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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/285,999	05/23/2014	Ling Tang	210167.0475.9 (P460)	7144

142839 7590 09/14/2020

WOMBLE BOND DICKINSON (US) LLP /Huawei
Attn: IP Docketing
P.O. Box 7037
Atlanta, GA 30357-0037

EXAMINER	
FIBBI, CHRISTOPHER J	

ART UNIT	PAPER NUMBER
2174	

NOTIFICATION DATE	DELIVERY MODE
09/14/2020	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LING TANG

Appeal 2019-000675
Application 14/285,999[1]
Technology Center 2100

Before JOHN A. JEFFERY, MARC S. HOFF, and SCOTT B. HOWARD, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a final rejection of claims 1–19. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellant's invention is a method for switching and presenting a terminal operation mode. The method comprises acquiring information about a space status change of a terminal (e.g., a mobile phone or tablet), determining whether an extent of the space status change falls within a

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42(a). Appellant states the real party in interest is Huawei Technologies Co., Ltd. Appeal Br. 3.

preset range, and determining an operation mode of the terminal when the extent of the space status change falls within the preset range. The operation mode includes a first operation mode that facilitates operation of interface elements with the left hand, and a second operation mode that facilitates operation of interface elements with the right hand. Abstract. Information about a space status change includes acquiring a direction of a space status movement change and the amplitude of the space status movement change. The direction of the space status movement change includes a leftward movement change in which the terminal moves toward the left hand side of a user of the terminal, or a rightward movement change in which the terminal moves toward the right hand side of the user. Spec. ¶ 7.

Claim 1 is exemplary of the claims on appeal:

> 1. A method for switching and presenting a terminal operation mode, the method comprising:
>
> acquiring information about a space status change of a terminal by acquiring a direction of a space status movement change and an amplitude of the space status movement change of the terminal, wherein the direction of the space status movement change of the terminal comprises a leftward movement change or a rightward movement change, the leftward movement change indicates that the terminal moves laterally towards the left hand side of a user of the terminal when the screen of the terminal faces the user of the terminal, and the rightward movement change indicates the terminal moves laterally towards the right hand side of the user of the terminal when the screen of the terminal faces the user of the terminal, and the amplitude of the space status movement change comprises a leftward movement amplitude or a rightward movement amplitude of the terminal;
>
> determining whether an extent of the space status change of the terminal falls within a preset range according to the information about the space status change;

> determining an operation mode of the terminal when the extent of the space status change of the terminal falls within the preset range, wherein the operation mode comprises a first operation mode or a second operation mode, the first operation mode facilitates an operation on an operable element in an operation interface of the terminal with the left hand, and the second operation mode facilitates an operation on an operable element in an operation interface of the terminal with the right hand; and
>
> presenting the operable element in the operation interface of the terminal according to the determined operation mode.

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Name	Reference	Date
Nasiri et al. ("Nasiri")	US 2009/0303204 A1	Dec. 10, 2009
Kim et al. ("Kim")	US 2013/0111384 A1	May 2, 2013

Claims 1–5, 8–15, 18, and 19 stand rejected under 35 U.S.C. § 102(a)(2) as being anticipated by Kim.

Claims 6, 7, 16, and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kim and Nasiri.

Throughout this decision, we make reference to the Appeal Brief ("Appeal Br.," filed May 16, 2018), the Reply Brief ("Reply Br.," filed Oct. 26, 2018), the Final Office Action ("Final Act.", mailed Oct. 17, 2017), and the Examiner's Answer ("Ans.," mailed Sept. 7, 2018) for their respective details.

ISSUE

Appellant's arguments present us with the following issue:

1. Does Kim teach acquiring information about a space status change of a terminal, including the direction of space status movement change, which comprises a leftward movement change indicating that the terminal moves laterally towards the left hand side of a user of a terminal or a rightward movement change indicating that the terminal moves laterally towards the right hand side of a user of the terminal?

2. Does the combination of Kim and Nasiri teach or suggest acquiring information about a space status change of a terminal by determining a shake frequency of the terminal?

PRINCIPLES OF LAW

Claim terms should be given their broadest reasonable meaning in their ordinary usage as such claim terms would be understood by one skilled in the art by way of definitions and the written description. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

> The claims, of course, do not stand alone. Rather, they are part of a "fully integrated written instrument" consisting principally of a specification that concludes with the claims. For that reason, claims "must be read in view of the specification, of which they are a part.". . . . [T]he specification "is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term."

Phillips v. AWH Corp., 415 F.3d 1303, 1315 (Fed. Cir. 2005) (citations omitted).

"A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art

reference." *In re Buszard*, 504 F.3d 1364, 1366 (Fed. Cir. 2007) (quoting *In re Paulsen*, 30 F.3d 1475, 1478–79 (Fed. Cir. 1994)). Anticipation of a claim requires a finding that the claim at issue reads on a prior art reference. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (citing *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

ANALYSIS

Claims 1–5, 8–15, 18, and 19

Independent claim 1 recites "acquiring information about a space status change of a terminal by acquiring a direction of a space status movement change." The direction of the space status movement change

> comprises a leftward movement change or a rightward movement change, the leftward movement change indicates that the terminal moves laterally towards the left hand side of a user of the terminal . . . and the rightward movement change indicates the terminal moves laterally towards the right hand side of the user.

Independent claim 11 contains a limitation which is commensurate in scope.

Appellant argues that Kim teaches a technique of arranging icons based on the tilt of a portable device, and does not teach a leftward movement change of a device in that the terminal moves laterally towards the left hand side of a user of the terminal, or a rightward movement change in that the terminal moves laterally towards the right hand side of the user of the terminal. Appeal Br. 19; Kim ¶ 9, Figs. 4A–4C.

The Examiner finds that Google Dictionary defines "laterally" as "at, toward, or from the side," and finds that Kim teaches such lateral movement

in that Kim teaches a tilted state, which can be either a right side tilt (right side is lower than the left side) or a left side tilt (left side lower than the right side). Final Act. 23; Ans. 4; Kim ¶¶ 28, 42, 50, Fig. 4A–4C. The Examiner characterizes such a tilt as movement of the device toward the user's left hand side (or right hand side, respectively). Ans. 4.

We do not agree with the Examiner that the tilt state disclosed in Kim corresponds to the claimed lateral movement of the terminal towards the left hand side, or the right hand side, of the user.

Figures 4A–4C of Kim are reproduced below:

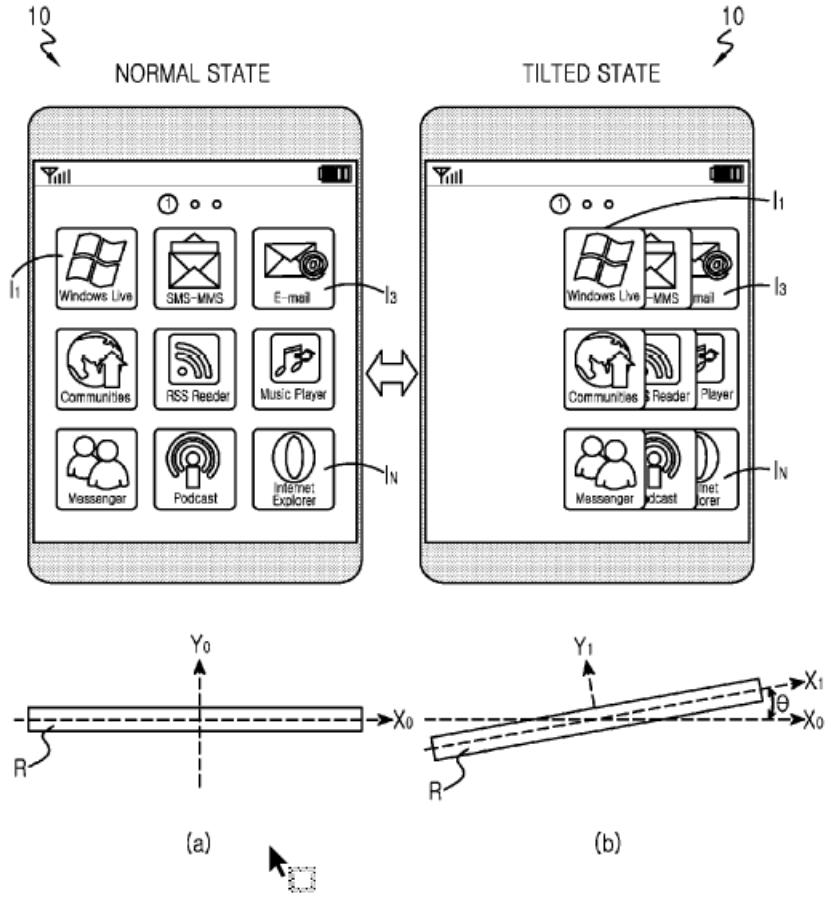

FIG.4A

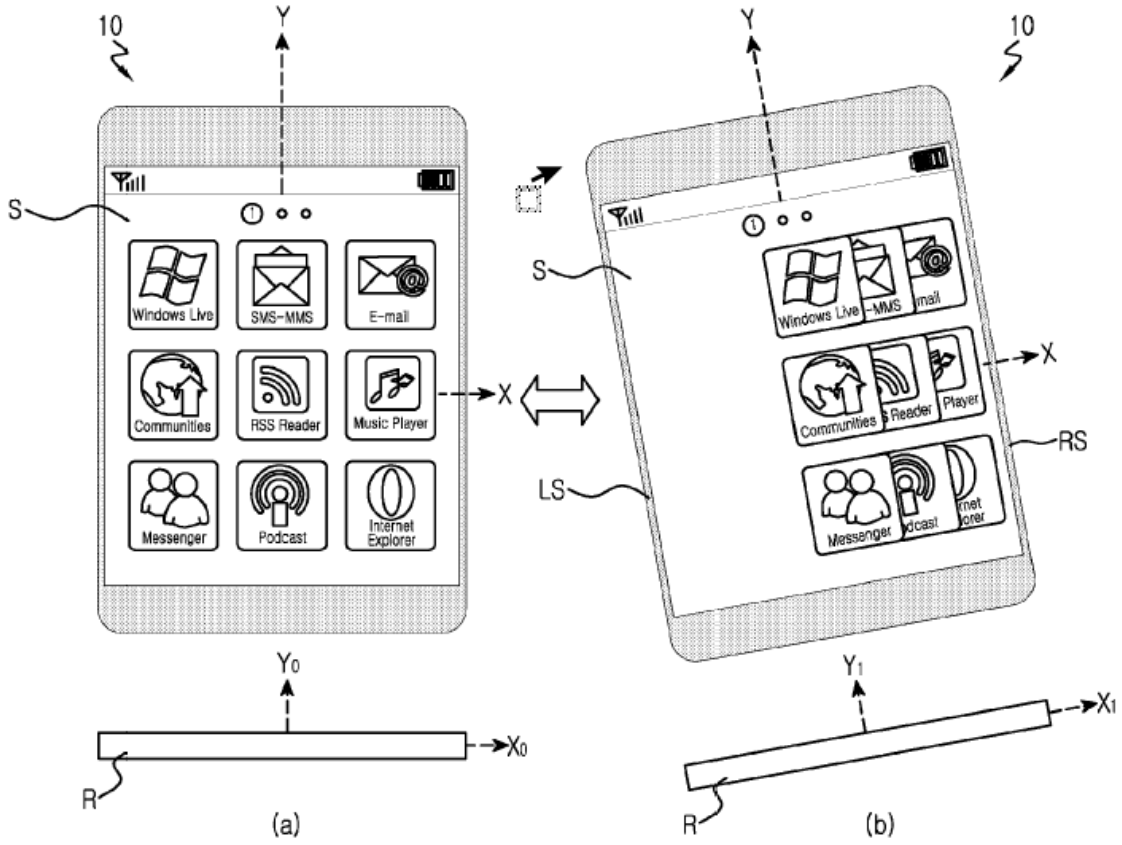
10
Y
S
Windows Live
SMS-MMS
E-mail
Communities
RSS Reader
Music Player
Messenger
Podcast
Internet Explorer
X
Y0
X0
R
(a)
Y
10
S
Windows Live
Communities
Player
RS
LS
Messenger
X
Y1
X1
R
(b)

FIG.4B

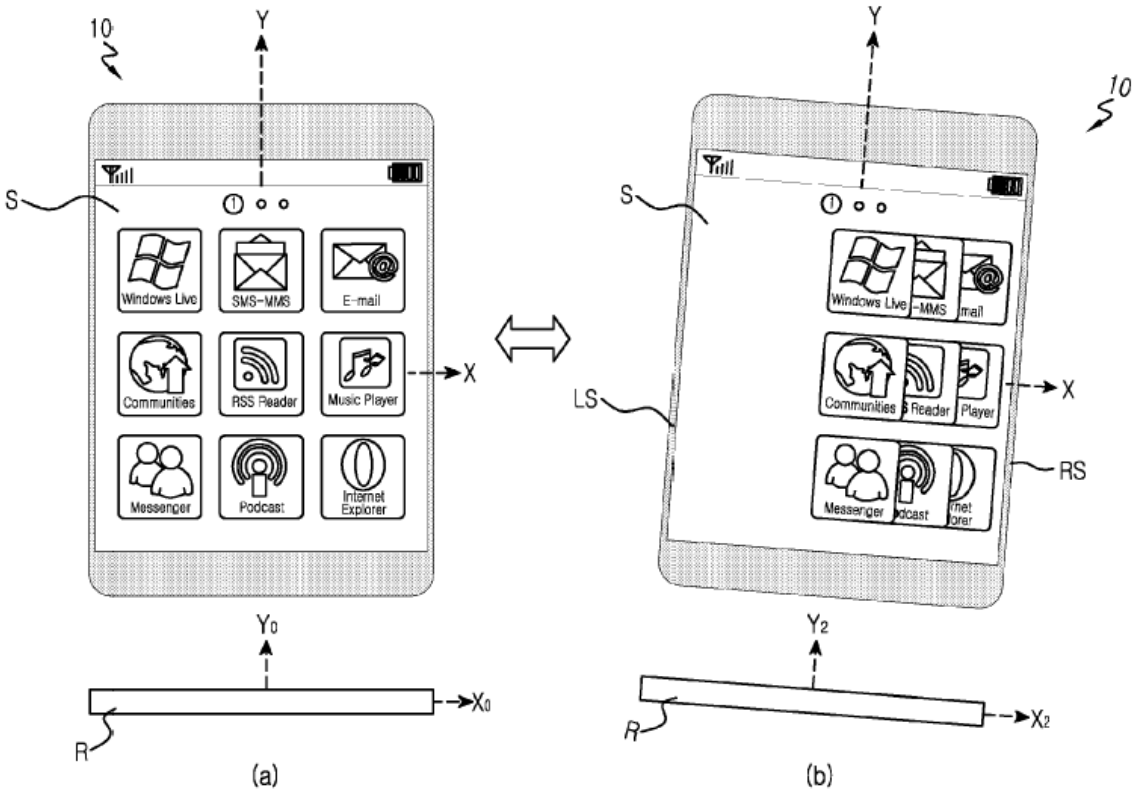

FIG.4C

Figures 4A–4C of Kim illustrate touch screens in which the icons are arranged lopsidedly according to embodiments of the invention. Kim ¶ 16. Figures 4A(b), 4B(b), and 4C(b) illustrate a device in a tilted orientation. Kim ¶ 50.

We agree with Appellant that the tilted state disclosed in Kim does not move the (entire) terminal toward either the left hand side or the right hand side of the user. Appeal Br. 21. The tilt illustrated in Kim Figure 4A shows the left side of the terminal lowered and the right side of the terminal raised. The rotational tilt illustrated in Kim Figures 4B and 4C can at most be characterized as one corner of the terminal moving toward one side of the user, while the opposite corner of the terminal is moving *away from* that side

of the user. *See* Appeal Br. 22. In neither case does the terminal, as a whole, move toward the left hand side or toward the right hand side of the user.

We therefore agree with Appellant that Kim does not teach detecting a space status movement change of a terminal comprising either leftward movement towards the left hand side of a user, or rightward movement towards the right hand side of a user. We find that Kim does not teach all the limitations of claims 1–5, 8–15, 18, and 19, and we do not sustain the Examiner's § 102(a)(2) rejection.

Claims 6, 7, 16, and 17

Independent claim 6 recites "acquiring information about a space status change of a terminal by determining a shake frequency of the terminal." Independent claim 16 recites a limitation that is commensurate in scope.

The Examiner finds that Nasiri teaches the claimed "shake frequency" by evaluating Appellant's proffered definition of "frequency," i.e., "the rate at which something occurs or is repeated over a particular period of time or in a given sample." Ans. 6; Appeal Br. 28. The Examiner emphasizes the "in a given sample" portion of the definition and finds that the count of the number of times the device is shaken in Nasiri ("the number of times the device was shook") corresponds to the definition of "frequency." Appeal Br. 28. The Examiner finds that Nasiri teaches a shake gesture, and teaches that a "return gesture" could be implemented as "a shaking of the device three times." Ans. 6; Nasiri ¶¶ 72, 123.

We do not agree with the Examiner's interpretation of the definition "frequency." Even assuming *arguendo* that one may disregard the portion of the definition calling for calculating the number of times something occurs

over a particular period of time, the Examiner's preferred interpretation fails to account for the word "rate," which is defined as "a quantity, amount, or degree of something measured per unit of something else." https://www.merriam-webster.com/dictionary/rate (retrieved Sept. 3, 2020). The portions of Nasiri cited by the Examiner do not teach a rate at which shaking occurs or is repeated *over a particular period of time*. The portions of Nasiri cited by the Examiner do not teach a quantity, amount, or degree of shake gestures detected *per unit* of anything else, whether it be time or some other quantity. We find that Nasiri does not teach determining a shake frequency of a terminal, as these claims require.

Accordingly, we do not sustain the Examiner's § 103(a) rejection of claims 6, 7, 16, and 17 over Kim and Nasiri.

CONCLUSION

1. Kim does not teach acquiring information about a space status change of a terminal, including the direction of space status movement change, which comprises a leftward movement change indicating that the terminal moves laterally towards the left hand side of a user of a terminal or a rightward movement change indicating that the terminal moves laterally towards the right hand side of a user of the terminal.

2. The combination of Kim and Nasiri does not teach or suggest acquiring information about a space status change of a terminal by determining a shake frequency of the terminal.

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–5, 8–15, 18, 19	102	Kim		1–5, 8–15, 18, 19
6, 7, 16, 17	103	Kim, Nasiri		6, 7, 16, 17
Overall Outcome				1–19

ORDER

The Examiner's decision to reject claims 1–19 is reversed.

REVERSED