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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 2018-006656
Application 15/256,481
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. 15/090,527; 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 57–76. Claims 1–56 have been cancelled. Br. 32. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Illustrative Claim

Illustrative claim 57 under appeal reads as follows:

> 57. An immersive wearable display 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;
>
> detect, in the image information, a predefined gesture performed by the user; and
>
> change an operation mode of the image sensor from a first operation mode to a second operation mode associated with the detected predefined gesture.

Rejections on Appeal

Claims 57, 61, 63, and 67 are provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over claims 57, 69, 72, and 79 of copending Application No. 15/060,533.[3]

Claims 57–60, 63–66, and 70–73 are rejected under 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 61, 62, and 67–69 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ota in view of Maltz (US 2012/0019662 A1, published Jan. 26, 2012).

Claims 74–76 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ota in view of Kipman (US 2010/0302015 A1, published Dec. 2, 2010).

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, "**chang[ing] an operation mode of the image sensor** from a first operation mode to a second operation mode **associated with the detected predefined gesture**" as recited in claim 57.

Br. 10–15.

2. Appellants contend that the Examiner erred in rejecting claim 70 under 35 U.S.C. § 102(e) because

> *Ota* fails to disclose, for example, an "external device ... configured to provide a notification to the user in response to the command" as recited in claim 70.

Br. 15–20.[4]

3. Appellants contend that the Examiner erred in rejecting claims 59 under 35 U.S.C. § 102(e) because

> *Ota* fails to disclose "wherein the change in operation mode comprises a change in a capture rate of images captured by the image sensor," as recited in claim 59.

Br. 20–23.

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[4] The patentability of claims 74–76 is not separately argued from that of claim 70. *See* Br. 30. Except for our ultimate decision, claims 74–76 are not discussed further herein.

4. Appellants contend that the Examiner erred in rejecting claim 60 under 35 U.S.C. § 102(e) because

> *Ota* fails to disclose "wherein the change in operation mode comprises a change in a resolution of images captured by the image sensor" as recited in claim 60.

Br. 23–27.

5. Appellants contend that the Examiner erred in rejecting claims 61, 62, and 67–69 under 35 U.S.C. § 103 because "*Maltz* fails to cure the deficiencies of *Ota*." Br. 28–29.

Issues on Appeal

Did the Examiner err in rejecting claim 57–60, 63–66, and 70–73 as being anticipated?

Did the Examiner err in rejecting claims 61, 62, 67–69, and 74–76 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. 10–26); and (2) the reasons set forth by the Examiner in the Examiner's Answer (Ans. 2–7) 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 claims 57 and 63. Final Act. 10–12; Ans. 3–4 (citing Ota

¶¶ [0026], [0041], [0048], [0050], and [0051]). In particular, we agree with the Examiner's finding regarding Ota's disclosure:

> **Note:** user touches a virtual 3D reference point in the space and touching button can change made 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.

Ans. 3–4 (emphasis omitted).

As to Appellants' contentions 2 through 4 regarding claims 59, 60, and 70 (Br. 15–27), the Examiner has rebutted each of those arguments supported by sufficient evidence. (Ans. 4–7). 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 § 102 rejection of claims 57, 59, 60, 63, and 70, as well as dependent claims 58, 61–62, 64–66, and 71–73 not separately argued.

As to above contention 5, we agree with the Examiner's analysis (Ans. 7) in response to Appellants' arguments. We also agree with the Examiner that

> Ota teaches change an operation mode of the image sensor from a first operation mode to a second operation mode associated with the detected predefined gesture (see detail rejection for claim 57 as stated above). Maltz reference is used to show change of operation mode from a standby mode to an active mode.

Id. at 7.

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 57–76.

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