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Barnes & Thornburg LLP (ABB) 11 S. Meridian Street Indianapolis, IN 46204			LAM, VINH TANG	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JENS DOPPELHAMER, KRISTOFFER HUSOY, MARTIN
HOLLENDER, MIKKO RISSANEN, and TORGEIR ENKERUD

Appeal 2019-000927
Application 14/054,531
Technology Center 2600

Before DEBRA K. STEPHENS, JON M. JURGOVAN, and
ADAM J. PYONIN, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the
Examiner's decision to reject claims 1, 4–15, and 19–25 (*see* Final Act. 1).²
We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

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 the assignee, ABB
Schweiz AG, (Appeal Br. 2).

² Claims 2, 3 and 16–18 have been withdrawn from consideration (Final
Act. 1).

CLAIMED SUBJECT MATTER

The claims are directed to a device and method for the gesture control of a screen in a control room (Spec., Abstract, ¶ 5). Claim 1, reproduced below, is illustrative of the claimed subject matter:

1 An operating and observation system for a technical installation, the operating and observation system comprising:

a gesture controller configured to operate components of the technical installation and for presenting at least one of measured values, process variables and state messages from the components of the technical installation in a control room;

at least one large display screen in the control room, and a plurality of user workstations for presenting, in the control room, the components of the technical installation and the at least one of the measured values, process variables and state messages from the components of the technical installation; and

a plurality of sensors each configured to recognize gestures constituting physical movements,

wherein the large display screen and the user workstations respectively have therein installed a motion recognition and motion controller configured to recognize and control motion,

wherein the motion recognition and motion controller is configured to allow at least one of operation and polling of at least one of the components, the measured values, the process variables and the state messages from the components of the at least one of the technical installation by means of a gesture from at least one user in the control room, the gesture constituting a physical movement,

wherein the motion recognition and motion controller comprises a position recognition controller configured to determine a position of individual users of the technical installation within the control room, by using a model of the control room to identify a target system to which a gesture of the at least one user relates, the model using a first component to depict the control room and showing where at least one device is situated in the control room, and

wherein the motion recognition and motion controller is configured to, based on the gesture of the at least one user, send

selection and position information to the identified target system for evaluation and initiation of appropriate actions.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Gilbert	US 2007/0132779 A1	June 14, 2007
Friedrich	US 2008/0100570 A1	May 1, 2008
Thorn	US 2009/0164896 A1	June 25, 2009
Geppert	US 2010/0246571 A1	Sep. 30, 2010
Ihara	US 2013/0120449 A1	May 16, 2013
Vennelakanti	US 2013/0241834 A1	Sep. 19, 2013
Park	US 2013/0265226 A1	Oct. 10, 2013
Christiane	DE 102004021379	June 16, 2005

REJECTIONS³

Claim 15 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Christiane (Final Act. 30–33).

Claims 1, 9, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christiane and Ihara (*id.* at 34–39).

Claims 4, 5, 10, and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, and Vennelakanti (*id.* at 39–43).

Claims 6–8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, and Friedrich (*id.* at 43–46).

³ The rejection of claim 25 under 35 U.S.C. § 112(a); claims 1, 4, 6, 7, 9, 10, 13, 15, 19–21, and 23–25 under 35 U.S.C. § 112(f); and claims 1–20 under 35 U.S.C. § 112(b) have been withdrawn by the Examiner (Ans. 3).

Claims 12–14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, Vennelakanti, and Friedrich (*id.* at 46–49).

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, and Geppert (*id.* at 49–51).

Claims 21 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, and Gilbert (*id.* at 51–55).

Claims 23 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, and Thorn (*id.* at 55–57).

Claim 25 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, and Park (*id.* at 58–59).

We have only considered those arguments that Appellant actually raised in the Briefs. Arguments 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)).

OPINION

35 U.S.C. § 102(b): Claim 15

Appellant contends the invention, as recited in claim 15, is not anticipated by Christiane (Appeal Br. 7). The issue presented by the arguments is whether Christiane discloses:

wherein the operation of the motion recognition and motion controller comprises operating a position recognition controller to determine a position of individual users of the technical installation within the control room, by using a model of the control room to identify a target system to which a gesture of the at least one user relates, the model using a first component to depict the control room and showing where at least one device is situated in the control room,

as recited in claim 15. Appellant argues “Christiane describes presenting information to a user regarding components of an industrial plant on a screen, in a hologram, in acoustic signals, or in haptic signals, and sending commands from the user back to the remote components of the industrial plant” (*id.* at 8). According to Appellant,

[w]hile the commands in Christiane may be determined based on gestures of the user, the commands are directed to *remote components* in the industrial plant (comparable to the recited ‘technical installation’, which is recited separately from the ‘control room’ in claim 15), rather than to target systems that are gestured towards in the control room and identified based on a model of the control room

(*id.*).

We do not find Appellant’s argument persuasive. Christiane describes “user inputs to operate the system are detected by means of the command detection unit” and “[t]he command detection unit advantageously has an image recognition unit for detecting a body movement of a user” (Christiane, 2 ¶¶ 1, 10). Christiane describes these body movements may be “gestures and facial expressions” (*id.* ¶ 11; Final Act. 33).

The Examiner finds:

The “control room” is NOT remote as argued by the appellant. [Christiane at page 1 ¶ 4] explicitly state[s] that “central control rooms ... operator panels equipped. These operator panels are mainly to be found in manufacturing plants”. *This would mean that the “control room” is located inside the industrial plant.*

(*id.* (emphasis added)).

We agree with the Examiner’s finding. Indeed, Christiane discloses “the user 14 may be located at one of the system 2 remote location”

(Christiane, 3, emphasis added). Therefore, (1) the user 14 may be located at (i.e., within) the system 2 (the claimed “technical installation”), or (2) the user 14 may be located remote from the system 2. Thus, Christiane does not require the user to be located remotely, but rather, offers it as an option.

Appellant argues “the control room is a subset of the technical installation” (Reply Br. 2–3); however, this is not recited in the claims, nor is the relationship clear from the claims. Appellant points to paragraph 38⁴ of the Specification as support for their interpretation; however, this description does not explicitly define either term and is described as “an exemplary embodiment.” [L]imitations are not to be read into the claims from the specification” (*In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)). We note that to the extent that one (or more) disclosed embodiment of Appellant’s invention may be narrower, the Appellant is not precluded during continuing prosecution from amending the claims to limit them to this narrower embodiment.

Appellant proffers an additional argument in the Reply Brief that “*Christiane does not disclose a model at all, and certainly does not disclose a model of a control room*” (Reply Br. 3). Appellant had an opportunity to raise this argument in the Appeal Brief, and has provided this record with no showing of good cause for not doing so. In the absence of a showing of good cause by Appellant, the new arguments by Appellant are deemed waived (*see* 37 C.F.R. § 41.41(b)(2); *cf. Optivus Tech., Inc. v. Ion Beam Appl’ns S.A.*, 469 F.3d 978, 989 (Fed. Cir 2006) (“[A]n issue not raised by

⁴ Appellant identifies this paragraph as paragraph 41; however, in the as-filed Specification, this is paragraph 38.

an appellant in its opening brief ... is waived.”) (internal citations and quotation marks omitted)).

Accordingly, we are not persuaded the Examiner erred in finding Christiane discloses the limitation as recited in claim 15. Therefore, we affirm the rejection of claim 15 under 35 U.S.C. § 102(b) as anticipated by Christiane.

35 U.S.C. § 103(a): Claims 1, 9, and 20

Appellant argues claim 1 on the same basis as set forth in claim 15 and further added that Ihara fails to cure the deficiencies of Christiane (Appeal Br. 9–10). As explained, Christiane is not deficient, so the above discussion applies equally well to claim 1.

Accordingly, we are not persuaded the Examiner erred in finding Christiane and Ihara teach the limitation as recited in claim 1. Dependent claims 9 and 20 thus fall with claim 1, from which they depend. Therefore, we affirm the rejection of claims 1, 9, and 20 under 35 U.S.C. § 103(a) as obvious over Christiane and Ihara.

35 U.S.C. § 103(a): Claims 4 and 5

Appellant contends the invention, as recited in claim 4, is not obvious over Christiane, Ihara, and Vennelakanti (Appeal Br. 10). The issue presented by the arguments is whether the combination of Christiane, Ihara, and Vennelakanti teaches or suggests “wherein the motion recognition and motion controller is further configured to: provide an identification for a person who is in front of the large screen and an identification of the person

is usable as a basis for *presenting views tailored specifically to the identified person,*” as recited in claim 4. (Appeal Br. 16, claim 4 (emphasis added)).

Appellant argues “Vennelakanti makes no mention or suggestion of identifying a person in front of a screen and using that identification to present views on the screen that are tailored specifically to that identified person” (Appeal Br. 11). Appellant further emphasizes “it follows that the facial recognition in Vennelakanti is not used *as a basis for presenting views tailored for the recognized person*” (Reply Br. 4).

The Examiner finds Vennelakanti teaches this limitation (Final Act. 40–41 (citing Vennelakanti ¶ 23; Table 1)). We are unable to find where in the reference the feature of “an identification of the person *is usable as a basis for presenting views tailored specifically to the identified person*” can be found. The Examiner finds “F[igure] 4 explicitly teaches ‘a **face recognition**’ would obviously **provide identification of a person** ... Table 1 explicitly teaches the ‘**face recognition**’ positively identifies the person as ‘**Ron**’ and presents views for ‘**Ron**’ as ‘**That is Ron**’” (Ans. 5). This description in Vennelakanti, however, teaches “possible tags,” but the Examiner has not shown or explained why Vennelakanti’s teaching of recognition of responses and assigning tags to the relevant portions of speech, teaches using the recognition of responses “as a basis for presenting *views tailored specifically to the identified person,*” as recited in claim 4. Accordingly, Appellant has persuaded us the Examiner failed to show the combination of Christiane, Ihara, and Vennelakanti teaches or suggests the limitation as recited in claim 4. Therefore, we do not sustain the rejection of claim 4 under 35 U.S.C. § 103(a) for obviousness over Christiane, Ihara, and Vennelakanti.

35 U.S.C. § 103(a): Claims 6–8, 10, 11, 19, and 21–25

Claims 6–8, 10, 11, 19, and 21–25 depend from independent claim 1. Appellant did not separately argue these claims; therefore, these claims fall with independent claim 1. Accordingly, we sustain the rejection of claims 6–8, 10, 11, 19, and 21–25 under 35 U.S.C. § 103(a) as being unpatentable.

CONCLUSION

The Examiner’s rejections are affirmed-in-part.

More specifically,

We affirm the rejection of claim 15 under 35 U.S.C. § 102(b) as being anticipated by Christiane.

We affirm the rejection of claims 1, 9, and 20 under 35 U.S.C. § 103(a) as being unpatentable over Christiane and Ihara.

We affirm the rejection of claims 6–8 under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, and Friedrich.

We affirm the rejection of claims 12–14 under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, Vennelakanti, and Friedrich.

We affirm the rejection of claim 19 under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, and Geppert.

We affirm the rejection of claims 21 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, and Gilbert.

We affirm the rejection of claims 23 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, and Thorn.

We affirm the rejection of claim 25 under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, and Park.

We reverse the rejection of claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Christiane, Ihara, and Vennelakanti.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
15	102(b)	Christiane	15	
1, 9, 20	103(a)	Christiane and Ihara	1, 9, 20	
4, 5, 10, 11	103(a)	Christiane, Ihara, and Vennelakanti	10, 11	4, 5
6–8	103(a)	Christiane, Ihara, Vennelakanti, and Friedrich	6–8	
19	103(a)	Christiane, Ihara, and Geppert	19	
21, 22	103(a)	Christiane, Ihara, and Gilbert	21, 22	
23, 24	103(a)	Christiane, Ihara, and Thorn	23, 24	
25	103(a)	Christiane, Ihara, and Park	25	
Overall Outcome:			1, 6–8, 9–11, 15, 19–25	4, 5

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)).

Appeal 2019-000927
Application 14/054,531

AFFIRMED-IN-PART