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EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ITAY KATZ and AMNON SHENFELD

Appeal 2018-006065
Application 15/090,527
Technology Center 2600

Before JOHNNY A. KUMAR, JASON J. CHUNG, and NORMAN H. BEAMER, *Administrative Patent Judges.*

KUMAR, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

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[1] Appellants have filed related Appeals in copending applications: U.S. Patent Application No. 14/345,592; U.S. Patent Application No. 15/060,533; U.S. Patent Application No. 15/256,481; U.S. Patent Application No. 15/096,674; and U.S. Patent Application No. 15/144,209. Br. 3.

STATEMENT OF CASE

Appellants[2] appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 57–78. Claims 1–56 have been cancelled. Br. 36. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Illustrative Claim

Illustrative claim 57 under appeal reads as follows:

> 57. An augmented reality device, comprising:
> at least one processor configured to:
> receive, from an image sensor, image information associated with a real world scene;
> detect, in the image information, a predefined hand gesture performed by a user; and
> record at least one of video information or audio information associated with a time prior to the detected predefined hand gesture and based, at least in part, on the detection.

Rejections on Appeal

Claims 57–61, 68, 74, and 78 are provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over claims 57, 58, 61–63, and 74 of copending Application No. 15/096,674.[3]

Claims 57, 61, 62, and 65-78 are rejected under pre-AIA 35 U.S.C. § 102(e) as being anticipated by Ota (US 2013/0050069 A1, published Feb. 28, 2013).

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[2] Appellants identify eyeSight Mobile Technologies Ltd., as the real party in interest. Br. 2.

[3] Arguments are not presented for this provisional rejection. Therefore, we affirm the Examiner's rejection *pro forma*. Except for our ultimate decision, this rejection of these claims is not discussed further herein.

Claims 59 and 60 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Ota (US 2013/0050069) in view of Vadhavana et al. (US 2012/0062602 A1, published Mar. 15, 2012).

Claims 58, 63, and 64 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Ota (US 2013/0050069) in view of Chau (US 2009/0147991 A1, published June 11, 2009).

Appellants' Contentions

1. Appellants contend that the Examiner erred in rejecting claim 57 under 35 U.S.C. § 102(e) because

> *Ota* fails to disclose, for example, "record at least one of video information or audio information **associated with a time prior to the detected predefined hand gesture and based, at least in part, on the detection,"** as recited in claim 57.

Br. 9–13.

2. Appellants contend that the Examiner erred in rejecting claims 61 and 72 under 35 U.S.C. § 102(e) because

> *Ota* does not disclose the "sounds recorded by a microphone" recited in claim 61, and similarly recited in claim 72.

Br. 13–16.

3. Appellants contend that the Examiner erred in rejecting claim 66 under 35 U.S.C. § 102(e) because

> *Ota* does not disclose "captur[ing] a frame from the video information in response to the detected second predefined hand gesture," as recited in claim 66.

Br. 16–21.

4. Appellants contend that the Examiner erred in rejecting claim 59 under 35 U.S.C. § 103 because

> *Ota* and *Vadhavana,* alone or in combination, fail to disclose the combination of dependent claim 59, including, for example, "cause a video or audio recording associated with the image information to be **tagged based, at least in part, on the detection or detection of a second predefined hand gesture.**

Br. 22–28.

5. Appellants contend that the Examiner erred in rejecting claim 58 under 35 U.S.C. § 103 because

> *Ota* and *Chau,* alone or in combination, fail to disclose the combination of dependent claim 58, including, for example, "wherein the time is a **predefined amount of time** defined by the user:"

Br. 28–30.

> *Chau* fails to disclose "a predefined amount of time" prior to detection of a predefined hand gesture"

Br. 30–31.

6. Appellants contend that the Examiner erred in rejecting claim 63 under 35 U.S.C. § 103 because

> *Ota* and *Chau,* alone or in combination, fail to disclose the combination of dependent claim 63, including, for example, "stop recording the at least one of video information or audio information in response to the detected second predefined hand gesture."

Br. 31–33.

7. Appellants contend that the Examiner erred in rejecting claim 64 under 35 U.S.C. § 103 because

> *Ota* and *Chau,* alone or in combination, fail to disclose the combination of dependent claim 64, including, for example, "change a recording mode from a first mode to a second mode."

Br. 33–35.

Issues on Appeal

Did the Examiner err in rejecting claims 57, 61, 62, and 65–78 as being anticipated?

Did the Examiner err in rejecting claims 58–60, 63, and 64 as being obvious?

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments that the Examiner has erred. We disagree with Appellants' conclusions. Except as noted herein, we adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which the appeal is taken (Final Act. 7–23); and (2) the reasons set forth by the Examiner in the Examiner's Answer (Ans. 2–10) in response to the Appellants' Appeal Brief. We concur with the conclusions reached by the Examiner. We highlight the following.

As to Appellants' above contention 1, we are not persuaded the Examiner erred. We agree with the Examiner that Ota teaches all the claim elements of claim 57. Final Act. 7–9, and 18–19; Ans. 2–3 (citing Ota ¶¶ [0045], [0050], [0063], and [0066]). In particular, we agree with the Examiner that "Ota's cameras and/or detectors are capable of recording user's hand associated with a time prior to the detected predefined hand gesture and based, at least in part, on the detection." Ans. 3 (emphasis omitted).

As to Appellants' contentions 2 through 7 regarding claims 58, 59, 61, 63, 64, and 66 (Br. 13–35), the Examiner has rebutted each of those arguments supported by sufficient evidence. (Ans. 4–10). Therefore, we

adopt the Examiner's findings and underlying reasoning, which are incorporated herein by reference. We see no error in these unrebutted findings.

We observe no Reply Brief is of record to rebut the Examiner's findings and responses to Appellants' arguments about the disputed features. Therefore, in the absence of persuasive rebuttal evidence or argument to persuade us otherwise, we adopt the Examiner's findings and underlying reasoning, which are incorporated herein by reference. Consequently, we sustain the rejection of claims 57–78.

DECISION

We affirm the Examiner's rejections of claims 57–60, 63–66, and 70–73 as being anticipated under 35 U.S.C. § 102(e).

We affirm the Examiner's rejections of claims 61, 62, 67–69, and 74–76 as being unpatentable under 35 U.S.C. § 103(a).

We summarily affirm the Examiner's provisional rejection of claims 57, 61, 63, and 67 on the ground of nonstatutory obviousness-type double patenting.

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).

AFFIRMED