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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ARSHAM HATAMBEIKI, JEFFREY KOHANEK, and
PAMELA EICHLER KEILES

Appeal 2019-000458
Application 12/645,037
Technology Center 2600

Before JASON V. MORGAN, JOSEPH P. LENTIVECH, and
JOHN R. KENNY, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Introduction

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1, 5–8, 11, 13–18, 20, 21, and 23–25. This appeal is related to an earlier appeal, number 2014-005267, decided April 4, 2016. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party-in-interest as Universal Electronics Inc. Appeal Br. 2.

Summary of disclosure

Appellant discloses a controlling device that has a moveable touch sensitive panel positioned above a plurality of switches. Spec. Abstract.

Representative claims (key limitations emphasized)

1. A controlling device, comprising:

a casing having an opening; and

an input device disposed in the opening comprised of a moveable touch sensitive surface positioned above a plurality of switches;

wherein the controlling device determines a touch location of a touch upon the touch sensitive surface that caused the touch sensitive surface to move a predetermined distance towards at least one of the plurality of switches, uses the determined touch location to retrieve from a library of command data stored in a memory of the controlling device a command data for use in controlling a functional operation of an appliance, and uses the retrieved command data to transmit a command signal to the appliance via use of a transmission protocol recognizable by the appliance.

11. A controlling device, comprising:

a casing having an opening; and

an input device disposed in the opening comprised of a moveable touch sensitive surface having a plurality of defined surface touch zones positioned above a plurality of switches;

wherein the controlling device determines a touch location of a touch upon the touch sensitive surface that caused the touch sensitive surface to move a predetermined distance towards at least one of the plurality of switches, uses the determined touch location to determine a one of the plurality of defined surface touch zones which includes the determined touch location, uses the determined one of the plurality of defined surface touch zones to retrieve from a library of command data stored in a memory of the controlling device a command data for use in controlling a functional operation of an appliance, and uses the retrieved

command data to transmit a command signal to the appliance via use of a transmission protocol recognizable by the appliance.

The Examiner's rejection and cited references

The Examiner rejects claims 1, 5–8, 11, 13–18, 20, 21, and 23–25 under 35 U.S.C. § 103(a) as being unpatentable over Rosenberg et al. (US 8,059,105 B2; issued Nov. 15, 2011) (“Rosenberg”), Nakamura (US 2009/0207040 A1; published Aug. 20, 2009), and Rigazio et al. (US 2009/0262073 A1; published Oct. 22, 2009) (“Rigazio”). Final Act. 2–8.

CLAIMS 1, 5–8, 18, 20, 21, AND 23–25

In rejecting claim 1 as obvious, the Examiner finds that Nakamura’s electrostatic touch panel 62, which can be moved downward to activate push button 6, teaches or suggests *wherein the controlling device determines a touch location of a touch upon the touch sensitive surface that caused the touch sensitive surface to move a predetermined distance towards at least one of the plurality of switches*. Final Act. 3 (citing Nakamura Figs. 3A, 3B, 4–7, ¶¶ 35–40). Appellant contends the Examiner erred because “Nakamura **does not** disclose, teach, or suggest that the detecting of the touch upon the touch pad 62 occurs in response to an activation of the switch 6” (Appeal Br. 6–7) and that Nakamura uses “activation of a switch, caused by movement of the touchpad, to do nothing more than provide button or switch input to the controlled device 30, i.e., to merely inform the controlled device 30 that the switch itself has been activated” (*id.* at 7). That is, although Appellant acknowledges that Nakamura’s “transmitter of the remote control 1001 transmits a remote control signal according to the detected position on the touch pad and transmits a remote control signal upon an activation of the push button switch” (Reply Br. 3), Appellant argues “the transmission[s] of these

‘different’ remote control signals by the transmitter involve two distinct and different processes” (*id.*).

Appellant’s arguments with respect to Nakamura are similar to the arguments Appellant used to challenge an anticipation rejection, based solely on Rosenberg, of an earlier version of claim 1 having a similar limitation. *See, e.g., Ex parte Hatambeiki*, No. 2014-005267, Appeal Br. 6 (Nov. 8, 2013) (Rosenberg’s device responds to “activation of a switch caused by a movement of the overlying touchpad 16 by transmitting . . . an additional signal that is reflective of the elevation of or distance of movement of the overlying touchpad 16 along the Z-axis”). We found Appellant’s arguments “unpersuasive because, as Appellant[] acknowledge[d], the z-axis data represents *additional data*.” *Ex parte Hatambeiki*, No. 2014-005267, at *3 (Apr. 4, 2016). Appellant’s arguments in this case are similarly unpersuasive.

Appellant acknowledges that Nakamura’s “remote control 1001 detects the position where the user touches the touch panel 62 and the remote control 1001 sends . . . a remote control signal corresponding to the detected position.” Appeal Br. 6; *see also* Nakamura ¶ 34. Appellant argues, however, that “with respect to detecting a touch upon a touch panel, Nakamura **does not** disclose, teach, or suggest that the detecting of the touch upon the touch pad 62 occurs in response to an activation of the switch 6.” Appeal Br. 6–7. Claim 1 does not require, however, that the detection of the touch occur *in response to* activation of a switch. Rather, claim 1 recites determining the touch location of a touch “*that caused* the touch sensitive surface to move a predetermined distance toward at least one of the plurality of switches” (emphasis added). Moreover, it is immaterial whether Nakamura *also* transmits a signal that “merely inform[s] the controlled device 30 that the

switch itself has been activated” (Appeal Br. 7), or does so as part of a “distinct and different” process from the detection and transmission of the touch location (Reply Br. 3). It is sufficient that Nakamura’s Figures 4, 6, and 7 illustrate that activation of switch 6 is caused by pushing down on electrostatic touch panel 62. *See also* Nakamura ¶¶ 35, 37. Thus, when switch 6 is activated, Nakamura will detect and transmit the location of where touch panel 62 was pressed (and thus touched) so as *to cause* switch 6 to activate. Therefore, we agree with the Examiner that Nakamura teaches or suggests *wherein the controlling device determines a touch location of a touch upon the touch sensitive surface that caused the touch sensitive surface to move a predetermined distance towards at least one of the plurality of switches*, as recited in claim 1. *See* Final Act. 3.

The Examiner concludes that it would have been obvious to an artisan of ordinary skill to modify similar touch panel teachings in Rosenberg using these teachings from Nakamura for the “predictable result of operating electronic devices *reliably without malfunctioning*.” Final Act. 3 (emphasis added); *see also* Nakamura ¶¶ 37–38. Appellant contends the Examiner erred “because the device of Rosenberg already includes the capability to use an activation of a switch, caused by movement of the touchpad, to provide button or switch input.” Appeal Br. 8; *see also* Reply Br. 5. Appellant does not, however, address the Examiner’s proffered rationale for modifying Rosenberg using the teachings and suggestions of Nakamura to provide for reliable, malfunction-free operation of the device. Therefore, we agree with the Examiner that it would have been obvious to an artisan of ordinary skill to combine the teachings and suggestions of Nakamura and Rosenberg in the claimed manner. *See* Final Act. 3.

Accordingly, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of claim 1, and claims 5–8, 18, 20, 21, and 23–25, which Appellant does not argue separately. Appeal Br. 9.

CLAIMS 11 AND 13–17

In rejecting claim 11 as obvious, the Examiner finds that Rigazio's one-to-one mapping of regions on touchpad 20 to control regions of a screen teaches or suggests: (1) *using a determined touch location to determine a one of the plurality of defined surface touch zones which includes the determined touch location*; (2) *using the determined one of the plurality of defined surface touch zones to retrieve a command data*; and (3) *using the retrieved command data to transmit a command signal*. Final Act. 6 (citing Rigazio ¶ 48); *see also* Ans. 4–5 (citing Rigazio Fig. 1, ¶ 23). Appellant contends the Examiner has not presented a *prima facie* case of obviousness because “it has not been explained nor is it evident how [¶] paragraph 0048 of Rigazio can be said to disclose, teach, or suggest the claimed” use of a determined touch location, especially since “paragraph 0048 does not even mention ‘touch locations’ or ‘touch zones.’” Appeal Br. 9–10.

Appellant's arguments are unpersuasive because the Examiner's findings, as based on the additional teachings found in Rigazio Figure 1 and paragraph 23, are reasonable and unrebutted. Therefore, we agree with the Examiner that Rigazio teaches or suggests the disputed recitations of claim 11.

Accordingly, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of claim 11, and claims 13–17, which Appellant does not argue separately.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1, 5–8, 11, 13–18, 20, 21, 23–25	103(a)	Rosenberg, Nakamura, Rigzaio	1, 5–8, 11, 13–18, 20, 21, 23–25	

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