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14/539,977	11/12/2014	Will John Temple		4063

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Will Temple  
PO Box 1993  
Placerville, CA 95667

EXAMINER
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BOLOTIN, DMITRIY

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* WILL JOHN TEMPLE

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Appeal 2018-005668  
Application 14/539,977  
Technology Center 2600

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Before MAHSHID D. SAADAT, ROBERT E. NAPPI, and  
JASON J. CHUNG, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 51–57.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant, appearing pro se, identifies the real party in interest as Will John Temple, the inventor. Appeal Br. 2.

<sup>2</sup> Claims 1–20 have been canceled and claims 21–50 and 58 have been withdrawn from consideration subsequent to an election filed August 12, 2016, in response to a Restriction Requirement, mailed June 16, 2016.

## STATEMENT OF THE CASE

### *Introduction*

Appellant's disclosure is directed "to user interfaces of computing devices and mobile electronic devices, and more particularly, to computing devices and mobile electronic devices that interpret user presses, releases, and motions of buttons, keys, or touch screen objects to determine device commands." Spec. 1.

Claims 51 and 52 are illustrative of the invention and read as follows:

51. A computer implemented method for enabling a user to interact with an electronic device through one or more multidirectional buttons, wherein the multidirectional buttons are not keys in a keyboard, the method comprising:

- a. receiving one or more signals associated with one or more user presses on a top surface of the multidirectional button;
- b. determining some initial positions of the user presses;
- c. determining one or more motion thresholds from the determined initial positions of the user presses, wherein the motion thresholds comprising some thresholds of displacement or thresholds of force;
- d. receiving some motion signals associated with some lateral user press motions, wherein the press motions are substantially within a plane generally coincident to the top surface of the multidirectional button;
- e. detecting if the lateral press motions exceed the one or more motion thresholds;
- f. determining one or more directions of the lateral press motions from the determined initial positions of the user presses and the motion signals;
- g. detecting one or more release signals associated with the user releasing the user presses of the multidirectional button;

h. determining a command for the device from a plurality of command choices, wherein the command is determined from the detections and determinations of the method comprising the detections of the press motions exceeding the motion thresholds and/or the directions of the lateral press motions, wherein a plurality of the command choices comprise commands for the device exclusive from scrolling and dragging objects on a display screen, and wherein one of the plurality of command choices is a center choice exclusive from the use of opening or closing the multidirectional button, wherein the center choice is the determined command if the release of the user press has been detected with the lateral press motions having not exceeded the one or more motion thresholds;

i. inputting the command to the device;

whereby the user may quickly and reliably choose from the plurality of command choices within one press and release of each of the multidirectional buttons.

52. The method of claim 51, wherein one or more of the commands of the multidirectional button comprise a command to unlock the device and go directly to a function.

Appeal Br. 17–18 (Claims App.).

*Prior Art and Rejections on Appeal*

The following table lists the prior art relied upon by the Examiner in rejecting the claims on appeal:

Name	Reference	Date
Steiner et al. (“Steiner”)	US 2008/0158024 A1	July 3, 2008
Mouilleseaux et al. (“Mouilleseaux”)	US 2009/0327964 A1	Dec. 31, 2009
Temple	US 2011/0285651 A1	Nov. 24, 2011
LeBeau et al. (“LeBeau”)	US 2012/0036556 A1	Feb. 9, 2012

*The Examiner’s Rejections*

Claims 51 and 57 stand rejected pre-AIA 35 U.S.C. § 102(a) as being anticipated by Temple. Final Act. 3–4.

Claims 51 and 54–56 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Mouilleseaux and Steiner. Final Act. 5–8.

Claims 52 and 53 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Mouilleseaux, Steiner, and LeBeau. Final Act. 8–9.

*Related Appeals*

Although Appellant does not identify any related appeals, Application 13/068,817, which is to the same inventor, is a related appeal.<sup>3</sup>

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments (Final Act. 3–9; Appeal Br. 5–12; Reply Br. 1–9) that the Examiner has erred, but we disagree with Appellant’s conclusions. The Examiner has provided a comprehensive response, supported by sufficient evidence, to each of the contentions raised by Appellant. *See* Ans. 2–10. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by

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<sup>3</sup> Application 13/068,817 is appealed under Appeal Number 2018-004757.

the Examiner in the Examiner’s Answer in response to Appellant’s Appeal Brief (*id.*). We highlight the following points for emphasis.

*REJECTION UNDER 35 U.S.C. § 102*

Because Appellant does not contest the Examiner’s anticipation rejection in the Appeal Brief as the Examiner indicates (Final Act. 3–4), we summarily sustain that rejection. *See* Manual of Patent Examining Procedure (MPEP) § 1205.02 (9th ed. Rev. 08.2017, Jan. 2018) (“If a ground of rejection stated by the examiner is not addressed in the appellant’s brief, appellant has waived any challenge to that ground of rejection and the Board may summarily sustain it, unless the examiner subsequently withdrew the rejection in the examiner’s answer.”).

Accordingly, we summarily sustain the Examiner’s rejection of claims 51 and 57 under 35 U.S.C. § 102(a) (pre-AIA).

*REJECTIONS UNDER 35 U.S.C. § 103*

Appellant focuses the arguments presented in the Appeal Brief on the rejection of claim 52 over the combination of Mouilleseaux, Steiner, and LeBeau. We select claim 52 as representative claim because Appellant does not separately argue any other claims. *See* 37 C.F.R. § 41.37 (c)(1)(iv) (2016).

*Discussion*

*First Argument*

Appellant contends the Examiner’s reliance on LeBeau as disclosing a method “wherein one or more of the commands of the multidirectional button comprise a command to unlock the device and go directly to a function” is in error. Appeal Br. 5. Appellant refers to paragraph 2 of LeBeau and argues:

This method of Le Beau requires three basic steps. First, the user has to press on an icon at the top of the screen. Second, the user has to drag over a second icon some distance from the first icon. And third, the user has to release the press/touch over the second icon. Each icon, which is a user interface object, has one use. The multidirectional buttons of the present claim have a plurality of commands, and thus, more than one use. LeBeau does not, in fact, disclose these commands and operations comprised in a multidirectional button, as the Examiner has stated.

Appeal Br. 6. Additionally, Appellant argues the disclosure in paragraph 52 of LeBeau provides a second method of unlocking the device as follows:

Compared to the previous method of LeBeau, this method of LeBeau requires the additional step of a second drag. By contrast, the present invention removes steps and element from the methods of Le Beau. In the present invention, the user may unlock the device and go directly to a function by simply pressing a button and then moving the press (equivalent to the term “drag” used in LeBeau) past a small threshold. The user does not have to locate and drag over a second (or third) icon before releasing. This step is removed. Further, the element of a second icon does not exist in the present invention, as it is not needed. Dragging over a second icon requires more precision, and more distance. A user of the present invention may more expediently unlock the device and go directly to a function. Elimination of steps without loss of function is objective indicia and evidence of nonobviousness.

*Id.*

In response, the Examiner explains the unlock scheme shown in Figure 4 of LeBeau suggests the unlock command which directly opens an application. Ans. 3 (citing LeBeau ¶ 52). With respect to whether LeBeau requires any additional steps, the Examiner finds claim 52 depends from independent claim 51 which requires “a multiple lateral press motions” to determine a command which is consistent with the disclosure of LeBeau,

suggesting that “the user may unlock the device and go directly to an email function by simply pressing a button 406 and then moving the press past a threshold comprising the motion of 404c to 404b back to 404c.” *Id.*

We agree with the Examiner’s findings and conclusion and adopt them as our own. First, as stated by the Examiner (Ans. 3), the broadest reasonable interpretation of the claims does not preclude additional steps or removing unnecessary steps from the selection process, as taught or suggested by the combination of Mouilleseaux, Steiner, and LeBeau. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004): “[T]he PTO is obligated to give claims their broadest reasonable interpretation during examination.”). Second, as found by the Examiner (Ans. 3), Figure 4 of LeBeau shows one or more command that unlocks a device and goes to a function as moving the unlock icon 406 to a function icon 404c, which in combination with the other applied references, teaches or suggests the subject matter of claim 52. *See* LeBeau Fig. 4, ¶ 52.

#### *Second Argument*

With respect to the combination of the references, Appellant contends the rejection is based on hindsight and furthermore, LeBeau teaches away from the present invention. Appeal Br. 8–9. Appellant points to Figures 3A and 3B of LeBeau and asserts the fact that the user has to interact with two elements indicates that “LeBeau clearly teaches away from using a single button (or icon) for the task.” Appeal Br. 7; *see also* Reply Br. 2–4.

We are unpersuaded. Appellant has not provided sufficient evidence that the Examiner’s rejection is based on knowledge gleaned only from Appellant’s disclosure, or based on knowledge which was beyond the level of ordinary skill in the art at the time. *See In re McLaughlin*, 443 F.2d 1392,

1395 (CCPA 1971). The Examiner has identified a motivation for combining LeBeau with Mouilleseaux and Steiner by relying on paragraph 2 of LeBeau, which explains the desirability of a scheme for receiving a command to perform a function while the device is being unlocked. As explained by the Examiner (Ans. 4), contrary to Appellant's assertion that the combination is based on hindsight, one of ordinary skill in the art would have added such an unlock feature to the operation of the multidirectional button of the Mouilleseaux-Steiner combination, which is a combination of familiar elements according to known methods with predictable results. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007). Further, we find the Examiner has provided a rational underpinning to support the conclusion of obviousness based on knowledge within the level of ordinary skill in the art, specifically to provide a user with the additional functionality of sharing their reaction to video content with others via social media. Final Act. 9; Ans. 4; *see also KSR*, 550 U.S. at 417–18.

We are also unpersuaded by Appellant's teaching away argument. Teaching away requires a reference to actually criticize, discredit, or otherwise discourage the claimed solution. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004). "We will not read into a reference a teaching away from a process where no such language exists." *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1364 (Fed. Cir. 2006). Appellant has offered no persuasive evidence that LeBeau discourages using a single button or the combination with Mouilleseaux and Steiner, as attorney argument alone is not evidence. *See In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). We agree with the Examiner's finding that the combination

of LeBeau’s unlocking scheme (Final Act. 9; Ans. 8–9 (citing LeBeau ¶¶ 2, 52)) with the multidirectional button taught or suggested by the Mouilleseaux-Steiner combination teaches or suggests the method of claim 52. “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 550 U.S. at 416.<sup>4</sup>

*Third Argument*

Appellant contends that the Examiner erred in characterizing the radial menu items of Mouilleseaux as the recited “multidirectional button” because menu items “simply cannot be tapped (press and release) to enter a command for the device,” “require more steps,” and “do not contain a center choice as defined by the present claim.” Appeal Br. 9. Appellant also argues “Steiner’s center choice is for a different use,” such as “keys in a keyboard that are clearly only for the use of typing” without disclosing or suggesting “other uses.” Appeal Br. 10, Reply Br. 6.

The Examiner responds by pointing to Appellant’s disclosure where the terms “multidirectional button” and “menu” are used as the same item

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<sup>4</sup> In the Reply Brief, Appellant for the first time argues that the Examiner’s proposed modification to LeBeau “renders the prior art less satisfactory for its intended purpose of performing ‘a more complex action that is unlikely to be performed accidentally.’” Reply Br. 2–3. This argument is entitled to no consideration because it was not presented for the first time in the opening brief. *Optivus Technology, Inc. v. Ion Beam Applications S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) (argument raised for the first time in the reply brief that could have been raised in the opening brief is waived); *accord Ex parte Borden*, 93 USPQ2d 1473, 1473–74 (BPAI 2010) (informative opinion) (absent a showing of good cause, the Board is not required to address an argument newly presented in the reply brief that could have been presented in the principal brief on appeal).

and explains that “the menu 400 of fig. 4 of Mouilleseaux is interpreted as the multidirectional button” which “performs multiple functions by sliding cursor associated with input device in multiple directions.” Ans. 6 (citing ¶¶ 121–123 of the published application US 2016/0132119 A1, which correspond to passages in Spec. pp. 10–11). Additionally, the Examiner finds the limitations related to the press and release features to enter a command and the center choice in a multidirectional button is taught or suggested by the combination of Mouilleseaux and Steiner. Ans. 7–8.

We agree with the Examiner’s findings and conclusions. We specifically agree with the Examiner’s characterization of the mouse click and release of Mouilleseaux as the recited user press, which is consistent with Appellant’s disclosure of selecting “pointer buttons” using a mouse. Final Act. 5–6 (citing Mouilleseaux Fig. 6, ¶¶ 72–77). The Examiner properly relies on Steiner as disclosing “a multidirectional button (132 of fig. 13), wherein one of the plurality of command choices is a center choice exclusive from the use of opening or closing the multidirectional button (S, G and K of fig. 13).” Final Act. 7.

#### *Fourth Argument*

Appellant argues the radial menus date back before their disclosure in Mouilleseaux, but the combination of a plurality of commands associated with a radial menu that function as buttons were not proposed by the ordinary skill artisan. According to Appellant, the long delay till the time the present application was filed indicates nonobviousness. Appeal Br. 10, *see also* Reply Br. 7–8.

We are unpersuaded that the identified dates support Appellant’s position with respect to the reason for obviousness of the combination. As

stated by the Examiner, “[t]he fact that no one has gotten a patent on this specific combination does not necessarily mean that it is not obvious – it merely means the no one has gotten a patent on this combination.” Ans. 9. We also agree with the Examiner that adding the center button of Steiner would “improve input interface by providing an additional choice option categorized as a central input (Steiner [0093]) and which would have been easy to use [0019].” Ans. 9.

*Fifth Argument*

Appellant contends that the Examiner’s stated reason for combining the applied references is conclusory. Appeal Br. 11. Appellant asserts “the Examiner’s reasoning for the combination was given for an independent claim for which the present claim is no longer dependent” and therefore “[t]he Examiner has not provided the required articulated reasoning for his multiple combinations.” *Id.*

As discussed above, the Examiner has provided sufficient reasoning for combining Mouilleseaux and Steiner by relying on specific portions of Steiner. Final Act. 7 (citing Steiner ¶¶ 18–24). The Examiner further provided such reasoning for combining Mouilleseaux and Steiner with LeBeau by pointing to specific portions of LeBeau. Final Act. 9 (citing LeBeau ¶ 2). *See In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)) (“[T]he test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.”). We are cognizant that “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U. S. at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Such reasoning can be based on

interrelated teachings of multiple patents, the effects of demands known to the design community or present in the marketplace, and the background knowledge possessed by a person having ordinary skill in the art. *KSR*, 550 U.S. at 417–18. In the present case, the Examiner found that the proposed combination would have resulted in improved input interface. Final Act. 7. We find this articulated rationale to be sufficient to justify this combination. In other words, we find that the proposed substitution would merely require the ordinarily skilled artisan to appreciate that including a center choice would improve the user interaction with the multidirectional button or key.

*Conclusion*

For the above-stated reasons, we are not persuaded by Appellant’s arguments that the Examiner erred in finding the combination of Mouilleseaux and Steiner with LeBeau teaches or suggests the subject matter of claim 52. Accordingly, we sustain the 35 U.S.C. § 103(a) rejections of claims 51–57.

DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
51, 57	102(a)	Temple	51, 57	
51, 54–56	103(a)	Mouilleseaux, Steiner	51, 54–56	
52, 53	103(a)	Mouilleseaux, Steiner, LeBeau	52, 53	
<b>Overall Outcome</b>			51–57	

Appeal 2018-005668  
Application 14/539,977

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED