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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID ANDREW YOUNG, LIVIU BURCIU, LOUIS LE,
and STEVEN MARTIN RICHMAN

Appeal 2018-005198
Application 14/271,685¹
Technology Center 2100

Before ROBERT E. NAPPI, CARL L. SILVERMAN, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–17, which are all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is the Applicant, Sony Corp. App. Br. 2.

STATEMENT OF THE CASE

Introduction

Appellants' application relates to controlling a display using a portable control device, such as a tablet computer. Spec. 2. Claim 1 illustrates the appealed subject matter and reads as follows:

1. A control device including control device circuitry comprising:

at least one computer storage with instructions executable by a processor;

at least one processor configured for accessing the instructions to configure the processor for:

presenting on a display of the control device a user interface (UI) presenting at least one video image of content and a border superimposed on a portion of the video image to define a portion of video, the portion of video being smaller than the video image;

receiving a user input from the UI on the control device to move the border from a first portion of video in the video image to a second portion of video in the video image; and

responsive to the user input, sending a command to a controller circuitry of a display device presenting the content separately from the control device to pan the video image on the display device from the first portion to the second portion.

The Examiner's Rejections

Claims 1–17 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Non-Final Act. 2–3.

Claims 1, 4, 5, 7–13, and 15–17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Keranen (US 2011/0252317 A1; Oct. 13, 2011) and Tsuda (US 2013/0167070 A1; June 27, 2013). Non-Final Act. 4–12.

Claims 2 and 3 stand rejected under 35 U.S.C. § 103 as being unpatentable over Keranen, Tsuda, and Ahmed (US 2006/0050090 A1; Mar. 9, 2006). Non-Final Act. 12–14.

Claims 6 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Keranen, Tsuda, and Hwang (US 2016/0057494 A1; Feb. 25, 2016). Non-Final Act. 14.

ANALYSIS

Patent-Ineligible Subject Matter

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4

in petitioners’ application explain the basic concept of hedging, or protecting against risk . . .”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 192 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (internal citation omitted) (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or

mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an “inventive concept”” sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (citation omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The PTO recently published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”). Under that guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

- (3) adds a specific limitation beyond the judicial exception that are not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Revised Guidance.

Revised Guidance Step 1

Step 1 of the Revised Guidance asks whether the claimed subject matter falls within the four statutory categories of patentable subject matter identified by 35 U.S.C. § 101: process, machine, manufacture, or composition of matter. Claim 1 recites a “control device including control device circuitry.” Appellants do not argue the Examiner erred in concluding claim 1 falls within the four statutory categories of patentable subject matter. We agree with the Examiner’s conclusion because claim 1 falls within the machine category.

Revised Guidance Step 2A, Prong 1

Under Step 2A, Prong 1 of the Revised Guidance, we determine whether the claims recite any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes). *See* Revised Guidance.

Claim 1 recites the following limitations: (1) “presenting on a display of the control device a user interface (UI) presenting at least one video image of content and a border superimposed on a portion of the video image to define a portion of video, the portion of video being smaller than the

video image,” (2) “receiving a user input from the UI on the control device to move the border from a first portion of video in the video image to a second portion of video in the video image;” and (3) “responsive to the user input, sending a command to a controller circuitry of a display device presenting the content separately from the control device to pan the video image on the display device from the first portion to the second portion.”

The Examiner concludes claim 1 is directed to the abstract idea of “collecting, displaying, and manipulating data.” Ans. 3 (citing *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307 (Fed. Cir. 2016)). The Examiner concludes the claims recite this abstract idea at a high level of generality, without providing any specificity such that the claims improve the functioning of a computer. Ans. 4–5.

Appellants argue the Examiner erred in concluding claim 1 is directed to an abstract idea. *See* App. Br. 4–8; Reply Br. 2–6. In particular, Appellants argue claim 1 is directed to a specific manner of displaying data that is necessarily rooted in computer technology to overcome video display synchronization, a problem specifically arising in the realm of computer networks. *See* Reply Br. 3–5.

Under the Revised Guidance, abstract ideas include “mathematical concepts,” “certain methods of organizing human activity,” and “mental processes.” Revised Guidance at 52. These “certain methods of human activity” include:

[F]undamental economic principles or practices (including hedging, insurance, mitigating risk); commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations); managing personal behavior or relationships or interactions between people (including social

activities, teaching, and following rules or instructions).

Id.

The Examiner concludes claim 1 is directed to “collecting, displaying, and manipulating data.” Ans. 9. We agree with the Examiner because the limitations discussed above, under their broadest reasonable interpretation, characterize collecting video image data, displaying the video image data, and manipulating the video image data according to input received on a control device. However, these concepts do not fit within the “certain methods of organizing human activity,” or any of the other categories, identified in the Revised Guidance.

Accordingly, we do not sustain the patent-ineligibility rejection of claim 1. We also do not sustain the patent-ineligibility rejection of independent claims 8 and 10, which recite commensurate limitations, or dependent claims 2–7, 9, and 11–17.

Obviousness

Claim 1

Appellants argue the Examiner erred in rejecting claim 1 as unpatentable over Keranen and Tsuda because the combination does not teach or suggest “responsive to the user input, sending a command to a controller circuitry of a display device presenting the content separately from the control device to pan the video image on the display device from the first portion to the second portion.” *See* App. Br. 11–13; Reply Br. 11–13. In particular, Appellants argue Tsuda teaches moving a video image from a first portion to a second portion, but does not teach panning the video image as claimed. App. Br. 12.

Appellants have not persuaded us of Examiner error. The Examiner finds, and we agree, Keranen teaches a first device showing a zoomed-out view of a webpage and a second device showing a zoomed-in view of a portion of the same webpage. Ans. 9 (citing Keranen Fig. 6, ¶ 44). The Examiner further finds, and we agree, Keranen teaches the first device receiving a user input to move a webpage and, in response, the zoomed-in view of the webpage on the second device is scrolled to the second position. *Id.* The Examiner concludes this movement is a “pan” as claimed. Ans. 9–10. The Examiner relies on Tsuda to show that Keranen’s scrolling feature can also be applied to video images. *Id.* at 10. We agree with the Examiner’s conclusions and findings. Appellants’ arguments directed to Tsuda are not persuasive because they do not consider the combination as proposed by the Examiner, instead focusing on the individual disclosures of the references. One cannot show nonobviousness by attacking references individually when the rejection is based on a combination of references. *In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Appellants also argue combining Keranen and Tsuda would frustrate the purpose of Keranen, which is to join multiple small displays to overcome the limitations of small displays. *See* App. Br. 12. According to Appellants, the Examiner has not provided a sufficient rationale to combine Keranen and Tsuda, as proposed. *Id.* at 12–13.

Appellants have not persuaded us of Examiner error. Appellants’ characterization of the purpose of Keranen focuses on an embodiment where multiple small displays are combined as a single display. *See* App. Br. 12 (citing Keranen ¶ 41). The Examiner relies on a different embodiment, however, where the second display shows a zoomed-in view of the content

displayed on a portion of the first display. *See* Ans. 13 (citing Keranen ¶ 44). Moreover, we disagree with Appellants’ assertion that the Examiner has failed to articulate a sufficient rationale to combine the references. As found by the Examiner, Tsuda teaches scrolling video, which is one of a limited number of content types that may be displayed on a screen such as taught by Keranen. *See* Final Act. 5.

For these reasons, we sustain the Examiner’s rejection of claim 1 as unpatentable over Keranen and Tsuda. We also sustain the Examiner’s obviousness rejection of dependent claims 4–6, for which Appellants offer no separate argument. *See* App. Br. 11–16.

Claim 7

Claim 7 recites “[t]he control device of Claim 1, wherein the controller circuitry is separate from the display device, and the control device communicates with the controller circuitry and not with the display device directly.” Appellants argue the Examiner erred in rejecting claim 7 as unpatentable over Keranen and Tsuda because the combination does not teach or suggest three separate components, as claimed. *See* App. Br. 13–14; Reply Br. 13.

Appellants have not persuaded us of Examiner error. The Examiner finds, and we agree, Tsuda teaches a base station (the claimed “controller circuitry”) connected to a controller (the claimed “control device”) and a monitor (the claimed “display device”). Ans. 14 (citing Tsuda ¶ 28). Tsuda teaches the controller communicates received input commands to the base station, which manipulates images on the monitor in response to the commands. *Id.* at 15 (citing Tsuda ¶¶ 114–15). Appellants’ argument that the cited passages do not mention the base station is unpersuasive because

the cited passages teach the controller communicates with control unit 310, which is a component of the base station. *See* Tsuda ¶ 113.

For these reasons, we sustain the Examiner’s rejection of claim 7 as unpatentable over Keranen and Tsuda.

Claim 8

Claim 8 recites a “[m]ethod comprising: receiving at circuitry associated with a control device a user-input drag and drop between first and second portions of a video image of content presented on the display device; and responsive to the drag and drop, commanding a controller circuitry of a display device presenting the content to pan presentation on the display device from the first portion to the second portion.” Appellants argue the Examiner erred in rejecting claim 8 as unpatentable over Keranen and Tsuda because the combination does not teach or suggest a drag and drop operation, as claimed. *See* App. Br. 14; Reply Br. 13–14.

Appellants have not persuaded us of Examiner error. The Examiner finds, and we agree, Keranen teaches a first device sends messages to a second device to take an action, such as scrolling, in response to a drag event on the first device. Ans. 16 (citing Keranen ¶¶ 34, 44). The Examiner further finds, and we agree, Keranen teaches these messages may be sent in response to the end of the drag event—in other words, the drop portion of a drag and drop. *See id.* at 17 (citing Keranen ¶ 5); *see also* Spec. 17.

For these reasons, we sustain the Examiner’s rejection of claim 8 as unpatentable over Keranen and Tsuda.

Claims 9 and 10

Claim 9 recites “[t]he method of Claim 8, further comprising, responsive to the drag and drop, commanding the controller circuitry of the

display device to zoom the second portion.” Appellants argue the Examiner erred in rejecting claim 9 as unpatentable over Keranen and Tsuda because the combination does not teach or suggest a zoom operation, much less a zoom operation in response to a drag and drop operation, as claimed. *See* App. Br. 14; Reply Br. 14.

Appellants have not persuaded us of Examiner error. The Examiner finds, and we agree, Keranen teaches a drag and drop event, as discussed above with respect to claim 8. The Examiner further finds, and we agree, Keranen teaches the second device displays a zoomed-in view of the content displayed on the first device. Ans. 18. When the user drags and drops to a new location, the second device pans to a zoomed-in view of a new portion of the content displayed on the first device. Thus, when the user drags and drops on the first device, the device responds by panning to a zoomed-in view of the content shown on the first device. Accordingly, we agree with the Examiner that Tsuda teaches, or at least suggests, the disputed limitation.

For these reasons, we sustain the Examiner’s rejection of claim 9 as unpatentable over Keranen and Tsuda. We also sustain the Examiner’s obviousness rejection of independent claim 10, for which Appellants offer similar arguments. *See* App. Br. 14–15. We also sustain the obviousness rejections of dependent claims 11–17, for which Appellants offer no separate argument. *See id.* at 11–16.

Claim 2

Claim 2 recites:

The control device of Claim 1, wherein the instructions are executable for, responsive to the user input, sending a command to the controller circuitry of the display device presenting the content separately from the control device to cause the

controller circuitry to pan and zoom a portion of the video image, such that the content related to the video image on the display device is entirely established, in temporal sequence, by a zoomed presentation of the first portion, then a moving pan across at least part of the video image on the display device in concert with the user input to move the border to the second portion of the video image on the control device.

Appellants argue the Examiner erred in rejecting claim 2 as unpatentable over Keranen, Tsuda, and Ahmed because the combination does not teach or suggest panning video, as claimed. *See* App. Br. 15–16; Reply Br. 14–15. Appellants have not persuaded us of Examiner error. The Examiner finds, and we agree, Ahmed teaches a user may lock movement of a zoom window to movement of the user’s mouse such that when the mouse moves, the zoom window correspondingly moves. Ans. 19 (citing Ahmed ¶¶ 12, 36). The Examiner finds, and we agree, an ordinarily skilled artisan would understand movement of a zoomed-in view of video from one location to another is a pan operation, as claimed. *Id.*

Appellants also argue Ahmed does not specifically disclose that the locked movement on one device corresponds to updating content on a different device. *See* Reply Br. 15 (citing Ahmed ¶ 36). We disagree. Ahmed teaches the location of the zoom window is consistently updated in real-time, citing Figure 3. Ahmed ¶ 36. Figure 3 depicts a primary device showing a full image and a secondary device showing a zoomed image. Ahmed Fig. 3. Thus, Ahmed teaches the zoom window on a separate device than the primary device that receives the user input.

For these reasons, we sustain the Examiner’s rejection of claim 2 as unpatentable over Keranen, Tsuda, and Ahmed. We also sustain the

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Examiner's obviousness rejection of dependent claim 3, for which Appellants offer no separate argument. *See* App. Br. 11–16.

DECISION

As discussed above, we do not sustain the rejection of claim 1–17 under 35 U.S.C. § 101.

As discussed above, we sustain the rejections of claims 1–17 under 35 U.S.C. § 103.

Because we have sustained at least one ground of rejection with respect to each claim on appeal, we affirm the decision of the Examiner rejecting claims 1–17. *See* 37 C.F.R. § 41.50(a)(1).

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED