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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIJESH TRIPATHI, ARTHUR L. SPENCE, JOSHUA P. DE CESARE, ILIE GARBACEA, GUY COTE, MAHESH B. CHAPPALLI, MALCOLM D. GRAY, and CHRISTOPHER P. TANN

Appeal 2018-007262
Application 14/869,148
Technology Center 2600

Before ALLEN R. MacDONALD, DAVID J. CUTITTA II, and PHILLIP A. BENNETT, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from a Final Rejection of claims 1–20. Appeal Br. 19. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

[1] Appellant identifies the real party in interest as Apple Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Claims 1 and 15 are illustrative of the claimed subject matter (emphasis, formatting, and bracketed material added):

1. A display control unit comprising:

[A.] circuitry including ***a timestamp queue*** comprising a plurality of entries, wherein each of said entries is configured to store a timestamp; and

[B.] circuitry configured to:

[i.] compare ***a timestamp in a top entry of the timestamp queue*** to a global timer value;

[ii.] in response to determining the timestamp in the top entry of the timestamp queue is later than the global timer value, extend or refresh a current frame;

[iii.] in response to determining the timestamp in the top entry of the timestamp queue matches or is earlier than the global timer value:

[a.] retrieve the timestamp from the top entry of the timestamp queue;

[b.] fetch a new frame configuration set corresponding to a new frame to be displayed ***based on the timestamp*** retrieved from the top entry of the timestamp queue; and

[c.] utilize the configuration set to update one or more display settings for processing and displaying source pixel data corresponding to the new frame.

15. A method comprising:

[A.] circuitry including a timestamp queue storing a timestamp in an entry of a plurality of entities configured to store a timestamp; and

[B.] circuitry:

[i.] comparing a timestamp in a top entry of the timestamp queue to a global timer value;

[ii.] in response to determining the timestamp in the top entry of the timestamp queue is later than the global timer value, extending or refreshing a current frame;

[iii.] in response to determining the timestamp in the top entry of the timestamp queue matches or is earlier than the global timer value:

[a.] retrieving the timestamp from the top entry of the timestamp queue;

[b.] fetching a new frame configuration set corresponding to a new frame to be displayed based on the timestamp retrieved from the top entry of the timestamp queue; and

[c.] utilizing the configuration set to update one or more display settings for processing and displaying source pixel data corresponding to the new frame.

REFERENCES[2]

The prior art relied upon by the Examiner is:

Name	Reference	Date
Bratt	US 2011/0169848 A1	July 14, 2011
Lee	US 2013/0136412 A1	May 30, 2013
Vazquez	US 8,823,721 B2	Sept. 2, 2014

[2] All citations herein to patent and pre-grant publication references are by reference to the first named inventor only.

REJECTIONS

A.

The Examiner rejects claims 1–5, 7–12, and 14–19 under 35 U.S.C. § 103 as being unpatentable over the combination of Lee and Bratt. Final Act. 4–24.

We select claim 1 as the representative claim for this rejection. The contentions discussed herein as to claim 1 are determinative as to this rejection. Therefore, except for our ultimate decision, we do not address claims 2–5, 7–12, and 14–19 further herein.

B.

The Examiner rejects claims 6, 13, and 20 under 35 U.S.C. § 103 as being unpatentable over the combination of Lee, Bratt, and Vasquez. Final Act. 25–28.

The contentions discussed herein as to claim 1 are determinative as to this rejection. Therefore, except for our ultimate decision, we do not address claims 6, 13, and 20 further herein.

OPINION

We have reviewed the Examiner's rejections in light of Appellant's arguments that the Examiner has erred. Appellant's contentions we discuss are determinative as to the rejections on appeal. Therefore, Appellant's other contentions are not discussed in detail herein.

A.

The Examiner finds as to above part A. of claim 1:

> Lee teaches that a display control unit (Lee: Fig. 1, and [0061], "the touch controller processes the signal(s), and then transmits corresponding data to the controller 180") comprising:

> circuitry including a timestamp queue comprising a plurality of entries (See Lee: Fig. 15, and [0221], "distributing contents among one or more distribution objects displayed in a distribution object selection region of the content according to the user's request". Note: the many scheduled contents are corresponding to the plurality of entries), wherein each of said entries is configured to store a timestamp (See Lee: Fig. 15, the "Start Time" for the content is corresponding to the timestamp).

Final Act. 4–5.

B.

Appellant contends that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103 because:

> In the Final Office Action, Lee is cited as disclosing [circuitry including a timestamp queue comprising a plurality of entries wherein each of said entries is configured to store a timestamp] at FIG. 15 and paragraph 221. However, Appellant respectfully submits the cited disclosures of Lee are not equivalent to the above features. While claim 1 recites "circuitry including a timestamp queue," the cited disclosure of Lee discloses a graphic user interface (also referred to as a user interface and scheduler in Lee). Appellant submits the disclosures of Lee are not equivalent to the recited circuitry including a timestamp queue comprising a plurality of entries configured to store a timestamp. Indeed, the Examiner has not even indicated which portion of the cited disclosure is intended to correspond to the recited circuitry, the recited queue, or the recited elements of the queue configured to store a timestamp.

Appeal Br. 8.

C.

As articulated by the Federal Circuit, the Examiner's burden of proving non-patentability is by a preponderance of the evidence. *See In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) ("preponderance of the evidence is the standard that must be met by the PTO in making rejections").

"A rejection based on section 103 clearly must rest on a factual basis[.]" *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). "The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis." *Id.* We conclude the Examiner's analysis fails to meet this standard because the rejections do not adequately explain the Examiner's findings of fact.

Although the Examiner repeatedly finds the "circuitry including a timestamp queue" is taught by Lee (Final Act. 4–5; Ans. 3), the Examiner does not explain this finding beyond simply citing to portions of Lee. We have reviewed the cited portions of Lee, and we are unable to find reasonable support for the Examiner's finding.

Furthermore, although not separately argued by Appellant, we do not find in the Examiner's rejection reasonable support for the Examiner's finding that Bratt teaches "fetch a new frame configuration set corresponding to a new frame . . . to be displayed based on a timestamp associated with the frame." Final Act. 6.

We conclude, consistent with Appellant's arguments, that there is insufficient articulated reasoning to support the Examiner's findings that either Lee or Bratt teaches the "circuitry including a timestamp queue," as required by claim 1. Therefore, we conclude that there is insufficient articulated reasoning to support the Examiner's final conclusion that claim 1 would have been obvious to one of ordinary skill in the art at the time of Appellant's invention.

NEW GROUNDS OF REJECTION

Pursuant to our authority under 37 C.F.R. § 41.50(b), we reject claims 15–20 under 35 U.S.C. § 112(b), as being indefinite.

Although claim 15 is styled as a method by its preamble, we do not find a method within the body of claim 15. Rather, we find an apparatus. For purposes of Appellant's appeal of the § 103 rejections, we read the preamble of claim 15 as –An apparatus comprising–; and we read "circuitry:" (line 4) as –circuitry for:–.

However, reading claim 15 as it is written, we are compelled to reject the claim under 35 U.S.C. § 112(b) as being indefinite because claim 15 does not apprise a person of ordinary skill in the art of its scope. Particularly, it is unclear whether infringement occurs when one creates a manufacture ("circuitry") that allows the user to perform the method, or whether infringement occurs when the user actually uses the manufacture to perform the method. *See IPXL Holdings, L.L.C. v. Amazon.com, Inc.*, 430 F.3d 1377, 1383–84 (Fed. Cir. 2005) (Claims were held indefinite because they claimed both a system and a method for using that system.) and *In re Katz*, 639 F.3d 1303, 1318 (Fed. Cir. 2011) (Claims were held indefinite because they claimed both an apparatus and method of use.).

Claims 16–20 incorporate by dependency the indefiniteness of claim 15.

CONCLUSION

The Appellant has demonstrated the Examiner erred in rejecting claims 1–3, 5–11, and 13–20 as being unpatentable under 35 U.S.C. § 103.

The Examiner's rejections of claims 1–3, 5–11, and 13–20 as being unpatentable under 35 U.S.C. § 103 are **reversed**.

We newly reject claims 15–20 under 35 U.S.C. § 112(b) as being indefinite.

DECISION SUMMARY

In summary:

Claims Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**	**New Ground**
1–5, 7–12, 14–19	103	Lee, Bratt		1–5, 7–12, 14–19	
6, 13, 20	103	Lee, Bratt, Vasquez		6, 13, 20	
15–20	112(b)	Indefiniteness			15–20
Overall Outcome				1–20	15–20

TIME PERIOD FOR RESPONSE

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

> (1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .
>
> (2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. . . .

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

REVERSED; 37 C.F.R. 41.50(b)