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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FARIED ABRAHAMS,
MICHAEL E. ALEXANDER, JIGNESHKUMAR K. KARIA,
GANDHI SIVAKUMAR, and RAMBABU YERRA

Appeal 2018-006051
Application 14/953,107
Technology Center 2600

Before ST. JOHN COURTENAY III, LINZY T. McCARTNEY, and JOYCE CRAIG, *Administrative Patent Judges*.

CRAIG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants[1] appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–20, which are all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] According to Appellants, the real party in interest is IBM Corporation. App. Br. 1.

INVENTION

Appellants' invention relates to a providing haptic feedback using context analysis and analytics. Abstract. Claim 1 is representative (App. Br. 7) and reads as follows:

> 1. A method, comprising:
>
> responsive to determining that a user is proximate to a haptic feedback device, determining, using a processor, a location of the haptic feedback device;
>
> receiving, using the processor, a plurality of external factors determined from the location of the haptic feedback device, biometric data for the user, and social networking data for the user; and
>
> determining, using the processor, a haptic feedback for use by the haptic feedback device by applying the external factors to a haptic feedback template of an object.

REJECTION

Claims 1–20 stand rejected under 35 U.S.C. § 103 as unpatentable over the combination of MODARRES et al. (US 2014/0347176 A1, published Nov. 27, 2014) ("Modarres") and DAS et al. (US 2013/0227409 Al, published Aug. 29, 2013) ("Das").

ANALYSIS

We have reviewed the rejection of claims 1–20 in light of Appellants' arguments that the Examiner erred. We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments Appellants could have made, but chose not to make, in the Briefs are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). Appellants' arguments are not persuasive of error. We agree with and adopt as our own the Examiner's findings of facts and conclusions as set forth in the Answer and in the Action

from which this appeal was taken. We provide the following explanation for emphasis.

Appellants contend one of the cited portions of Modarres does not teach the limitation "receiving, using the processor, a plurality of external factors determined from the location of the haptic feedback device," as recited in claim 1. App. Br. 7–8. Appellants argue that paragraph 5 of Modarres merely teaches determining a location of the haptic feedback device, not using the location to determine a plurality of external factors, as claim 1 requires. *Id.* at 9. Thus, Appellants argue "none of the sensor information described in paragraph [0005] of Modarres requires knowledge of the location of the haptic device in order to sense." *Id.*

Appellants' arguments are not persuasive because they do not address all of the portions of Modarres on which the Examiner relied. The Examiner found Modarres teaches multiple "external parameters" that include "sensed conditions related to: an environment (e.g., ambient air temperature), spatial information (e.g., motion, location, orientation, etc.), biometrics information of a user that is being sensed (and who may receive the haptic feedback), and/or other information that can be sensed or otherwise determined about a user, object, and/or environment." Final Act. 2 (citing Modarres ¶¶ 4–5) (emphasis omitted).

The Examiner further found Modarres teaches or suggests that the location of the haptic device is the location of the user in an environment because the user carries or wears haptic device 162, which provides haptic feedback to the user, using multiple "external parameters." *Id.* at 2–3 (citing Modarres ¶¶ 54, 66). The Examiner concluded that the limitation "location"

is broad enough to encompass the "location of the user when the device is worn or carried by the user." Ans. 4.

Appellants have not persuasively rebutted the Examiner's findings or persuaded us that the Examiner's interpretation of the term "location" is overly broad, unreasonable, or inconsistent with the Specification. Instead, Appellants argue the recited "external factors" must be "separate and dependent from the claimed 'location.'" Reply Br. 4. Moreover, while Appellants acknowledge that the ambient air temperature, sensor information, and environment taught in Modarres are "associated with the location of the haptic feedback device," Appellants argue the claim limitation "determined from" requires "a strong linkage such that one (i.e., the external factors) can be determined from (e.g., analyzed) the other (i.e., the location)." Reply Br. 5 (emphasis omitted).

Appellants present insufficient support for their proffered claim interpretation, and we find none. *See* Reply Br. 5; *see also* Spec. ¶¶ 28–29 (describing determining external factors). Neither the Specification nor the claims describe how or to what extent the recited location is used to determine external factors.

Appellants further argue, "as a matter of common sense (for example) one does not need to know the location of something in order to obtain the 'ambient air temperature.'" Reply Br. 5. Appellants do not provide any basis for this argument. It is well settled that mere attorney arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (attorney argument is not evidence). Moreover, we find a preponderance of

the evidence supports the Examiner's finding that the cited teachings of Modarres reasonably suggest that the relevant "ambient air temperature" in Modarres is at the location of the haptic device.[2] *See* Ans. 3–4.

For these reasons, we are not persuaded that the Examiner erred in finding that the combination of Modarres and Das teaches or suggests the disputed limitation of representative claim 1.

Accordingly, we sustain the Examiner's § 103 rejection of independent claim 1, as well as the Examiner's § 103 rejection of claims 2–20, which Appellants group with claim 1.[3] *See* App. Br. 7.

DECISION

We affirm the Examiner's decision rejecting claims 1–20.

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

[2] "The test for obviousness is what the combined teachings of the references would have suggested to those having ordinary skill in the art." *In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)); s*ee also* MPEP § 2123.

[3] "Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately." 37 C.F.R. § 41.37(c)(1)(iv).