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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK D. WIECZOREK¹

Appeal 2018-006901
Application 14/669,744
Technology Center 2600

Before IRVIN E. BRANCH, STACEY G. WHITE, and
JON M. JURGOVAN, *Administrative Patent Judges*.

JURGOVAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks review under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–5, 7, 9–17, 19, and 20, which constitute all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.²

¹ We use the word “Appellant” to refer to “applicant(s)” as defined in 37 C.F.R. § 1.42. According to Appellant, the real party in interest is Mark D. Wieczorek. Appeal Br. 3.

² Our Decision refers to the Specification (“Spec.”) filed March 26, 2015, the Final Office Action (“Final Act.”) mailed June 1, 2017, the Appeal Brief (“Appeal Br.”) filed November 30, 2017, the Response to Notification of Non-Compliant Appeal Brief (“Response”) filed January 22, 2018, the

CLAIMED SUBJECT MATTER

The claims recite systems and methods for providing a virtual reality experience. Spec. Abstract. The systems (claims 1–5, 19, and 20) include motorized pads and a means of communication between the set of motorized pads and a computing environment that operates a virtual reality headset. The motorized pads provide pressure to the user’s left or right foot as a user’s avatar steps down on the virtual environment. The speed of providing pressure and the force applied by the motorized pads to the user’s feet depends on whether the avatar is walking or running.

The methods (claims 7 and 9–15) and computer-readable medium (claim 16) provide a multiuser virtual reality experience that includes a page tour of a social networking page displayed in a common environment viewable with virtual reality headsets. Another method (claim 17) allows a first user to record a page tour including audio data.

Claims 1, 7, and 17 are independent. Claim 1 is reproduced below with emphasis added to indicate argued claim language:

1. A system for providing a virtual reality experience, comprising:
 - a. a set of motorized pads for coupling to respective feet of a user; and
 - b. a means of communication between the set of motorized pads and a computing environment operating a virtual reality headset;
 - c. such that the set of motorized pads are configured to provide pressure on a user's feet as an avatar within a virtual environment traverses the environment, and
 - d. wherein the set of motorized pads includes a left pad and a right pad, corresponding to a user's left foot and right

Examiner’s Answer (“Ans.”) mailed April 24, 2018, and the Reply Brief (“Reply Br.”) filed June 25, 2018.

foot, and wherein the set of motorized pads are configured to provide pressure on the user's left foot as an avatar within the virtual environment steps down on the virtual environment with their left foot, and wherein the set of motorized pads are configured to provide pressure on the user's right foot as an avatar within the virtual environment steps down on the virtual environment with their right foot, *wherein a speed of providing pressure, and a force of pressure, varies depending on whether the avatar is walking or running.*

Response 3 (Claims Appendix).

Claim 7 is reproduced below with emphasis added to indicate argued claim language:

7. A method of providing a multiuser virtual reality experience including a page tour of a social networking page, comprising:
 - a. configuring a server to communicate with a first user computing environment, the first user computing environment coupled to a first virtual reality headset, the first user computing environment configured to generate a first avatar corresponding to a first user, the first avatar situated within a common environment viewable in the first virtual reality headset; and
 - b. configuring a server to communicate with a second user computing environment, the second user computing environment coupled to a second virtual reality headset, the second user computing environment configured to generate a second avatar corresponding to a second user, the second avatar situated within the common environment viewable in the second virtual reality headset,
 - c. *wherein the common environment includes a display of visual depictions of entries from a social networking page, the visual depictions including one or more links to other pages corresponding to the entries, such that the first user is enabled to provide a page tour to the second user.*

Response 3–4 (Claims Appendix).

Claim 17 is reproduced below with emphasis added to indicate argued claim language:

17. A method of providing a multiuser virtual reality experience including a page tour of a social networking page, comprising:

a. configuring a server to communicate with a first user computing environment, the first user computing environment coupled to a first virtual reality headset, the first user computing environment configured to generate a common environment viewable in the first virtual reality headset; and

b. recording a page tour including audio data as the first user describes the common environment,

c. wherein the common environment includes a display of visual depictions of entries from a social networking page, the visual depictions including one or more links to other pages corresponding to the entries, such that the first user is enabled to record a page tour.

Response 5 (Claims Appendix).

REJECTIONS

I. Claim 9 stands rejected under 35 U.S.C. § 112(b) for indefiniteness. Final Act. 3.

II. Claims 1–5, 19, and 20 stand rejected under 35 U.S.C. § 103 based on Ranky (US 2011/0082009 A1, published April 7, 2011), Roston (U.S. Patent No. 5,872,438, issued February 16, 1999), and Rosenberg (US 2006/0262120 A1, published November 23, 2006). Final Act. 4–12.

III. Claims 7, 10, 14, and 16 stand rejected under Miller (US 2014/0306866 A1, published October 16, 2014) and Field (US 2007/0186007 A1, published August 9, 2007). Final Act. 12–18.

IV. Claim 9 stands rejected under 35 U.S.C. § 103 based on Miller, Field, and “Tip of the Week—Raiding in Everquest” (“EQ”) dated 7/3/2007. Final Act. 18–19.

V. Claims 11–13, 15, and 17 stand rejected under 35 U.S.C. § 103 based on Miller, Field, and Serban (US 2014/0046829 A1, published February 13, 2014). Final Act. 19–28.

OPINION

§ 112(b) Rejection

Section 112(b) provides that a specification shall conclude with one or more claims distinctly claiming the subject matter regarded as the invention. The Examiner finds that claim 9 should recite “the page tour” because “a page tour” was mentioned in independent claim 7 from which claim 9 depends. Appellant argues the definite article “the” refers to the “first user” recited earlier in the claim so the definite article is not needed for “a page tour.” Appeal Br. 7. Appellant then provides a new argument, without a showing of good cause, that the definite article “the” refers to “the configuring” earlier in the claim so that the definite article is not needed. Reply Br. 3; *see* 37 C.F.R. § 41.41(b)(2).

“A page tour” renders claim 9 indefinite because it cannot be ascertained whether this is the same page tour recited in claim 7, or a different page tour introduced for the first time in claim 9. As claim 9 is indefinite, we sustain the Examiner’s rejection.

§ 103 Rejections

A patent claim is unpatentable under 35 U.S.C. § 103 if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406

(2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) where present, objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

Claims 1–5, 19, and 20

Claim 1 recites “wherein a speed of providing pressure, and a force of pressure, varies depending on whether the avatar is walking or running.” Response 3 (Claims Appendix). The Examiner acknowledges that Ranky and Roston do not disclose this feature. Final Act. 8. Instead, the Examiner relies on Rosenberg for this teaching. Final Act. 8–10.

Appellant argues none of the references discloses this feature. Appeal Br. 8–10. Appellant argues that Rosenberg actually teaches the opposite of what is claimed—that the user’s walking speed determines how fast the avatar moves, not that the avatar walking/running determines the speed of providing pressure. *Id.* at 9. Reviewing Rosenberg (§ 34), we agree with Appellant that the reference teaches a user’s feet action varies the speed of the avatar’s running or walking. This does not teach what is claimed, namely, that the speed or force of pressure of the foot pads varies depending on whether the avatar is walking or running.

Accordingly, we do not sustain the § 103 rejection of claim 1 or the remaining claims which are dependent therefrom.

Claims 7, 10, 14, and 16

The Examiner makes the following findings for claim 7:

Miller in view of Fields teaches claim 7. It would have been obvious to one of ordinary skill in the art at the time of filing to modify Miller's interaction of a virtual environment between multiple users to include a virtual environment wherein users can both view and share social networking information and interact with each other. An advantage of the modification is that it achieves the predictable result of allowing for different types of shared virtual environments including tour of a personal page computer environment, as taught by Fields.

Final Act. 16.

Appellant argues that "the common shared environment of Miller is entirely different to that of Field, and thus one of ordinary skill in the art would not consider combining the two as the environments are so different."

Appeal Br. 12. Appellant further argues "[w]hile the *possibility* of the combination is indeed stated by the reasoning, no reason is given for the combination itself, much less a reason why one of ordinary skill in the art would have combined the allegedly known elements in the fashion claimed."

Reply Br. 11. In addition, Appellant argues "[t]here is only one type of common environment stated in the claim, and it is not clear how "different types" of shared virtual environments are disclosed or presented as an advantage of either reference." *Id.*

We agree with Appellant that the Examiner has not adequately explained why one of ordinary skill in the art would have combined Miller and Field to arrive at the claimed invention. Field discloses a personal chat area where members provide a tour of their page (§ 152), and Miller discloses a virtual world where the first user has a remote avatar and interacts with a second user (§ 33). We agree with Appellant's assertion that "Field . . . relates to a collaborative mobile social computing application. However, Miller is entirely related to allowing one user to see another user's

point of view.” Appeal Br. 12. As described in Field, “[a]nother social activity provided by the system is the user’s ‘personal pages.’” Field ¶ 150. These pages may display images, provide links to music, or other personal information designated by the user. *Id.* In order to “encourage personal interaction, every personal page includes an option for adding a ‘living room’—a personal chat area where members can receive visitors, provide a tour of their page, and hang out with friends.” *Id.* ¶ 152. This is strikingly different from Miller in which one user is local to a particular geographic area and the system transmits at least a portion of that local area to a user device for presentation to a second user, such that the second user may experience the location of the other user. Miller Abstract. As Appellant notes, Miller’s “‘virtual world’ does not appear to be actually ‘virtual’ for the second user, as the second user accesses the ‘virtual world’ through a second user device at the real geographic location.” Reply 9. Combining these two references under the Examiner’s reasoning would result in multiple different environments, but, as Appellant notes, “[t]here is no claim element nor advantage related to ‘different types of shared virtual environments.’” Reply Br. 11. Accordingly, based on the cited portions of the references, we do not see how or why an artisan considering Miller and Field would have arrived at the claimed invention.

Appellant also contends Miller fails to disclose two avatars situated in a common environment. Appeal Br. 12 (citing Miller ¶ 171, Fig. 19). Miller discloses two users may interact within a virtual world (¶ 33), but the cited portions mention only a remote avatar of a first user. Accordingly, the cited portions of the combined references fail to disclose two avatars of

respective users situated in a common virtual environment, as claimed.

Reply Br. 10.

Accordingly, we do not sustain the § 103 rejection of claim 7 or the remaining claims which are dependent therefrom.

Claim 9

The Examiner rejects claim 9 over the combination of Miller, Field, and EQ. Final Act. 18–19. Claim 9 depends from claim 7 and thus, incorporates all of its limitations. Response 4 (Claims Appendix). The Examiner relies on EQ to teach configuring a server to cause a second avatar to automatically follow the first avatar as the first avatar moves within the common environment. Final Act. 18–19. This teaching does not cure the deficiencies in the Examiner’s reason to combine Miller and Field noted above with respect to claim 7, so we do not sustain this rejection of claim 9.

Claims 11–13, 15, and 17

The Examiner rejects claims 11–13, 15, and 17 over the combination over Miller, Field, and Serban. Final Act. 19–24. Claims 11–13 and 15 depend from claim 7 and thus include all of its limitations. Response 4–5 (Claims Appendix). The Examiner relies on Serban to teach configuring a server to allow the first user to provide audio commentary before, during, or after, an indication. Final Act. 19–20. Because Serban does not cure the deficiencies in the Examiner’s reason to combine Miller and Field noted above with respect to claim 7, we do not sustain the rejection of claims 11–13 and 15.

Claim 17 is similar to claim 7 in reciting a common environment that includes a display of visual depictions of entries from a social networking page in the context of providing a multiuser virtual reality experience.

Response 5 (Claims Appendix). Accordingly, for similar reasons as stated with respect to claim 7 regarding the reason to combine Miller and Field, we do not sustain the rejection of claim 17. Specifically, the Examiner has not explained adequately why an artisan would have modified Miller’s virtual world in which first and second users interact and the first user has a remote avatar (§ 33), with Field’s page tour in a personal chat area (§ 152).

Summary for Obviousness Rejections

For the reasons explained above, the § 103 rejections lack “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Accordingly, we do not sustain the § 103 rejections of claims 1–5, 7, 9–17, 19, and 20.

CONCLUSION

We affirm the Examiner’s rejection of claim 9 for indefiniteness under 35 U.S.C. § 112(b).

We reverse the obviousness rejections of claims 1–5, 7, 9–17, 19, and 20 as obvious under 35 U.S.C. § 103.

DECISION SUMMARY

In summary:

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
9	112(b)	Indefiniteness	9	

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Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–5, 19–20	103	Ranky, Roston, Rosenberg		1–5, 19– 20
7, 10, 14, 16	103	Miller, Field		7, 10, 14, 16
9	103	Miller, Field, EQ		9
11–13, 15, 17	103	Miller, Field, Serban		11–13, 15, 17
Overall Outcome			9	1–5, 7, 10–17, 19, 20

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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)(1)(iv).

AFFIRMED-IN-PART