UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/849,634	03/25/2013	Elizabeth Caroline Furches Cranfill	18814-0181005	4276

26183 7590 03/03/2020

FISH & RICHARDSON P.C. (APPLE)
PO BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER	
SMITH, BENJAMIN J	

ART UNIT	PAPER NUMBER
2144	

NOTIFICATION DATE	DELIVERY MODE
03/03/2020	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ELIZABETH CAROLINE FURCHES CRANFILL, DAVID HELLER, JEFFREY ROBBIN, ALAN C. CANNISTRARO, WILLIAM MARTIN BACHMAN, TIMOTHY B. MARTIN, MATT EVANS, and JOE R. HOWARD

Appeal 2019-000283
Application 13/849,634
Technology Center 2100

Before CARL W. WHITEHEAD JR, DAVID M. KOHUT, and IRVIN E. BRANCH, Administrative Patent Judges.

BRANCH, Administrative Patent Judge.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 1–3, 11–13, 16, 17, and 20–31, which are all of the pending claims. Appeal Br. 17; Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

---

[1] We use "Appellant" to reference the applicant as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as "Apple Inc." Appeal Br. 1.

STATEMENT OF THE CASE

APPELLANT'S INVENTION

Appellant's claimed subject matter "relates to displaying and facilitating the manipulation of electronic text, for example, the text of an electronic book ('eBook') being read on an electronic device." Spec. 1, ll. 13–14. Claim 1, reproduced below with added emphasis, is illustrative of the claimed subject matter.

> 1. A method of presenting information, the method comprising:
>
> presenting, within an electronic book reader application on an electronic device, a representation of an electronic book that includes an electronic representation of a paper page;
>
> enabling an interaction with the electronic representation of the paper page through a touch-sensitive control mechanism associated with the electronic device to navigate through the electronic book, wherein the electronic representation of the paper page includes a page indicator that provides information indicating the electronic representation of the paper page currently presented;
>
> *detecting a first input provided through the touch-sensitive control mechanism selecting the page indicator;*
>
> *in response to the first input, displaying a progress bar replacing the page indicator;*
>
> detecting a second input selecting a portion of the progress bar; and
>
> in response to the second input, presenting an electronic representation of a second paper page that corresponds to the selected portion of the progress bar.

Appeal Br., Claims Appendix.

REJECTIONS

Claims 1, 11, and 12 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Final Act. 3–4.

Claims 1, 11, 12, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Petschnigg (US 2010/0175018 A1; July 8, 2010), Lattyak (US 8,793,575 B1; July 29, 2014), and Park (US 2010/0058228 A1; Mar. 4, 2010). Final Act. 4–8.

Claims 16, 23, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Petschnigg, Lattyak, Park, and Tse (US 2013/0021281 A1; Jan. 24, 2013). Final Act. 8–9.

Claims 17, 24, and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Petschnigg, Lattyak, Park, Ryan (US 8,725,565 B1; May 13, 2014), and Card (US 2003/0052900 A1; Mar. 20, 2003). Final Act. 9–11.

Claims 21 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Petschnigg, Lattyak, Park, and Trespass (US 2005/0004949 A1; Jan. 6, 2005). Final Act. 12–13.

Claims 2, 3, 13, 22, 25, 26, 30, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Petschnigg, Lattyak, Park, and Kao (US 2009/0066701 A1; Mar. 12, 2009). Final Act. 13–16.

OPINION

35 U.S.C. § 112, ¶ 1, REJECTION OF CLAIMS 1, 11, AND 12

Claims 1, 11, and 12 are argued as a group for this rejection. Appeal Br. 7 (heading). We select claim 1 as representative. 37 C.F.R. § 41.37(c)(1)(iv). We are unpersuaded of error in this rejection of

claim 1.

The disputed claim limitation is emphasized in reproduced claim 1 (*supra* 2) and recites: "detecting a first input provided through the touch-sensitive control mechanism selecting the page indicator; in response to the first input, displaying a progress bar replacing the page indicator." The Examiner and Appellant dispute the meaning of "progress bar." The Examiner finds a "progress bar" conveys progress by extending a displayed bar and, in turn, finds the Specification does not describe a progress bar replacing a page indicator. Ans. 3–8. Appellant contends a "progress bar" can convey progress by any means (i.e., is not restricted to the above structure) and, in turn, contends the Specification describes a progress bar replacing a page indicator. Appeal Br. 7–10; Reply Br. 1–3. For the following reasons, we conclude the claimed progress bar is a *diagrammatic representation* of progress and the Specification does not describe such an element replacing a page indicator.

A general dictionary shows "progress" and "bar" are respectively understood as meaning "a movement toward a goal" and "a relatively long, evenly shaped piece." Dictionary.com (https://www.dictionary.com/browse/progress?s=t and https://www.dictionary.com/browse/bar?s=t) (last visited Feb. 18, 2020); *see also Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005) (en banc) (use of dictionaries to interpret a claim term). These meanings of "progress" and "bar," when compounded, convey an element that represents progress via a bar shape. The same general dictionary defines a "progress bar" ("*noun Digital Technology*") as "a graphical element that illustrates the percentage of a computer task that is complete: *The progress bar stopped moving when the program was about*

halfway downloaded." Dictionary.com (available at https://www.dictionary.com/browse/progress-bar?s=t) (last visited Feb. 18, 2020). We accordingly construe the plain meaning of "progress bar" to be a diagrammatic representation of progress.

For the foregoing reasons, we construe the claimed progress bar as a diagrammatic representation of progress. Having reviewed the present application for such an element, we find no written description of a progress bar that replaces a page indicator.

Appellant contends the application describes a "scrubbing bar" that could be understood as a progress bar and replaces a touched page indicator. Appeal Br. 9–10; Reply Br. 1–3; *see e.g.*, *id.* at 2 ("person of skill in the art . . . would have understood that the two terms could refer to the same item"). In support, Appellant further contends the application describes a progress bar as merely "indicat[ing] which portions of the electronic publication have been read" and, therefore, the scrubbing bar needs nothing more to be construed as a progress bar. Reply Br. 1 (quoting Spec. 4, ll. 29–31).

We are unpersuaded because the scrubbing bar is not a diagrammatic representation of progress,[2] but rather a *textual* representation of the reader's current location in the document; e.g., it provides a pop-up window (Spec. 42, ll. 20–22) or overlay (Fig. 8A) *stating* the currently read chapter. *See also* Appeal Br. 9 (addressing the pop-up window); Reply Br. 2 (addressing the overlay). The foregoing Specification statement that a "progress bar indicates which portions of the electronic publication have

[2] The invention's only diagrammatic representation of progress is a "relative indicator" that changes the displayed heights of the open book's left and right stacks of pages to represent the location of the current page (e.g., equal heights represent the book's half way location). Spec. 55, ll. 17–24.

been read" (Spec. 4, ll. 29–31) does not express a clear intent to newly define a "progress bar" by omitting its diagrammatic representation of progress (which would render the scrubbing bar as a "progress bar"). *See Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527 F.3d 1379, 1381 (Fed. Cir. 2008) ("A patentee may act as its own lexicographer and assign to a term a unique definition that is different from its ordinary and customary meaning; however, a patentee must clearly express that intent in the written description.").

For the foregoing reasons, we sustain the rejection of claims 1, 11, and 12 under 35 U.S.C. § 112, first paragraph.

35 U.S.C. § 103(a) REJECTION OF CLAIMS 1, 11, 12, AND 20 OVER PETSCHNIGG, LATTYAK, AND PARK

Appellant argues claims 1, 11, 12, and 20 as a group for this rejection. Appeal Br. 10. We select claim 1 as representative. 37 C.F.R. § 41.37(c)(1)(iv). We are unpersuaded of error in this rejection of claim 1.

Appellant contends the Examiner's proposed combination of Lattyak and Park does not suggest the claimed replacing of a page indicator with a progress bar. Appeal Br. 10–15; Reply Br. 4–5. Specifically, Appellant contends that, because Lattyak's cited progress gauge 202 concurrently displays a page indicator and progress bar, the proposed combination's replacement of the page indicator with the progress bar would senselessly duplicate the progress bar in a same display window. *Id.*

We are unpersuaded because Appellant does not persuasively rebut the Examiner's findings. The Examiner finds Lattyak's page indicator and progress bar are respective functions/elements of the progress gauge. Final Act. 5–6; Ans. 9–10. The Examiner finds Park's "multi-function"

element displays a first function/element until toggled, by a touch, to display a second function/element. Final Act. 6; Ans. 9–10. The Examiner concludes, in view of Park, it would have been obvious to likewise provide Lattyak's page indicator and progress bar *as togglable faces of a multi-function element*. Ans. 9–10. The Examiner does not propose, as is argued, *additionally providing* Lattyak's progress bar *as another* separate element of Lattyak's progress gauge window.

For the foregoing reasons, we sustain the rejection of claims 1, 11, 12, and 20 under 35 U.S.C. § 103(a).

35 U.S.C. § 103(a) REJECTION OF CLAIMS 17, 24, AND 28 OVER PETSCHNIGG, LATTYAK, PARK, RYAN, AND CARD

Appellant argues claims 17, 24, and 28 as a group for this rejection. Appeal Br. 16–17. We select claim 17 as representative. 37 C.F.R. § 41.37(c)(1)(iv). For the following reasons, we are unpersuaded of error in this rejection of claim 17.

Appellant contends Ryan does not teach or suggest the claimed "automatically selecting a next electronic book present in a queue in the electronic device" (claim 17). Specifically, Appellant acknowledges Ryan's cited prompt 452 invites an e-book reader to purchase a book, but contends this feature requires the reader to "actively order" the book before it is displayed and therefore does not "automatically" select a book. Appeal Br. 16.

The Examiner responds:

> The "automatic" term in the claim simply means that the user does not have to take any more steps or provide any more input. And this is exactly what Ryan discloses. Ryan . . . teaches the process of acquiring the next issue of a periodical or the next eBook in a series [Col. 12, Ln. 16-63, Figs. 4A, 48]. As cited by

> Appellant, Ryan teaches that when the reader comes to the end of periodical, eBook, or play, a "prompt 452 is provided to the user". When the user reaches the end of a publication and clicks on the prompt "she clicks on the prompt to quickly acquire the next play in the series."

Ans. 11.

We agree with the Examiner. The claimed "automatically selecting a next electronic book" requires *only some* automation in selecting a next book. *See e.g.*, Spec. 38, ll. 24–26 ("The arrangement of the available eBooks also may be altered—either automatically ***and***/or based on user input." (emphasis added)). Ryan's prompt 452 automatically initiates the purchase of a next book and thereby provides some automation.

Moreover, Appellant's argument is not commensurate with the claim scope. Appellant contends Ryan's prompt 452 does not automatically display the next book. Appeal Br. 16. Claim 17 does not, however, require the book to be automatically displayed, but rather *automatically selected*. By automatically initiating the purchase of a next book, Ryan's prompt 452 *automatically selects* that next book.

For the foregoing reasons, we sustain the rejection of claims 17, 24, and 28 under 35 U.S.C. § 103(a).

REMAINING 35 U.S.C. § 103(a) REJECTIONS

Because Appellant does not present separate arguments for the rejections of claims 2, 3, 13, 16, 21–23, 25–27, and 29–31 under 35 U.S.C. § 103(a), we sustain these rejections.

OVERALL CONCLUSION

We affirm the Examiner's decision to reject claims 1–3, 11–13, 16, 17, and 20–31.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–6, 8–17, 19–21	§ 112	¶ 1 (Written Description)	1, 11, 12	
1, 11, 12, 20	§ 103(a)	Petschnigg, Lattyak, Park	1, 11, 12, 20	
16, 23, 27	§ 103(a)	Petschnigg, Lattyak, Park, Tse	16, 23, 27	
17, 24, 28	§ 103(a)	Petschnigg, Lattyak, Park, Ryan, Card	17, 24, 28	
21, 29	§ 103(a)	Petschnigg, Lattyak, Park, Trespass	21, 29	
2, 3, 13, 22, 25, 26, 30, 31	§ 103(a)	Petschnigg, Lattyak, Park, Kao	2, 3, 13, 22, 25, 26, 30, 31	
Overall Outcome			1–3, 11–13, 16, 17, 20–31	

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED