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BAKER BOTTS L.L.P./FACEBOOK INC.
2001 ROSS AVENUE
SUITE 900
DALLAS, TX 75201

EXAMINER	
TSAI, JAMES T	

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judy.wan@bakerbotts.com
ptomail1@bakerbotts.com
ptomail2@bakerbotts.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIAN D. AMERIGE

Appeal 2018-007415
Application 14/071,028
Technology Center 2100

Before JOSEPH L. DIXON, STEVEN M. AMUNDSON, and JASON M. REPKO, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from a rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm in part.

The claims are directed to a user interface (UI) of an application that includes a nested hierarchy of views and enables a particular view of the nested hierarchy to over-ride the default behavior of a hit-test view. (Spec. ¶ 3.) Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method comprising:

> by a computing device, receiving a touch input within a particular region of a display area of the computing device, the display area presenting a user interface (UI) comprising a plurality of views organized in a hierarchy, one or more of the views having a gesture recognizer configured to process a touch input detected within one or more regions of the display area associated with each of the views, each of the views corresponding to one or more regions of the display area, one or more of the gesture recognizers having one or more intervention conditions, a particular one of the views being a default view to process the touch input;
>
> by the computing device, determining a plurality of eligible views from the plurality of views based at least in part on the particular region of the touch input corresponding to the region of the respective view;
>
> by the computing device, evaluating the intervention conditions of the plurality of eligible views to identify a

[1] We use the word "Appellant" to refer to "[A]pplicant" as defined in 37 C.F.R. § 1.42(a) (2017). Appellant identifies the real party in interest as Facebook, Inc. (Appeal Br. 3).

particular one of the eligible views from among the plurality of eligible views to process the touch input, wherein the evaluation of the intervention conditions is performed based on a type associated with the touch input with regard to content displayed in the display area and in an order in accordance to the hierarchy;

by the computing device, temporarily retargeting processing of the touch input from the gesture recognizer of the default view to the gesture recognizer of the identified eligible view based on the evaluation of the intervention conditions;

by the computing device, processing the touch input through the gesture recognizer of the identified eligible view; and

by the computing device, temporarily performing an action with regard to the content displayed in the display area in accordance to the gesture recognizer of the identified eligible view instead of an action in accordance to the gesture recognizer of the default view based on the temporary retargeting of the processing of the touch input.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Gallagher et al. ("Gallagher")	US 2006/0212833 A1	Sept. 21, 2006
Shaffer et al. ("Shaffer")	US 2011/0179380 A1	July 21, 2011
Dale et al. ("Dale")	US 2011/0307833 A1	Dec. 15, 2011
Braithwaite et al. ("Braithwaite")	US 2013/0268837 A1	Oct. 10, 2013
Huang	US 2014/0033129 Al	Jan. 30, 2014

W3C, *Document Object Model (DOM) Level 3 Events Specification* Draft 06 ("DOM"), as of September 6, 2012

REJECTIONS

The Examiner made the following rejections:

Claims 1, 9, and 17 stand provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1, 9, and 17 of copending Application No. 13/770,506.[2]

Claims 1–6, 9–14, and 17–20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shaffer in view of Huang, DOM, and Dale.

Claims 7 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shaffer in view of Huang, DOM, and Dale in further view of Gallagher.

Claims 8 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shaffer in view of Huang, DOM, and Dale in further view of Braithwaite.

ANALYSIS

Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37 (c)(1)(iv).

[2] We note that the patent application 13/770,506 relied upon in the rejection has issued as US Patent No. 9,703,477 on July 11, 2017. Therefore, the rejection was not a provisional rejection when the Notice of Appeal was filed on September 11, 2017.

Obviousness-type double patenting

The Examiner sets forth the basis for the provisional nonstatutory obviousness-type double-patenting rejection. (Final Act. 5–8.) The Examiner did not withdraw the obviousness-type double-patenting rejection in the Examiner's Answer. (Ans. 3.) In the Appeal Brief, Appellant offers to file a terminal disclaimer, but provides no argument and no terminal disclaimer. (Appeal Br. 8.) Therefore, we summarily affirm the Examiner's nonstatutory obviousness-type double-patenting rejection of independent claims 1, 9, and 17.

Obviousness[3]

At the outset, we note that Appellant's Summary of the Claimed Subject Matter in the Appeal Brief generally paraphrases paragraphs 11–17 of the Specification referring to Figure 3, but the Summary does not provide the required correlation of the claim limitations to the subject matter in the disclosure and drawings.[4] (*See* 37 C.F.R. § 41.37(c)(1)(iii): "A concise explanation of the subject matter defined in each of the rejected independent claims, which shall refer to the specification in the Record by page and line

[3] Appellant raises additional arguments. Because the identified issues are dispositive of the appeal, we do not need to reach the additional arguments.

[4] Additionally, we note that this portion of the Specification merely provides lists of non-limiting alternative embodiments, but Appellant's independent claim 1 is directed to a combination of these non-limiting alternative embodiments. We leave it to the Examiner in any further prosecution on the merits to consider whether there is written-description support for the individual claim limitations and the claimed invention as a whole.

number or by paragraph number, and to the drawing, if any, by reference characters.")

With respect to independent claims 1, 9, and 17, Appellant argues the claims are similar and provides arguments to independent claim 1. (Appeal Br. 9–10.) Therefore, we address independent claim 1 as the illustrative claim for the group.

With respect to illustrative independent claim 1, Appellant argues that the combination of Dale and Shaffer fails to disclose the claimed "temporarily retargeting processing of the touch input from the gesture recognizer of the default view to the gesture recognizer of the identified eligible view based on the evaluation of the intervention conditions," and that the Dale reference merely discloses general concepts related to hierarchical touch regions that detect a contact on a touch sensitive display and perform a default action when a view is not configured to process a contact. (Appeal Br. 10; *see also* Reply Br. 2 (citing Dale Abstract, ¶¶ 59, 65).)

Additionally, Appellant argues that the cited portions of the Shaffer reference do not disclose that setting of the skip property is temporary or modifiable and the introduction of the teachings of Dale do not disclose that the configuration of a view is modifiable. (Appeal Br. 10.) Appellant further contends that:

> the Examiner appears to be equating the default <u>action</u> of *Dale* is the new target with a default <u>view</u>, which is clearly not the case. (*See* Examiner's Answer at page 16). As described in the Specification, a view is associated with a particular area of a display and has an associated gesture recognizer. *(See* Specification at [0011]). A default action of *Dale* is not

> associated with a particular area of the display nor is the default action associated with a gesture recognizer.

(Reply Br. 2.)

We agree with Appellant that the Dale reference discloses general concepts related to hierarchical touch regions that detect a contact on a touch sensitive display and perform a default action when a view is not configured to process the contact. (Appeal Br. 10.) We further find that the Dale reference merely checks whether there is a gesture recognizer at the specific level in the hierarchical view structure 408–1 through 408–N. If there is a gesture recognizer at the specific level in the view hierarchy, then the contact is processed in the manner in the gesture recognizer, but if there is not a gesture recognizer at the specific level in the view hierarchy, then the Dale reference discloses going to the next level in the hierarchy to determine if there is a gesture recognizer at the next level and uses that gesture recognizer to process the contact. (*See generally* Dale ¶¶ 59–65.)

Therefore, Dale does not teach or suggest target processing at a specific level in a hierarchical view structure because there is no gesture recognizer at a specific level in the hierarchy. Therefore, there is no "retargeting" as claimed in "temporarily retargeting processing of the touch input from the gesture recognizer of the default view to the gesture recognizer of the identified eligible view based on the evaluation of the intervention conditions."

As a result, we find that Appellant has identified error in the Examiner's obviousness rejection of illustrative independent claim 1, and we cannot sustain the rejection of claim 1 and dependent claims 2–6. Because independent claims 9 and 17 contain similar claim limitations, we also

cannot sustain the obviousness rejection of independent claims 9 and 17 and dependent claims 10–14 and 18–20.

Furthermore, the Examiner has not identified how the additional prior-art references relied upon for dependent claims 7, 8, 15, and 16 remedy the noted deficiency above. As a result, we cannot sustain the obviousness rejections of claims 7, 8, 15, and 16.

CONCLUSIONS

The Examiner did not err in rejecting claims 1, 9, and 17 based upon nonstatutory obviousness-type double patenting, but the Examiner erred in rejecting claims 1–20 based upon obviousness under pre-AIA 35 U.S.C. § 103(a).

DECISION SUMMARY

Claims Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**
1, 9, 17		Nonstatutory Obviousness-type double patenting	1, 9, 17	
1–6, 9–14, 17–20	103	Shaffer, Huang, DOM, Dale		1–6, 9–14, 17–20
7, 15	103	Shaffer, Huang, DOM, Dale, Gallagher		7, 15
8, 16	103	Shaffer, Huang, DOM, Dale, Braithwaite		8, 16
Overall Outcome			1, 9, 17	2–8, 10–16, 18–20

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