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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/060,533	03/03/2016	Itay Katz	11968.0011-02000	4474
22852	7590	01/31/2019	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413 UNITED STATES OF AMERICA			CHOWDHURY, AFROZA Y	
			ART UNIT	PAPER NUMBER
			2628	
			NOTIFICATION DATE	DELIVERY MODE
			01/31/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ITAY KATZ and AMNON SHENFELD

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Appeal 2018-006571  
Application 15/060,533  
Technology Center 2600

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

KUMAR, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> Appellants have filed related Appeals in copending applications — U.S. Patent Application No. 14/345,592; U.S. Patent Application No. 15/096,674; U.S. Patent Application No. 15/090,527; U.S. Patent Application No. 15/256,481; and U.S. Patent Application No. 15/144,209. Br. 3.

STATEMENT OF CASE

Appellants<sup>2</sup> appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 57–65, 67–75, and 77–85. Claims 1–56, 66, and 76 have been cancelled. Br. 31, 33, and 35. 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 having a plurality of operation modes, comprising:  
at least one processor configured to:  
    receive, from an image sensor, image information associated with a real world scene;  
    output, to a display, visual data associated with the received image information to enable a user to view the visual data, and view at least a portion of the real world scene in a see-through area of the display;  
    detect, in the image information, a predefined gesture performed by the user; and  
    change an operation mode of the augmented reality device from a first operation mode to a second operation mode associated with the detected predefined gesture, wherein the change in operation mode comprises a change in an operation mode of the image sensor.

*Rejections on Appeal*

Claims 57–62, 64, 65, 67–69, 71, 72, 74, 75, 77–79, and 81–85 are rejected under pre-AIA 35 U.S.C. 103(a) as being unpatentable over Ota

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<sup>2</sup> Appellants identify eyeSight Mobile Technologies Ltd., as the real party in interest (Br. 2).

(US 2013/0050069 A1, published Feb. 28, 2013) in view of Abernethy et al.  
(US 2011/0296163 A1, published Dec. 1, 2011).

Claims 63, 70, 73, and 80 are rejected under pre-AIA 35 U.S.C.  
103(a) as being unpatentable over Ota, Abernethy, and in further view of  
Vadhavana et al. (US 2012/0062602 A1, published Mar. 15, 2012).

*Appellants' Contentions*

1. Appellants contend that the Examiner erred in rejecting claim 57  
under 35 U.S.C. § 103 because:

*Ota* and *Abernethy*, alone or in combination, fail to disclose or  
suggest "change an operation mode of the augmented reality  
device from a first operation mode to a second operation mode  
**associated with the detected predefined gesture, wherein the  
change in operation mode comprises a change in an  
operation mode of the image sensor,**" as recited in claim 57,  
and similarly recited in independent claims 72 and 82.

Br. 11–19.

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

*Ota* and *Abernethy*, alone or in combination, fail to disclose "wherein  
the change in operation mode comprises **a change in one or  
more gestures to be identified,**" as recited in claim 64.

Br. 19–21.

3. Appellants contend that the Examiner erred in rejecting claim 65  
under 35 U.S.C. § 103 because:

*Ota* and *Abernethy*, alone or in combination, fail to disclose "wherein  
the change in operation mode comprises **a change in one or more**

**algorithms that are active in a gesture detection module,"** as recited in claim 65.

Br. 21–24.

4. Appellants contend that the Examiner erred in rejecting claim 71 under 35 U.S.C. § 103 because:

*Ota* and *Abernethy*, alone or in combination, fail to disclose "wherein the change from the standby mode to the active mode is associated with an availability of visual data associated with the real world scene for output on a display of the augmented reality device," as recited in claim 71.

Br. 24–27.

5. Appellants contend that the Examiner erred in rejecting claims 63 and 70 under 35 U.S.C. § 103 because:

*Ota*, *Abernethy*, and *Vadhavana*, alone or in combination, fail to disclose "wherein the change in operation mode comprises a change in a number of frames per second of the received image information being analyzed," as recited in claim 63, and similarly recited in claim 70.

Br. 27–30.

### *Issue on Appeal*

Did the Examiner err in rejecting claims 57–65, 67–75, and 77–85 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. 6–31), 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, the Examiner finds, and we agree,

Note: it is well known in the art that mode before 'playback' must be 'stand by' or 'stop' mode; therefore, there is a change of operation mode; 'playback' is interpreted as 'second operation mode' and 'stand-by' mode is interpreted as 'first operation mode');

...

Note: user touches a virtual 3D reference point in the space and touching button can change mode of operation; therefore, using broadest reasonable interpretation, it is interpreted that operation mode of image sensor can be changed based on the detected predefined gesture).

...

Abernethy reference is used to emphasize changing operation mode. Abernethy teaches the change in operation mode comprises a change in an operation mode of the image sensor (Fig. 1 b(5): second sensor 5 includes image capture device 6a, [0019]...

Ans. 3–5 (citing Ota ¶¶ 26, 28, 41, 48, 50, and 51; Abernethy ¶¶ 19, 23, and 51 (emphasis omitted)).

As to Appellants’ contentions 2 through 5 regarding claims 63, 64, 65, 70, and 71 (Br. 19–30), the Examiner has rebutted each of those arguments supported by sufficient evidence. (Ans. 6–10). Therefore, we adopt the Examiner’s findings and underlying reasoning, which are incorporated herein by reference. We see no error in these unrebutted findings.

Accordingly, we sustain the Examiner's § 103 rejection of claims 57, 63–65, 70–72, and 82, as well as the remaining claims not separately argued.

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 57–65, 67–75, and 77–85.

#### DECISION

We affirm the Examiner's rejections of claims 57–65, 67–75, and 77–85 as being unpatentable under 35 U.S.C. § 103(a).

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