative of the invention and is reproduced below, with bracketed lettering and emphases added to disputed portions of the claim.

1. A method comprising:

accessing standard video content, comprising a standard video view comprising one or more primary content views of one or more scenes, without immersive video content comprising one or more corresponding immersive views that provide a panning effect enabling panning from the one or more primary content views to the immersive views of the one or scenes;

[A] accessing the immersive video content, comprising a corresponding immersive video view comprising one or more immersive views that enable panning from the one or more primary content views of the one or more scenes to the immersive views of the one or more scenes, wherein the immersive video content is separate from the standard video content;

displaying at least a portion of the standard video view at an audience playback system;

determine whether an audience request to view at least a portion of the immersive video view is received during display of the at least portion of the standard video view;

[B] *when the audience request is received during display of the standard video view, displaying the at least portion of the immersive video view; and*

otherwise, when the audience request is not received during display of the standard video view, continue displaying the standard video view.

EXAMINER'S REJECTIONS

(1) The Examiner rejected claims 23–27 under 35 U.S.C. § 112(b), as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention. Final Act. 2–3.

(2) The Examiner rejected claims 1–27 under 35 U.S.C. § 103 as being unpatentable over the same base combination of McCutchen et al. (US 2010/0299630 A1; published Nov. 25, 2010)(hereinafter, “McCuthchen 1”) and McCutchen, (US 2012/0092348 A1; published April 19, 2012)(hereinafter, “McCutchen 2”). Final Act. 3–20.

ISSUES

Based on Appellant’s arguments in the Briefs (Appeal Br. 8–38; Reply Br. 2–8), two principal issues are before us on appeal:

(1) Did the Examiner err in rejecting claims 23–27 under 35 U.S.C. § 112(b), for being indefinite;² and

² Notably, Appellant also contests the Examiner’s objection to claims 7, 9, and 23, requesting that the proposed amendments be entered to cure the objections (*see* Appeal Br. 39). Claim objections are not under the jurisdiction of the Board. The propriety of any amendments submitted to cure claim objections is more properly within the jurisdiction of the Examiner upon further prosecution, if any. We note that the Examiner’s objection is reviewable by petition under 37 C.F.R. § 1.181, and thus is not

(2) Did the Examiner err in rejecting independent claims 1, 10, 17, and 23, along with dependent claims 2–9, 11–16, 18–22, and 24–27,³ under 35 U.S.C. § 103 over the same base combination of McCutchen 1 and McCutchen 2 because the base combination fails to teach or suggest displaying at least a portion of the immersive view “when the audience request is received *during display* of the standard video view,” as recited in claim 1 (*see* claim 1, limitation B (emphasis added)), and commensurately recited in claims 10, 17, and 23?

ANALYSIS

Issue (1): Indefiniteness of Claims 23–27

With regard to the indefiniteness rejection of claims 23–27, the Examiner found the phrase “the one or more primary content views” in independent claim 23, and thus claims 24–27 depending therefrom, lacks antecedent basis (*see* Final Act. 3). Although Appellant urges the Board to reverse this rejection (Appeal Br. 8), Appellant’s arguments are conclusory, and such conclusory assertions without supporting explanation or analysis

within the jurisdiction of the Board. *See In re Mindick*, 371 F.2d 892, 894 (CCPA 1967). As such, we will not further consider this issue.

³ Appellant presents separate arguments to many of the independent, as well as dependent, claims (*see generally* Appeal Brief 8–38; Reply Br. 2–8). However, we find the issue presented as to claim 1 (*see* Appeal Br. 8–16; Reply Br. 2–4), and particularly to limitation B of claim 1 (*see* Appeal Br. 15–16; Reply Br. 2–3), to be dispositive of this appeal, as (i) claims 10 and 17 (*see* Appeal Br. 17–28; Reply Br. 2–5); and (ii) claim 23 (*see* Appeal Br. 33–38; Reply Br. 2–4), are argued for the same reasons as claim 1. Namely that limitations A and B of claim 1 are not met by the applied base combination of McCutchen 1 and McCutchen 2 (*see* Appeal Br. 11–16; Reply Br. 2–4).

particularly pointing out errors in the Examiner's finding or reasoning fall well short of persuasively rebutting the Examiner's prima facie case of obviousness. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011). Furthermore, Appellant's request for the Board to enter Appellant's proposed amendment (*see* Appeal Br. 38), is denied pursuant to our authority set forth in 37 C.F.R. §§ 41.31(c) and 41.33(a)–(c). Appellant's request that the amendments to the claims be entered is not an issue before us because the request relates to a petitionable issue and not an appealable issue. *See In re Schneider*, 481 F.2d 1350, 1356–57 (CCPA 1973); *In re Mindick*, 371 F.2d 892, 894 (CCPA 1967); *see also* Manual of Patent Examining Procedure (MPEP) (8th Ed., August 2001) § 1002.02(c), item 3(g) and § 1201. Thus, the relief sought by Appellant would have been properly presented by a petition to the Director under 37 C.F.R. § 1.181 instead of by appeal to this Board. And, even if the amendment were to cure the deficiencies found by the Examiner and render the rejection moot, the proper venue for evaluating and entering such an amendment is before the Examiner upon further prosecution, if any.

In addition, Appellant's conditional statement of intent to amend the claims does not satisfy Appellant's burden to respond as to why the Examiner erred as to this ground of rejection. *See* 37 C.F.R. § 41.37(c)(1)(iv) (“The arguments shall explain why the examiner erred as to each ground of rejection contested by appellant.”). Therefore, we summarily sustain the Examiner's indefiniteness rejection of claims 23–27 because Appellant fails to adequately respond.

Issue (2): Obviousness of Claims 1–27

We have reviewed Appellant's arguments in the Briefs (Appeal Br. 8–

38; Reply Br. 2–7), the Examiner’s obviousness rejections (Final Act. 6–24; Ans. 4–22), and the Examiner’s response to Appellant’s arguments (Ans. 3–19). Appellant presents several arguments asserting the Examiner’s rejections of independent claims 1, 10, 17, and 23, each relying upon the same base combination of McCutchen 1 and McCutchen 2, is in error (Appeal Br. 8–28, 33–38; Reply Br. 2–5). The dispositive issue presented by these arguments is whether or not the Examiner erred in finding the base combination of McCutchen 1 and McCutchen 2 teaches or suggests limitation B as recited in independent claim 1, and as commensurately recited in remaining independent claims 10, 17, and 23.

Most particularly, Appellant’s arguments as to limitation B of claim 1 (*see* Appeal Br. 15–16; Reply Br. 2–3),⁴ have persuaded us of error in the Examiner’s rejections of all the disputed claims under 35 U.S.C. § 103. Simply put, we agree with Appellant’s contentions (*see* Appeal Br. 15–16; Reply Br. 2–3) that the base combination, and most particularly McCutchen 2 (which is relied upon by the Examiner for the “during display” part of limitation B of claim 1), fails to disclose displaying at least a portion of the immersive view “when the audience request is received *during display* of the standard video view,” as recited in claim 1 (*see* claim 1, limitation B (emphasis added)).

More specifically, we do not agree with the Examiner that the portions of McCutchen 1 (¶¶ 55, 69; Fig. 12), taken in combination with the portions

⁴ Appellant presents similar arguments as to the commensurate limitations of remaining independent claims 10, 17, and 23 (*see* Appeal Br. 17–28, 33–38; Reply Br. 2–5). Therefore, the issue as to limitation B of claim 1 is dispositive of all claims on appeal.

of McCutchen 2 (¶¶ 28, 94; Figs. 3, 7), teach or suggest the disputed limitation requiring steps occur “during display” (*see e.g.*, claim 1, limitation B). Although McCutchen 2 describes (i) “times when the observer may wish to have manual control” (McCutchen 2 ¶ 28); (ii) “[i]mmersive movies have particular demands on the observer that can require extra help at the time of playback” (*id.*); and (iii) “[t]he immersive images and the View Track can be generated live from the image source, with a View Track being generated by a camera operator or director[,] looking around in the image, or be the result of playback from some storage medium” (McCutchen 2 ¶ 94), these portions of the reference fall short of the specific requirement of claims 1, 10, 17, and 23 that “when the audience request is received *during display* of the standard video view, displaying the at least portion of the immersive video view” (claim 1, limitation B (emphasis added)).

And, we cannot agree with the Examiner’s reasoning that “during display could include before, during, or after playback” (Ans. 3), and/or “[d]uring display is not the same as during playback because during display may include before, during, or after playback” (Ans. 5). As a result, we also cannot agree with the Examiner that “[t]his teaches or suggests the request for the immersive video view could be during [the] display of the standard video view” (Ans. 6).

We will not resort to speculation or assumptions to cure the deficiencies in the Examiner’s fact finding and reasoning. *See In re Warner*, 379 F.2d at 1017; *Ex parte Braeken*, 54 USPQ2d 1110, 1112 (BPAI 1999) (unpublished) (“The review authorized by 35 U.S.C. [§] 134 is not a process whereby the examiner . . . invite[s] the [B]oard to examine the application

and resolve patentability in the first instance.”).

In view of the foregoing, Appellant’s arguments that the base combination does not disclose, teach, or suggest limitation B recited in claim 1, and commensurately recited in claims 10, 17, and 23. Thus, Appellant’s arguments have persuaded us of error in the Examiner’s rejection of independent claims 1, 10, 17, and 23, and the claims which depend thereupon. Accordingly, we do not sustain the Examiner’s rejections of independent claims 1, 10, 17, and 23, or dependent claims 2–9, 11–16, 18–22, and 24–27, over the base combination of McCutchen 1 and McCutchen 2.

CONCLUSIONS

(1) Appellant has not shown the Examiner erred in rejecting claims 23–27 under 35 U.S.C. § 112(b), as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(2) Appellant has shown the Examiner erred in rejecting claims 1–27 under 35 U.S.C. § 103 over the combination of McCutchen 1 and McCutchen 2.

Thus, we affirm the Examiner’s indefiniteness rejection of claims 23–27 under 35 U.S.C. § 112(b), and reverse the Examiner’s obviousness rejections of claims 1–27 under 35 U.S.C. § 103 (all based on the same base combination of McCutchen 1 and McCutchen 2. Because we have affirmed at least one ground of rejection with respect to claims 23–27 on appeal, the Examiner’s decision rejecting claims 23–27 is affirmed. *See* 37 C.F.R. § 41.50(a)(1) (“The affirmance of the rejection of a claim on any of the

grounds specified constitutes a general affirmance of the decision of the [E]xaminer on that claim, except as to any ground specifically reversed.”).

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
23–27	112(b)	Indefiniteness	23–27	
1, 6–9	103	McCutchen 1, McCutchen 2		1, 6–9
2–4, 10, 11, 13–22	103	McCutchen 1, McCutchen 2, Elder et al. ⁵		2–4, 10, 11, 13–22
5	103	McCutchen 1, McCutchen 2, Li et al. ⁶		5
12	103	McCutchen 1, McCutchen 2, Elder, Lord et al. ⁷		12
23–27	103	McCutchen 1, McCutchen 2, Matsuura et al. ⁸		23–27
Overall Outcome			23–27	1–22

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).

⁵ US 2003/0026588 A1; published Feb. 6, 2003 (hereinafter, “Elder”).

⁶ US 7,671,893 B2; issued March 2, 2010.

⁷ US 2015/0016661 A1; published Jan. 15, 2015.

⁸ US 2012/0002949 A1; published Jan. 5, 2012.

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AFFIRMED-IN-PART