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.
13/474,619	05/17/2012	Charles McCoy	114514-085UT1	9696

103865 7590 06/15/2020

Procopio - SPE
525 B Street
Suite 2200
San Diego, CA 92101

EXAMINER
CHUNG, MONG-SHUNE

ART UNIT	PAPER NUMBER
2142	

NOTIFICATION DATE	DELIVERY MODE
06/15/2020	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):

docketing@procopio.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHARLES MCCOY, LEO MARK PEDLOW JR., LING JUN WONG, and TRUE XIONG

Appeal 2019-001175
Application 13/474,619
Technology Center 2100

Before BRADLEY W. BAUMEISTER, MICHAEL J. STRAUSS, and JEREMY J. CURCURI, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1, 3–9, 11, 13–15, 17, 18, 21 and 23, which constitute all of the pending claims.[1] Appeal Br. 2. 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 Sony Corporation and Sony Network Entertainment International LLC as the real party in interest. Appeal Brief filed June 12, 2018 ("Appeal Br."), 2.

CLAIMED SUBJECT MATTER

Appellant describes the present invention as follows:

> Customizing menus for a consumer electronics device, including: generating a predefined menu identifier; preparing menu definitions for the menus to be customized on the consumer electronics device; generating menu configuration information using the prepared menu definitions; transmitting the generated menu configuration information to the consumer electronics device; and identifying a specific menu and menu items using the predefined menu identifier.

Abstract.

Independent claim 1, reproduced below with modified formatting and added limitation designators, illustrates[2] the appealed claims:

> 1. A method of customizing a plurality of menus within a menu structure for a graphical user interface of a consumer electronics device, the method comprising:
>
> a) receiving a menu customization request at a server from the consumer electronics device;
>
> b) identifying the consumer electronics device using device specific information included in the menu customization request;
>
> c) generating a predefined menu identifier by the server;
>
> d) identifying the plurality of menus and a plurality of menu items by the server using the predefined menu identifier, wherein the plurality of menu items is made up of items within a specific menu of the plurality of menus and is configured in a hierarchical arrangement;
>
> e) identifying, by the server, locations within the menu structure where the plurality of menu items are to be placed;
>
> f) preparing menu definitions by the server for the plurality of menus to be customized on the consumer electronics device;

[2] Appellant argues claims 1 and 21 together as a group. See Appeal Br. 11–16. Accordingly, we select independent claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

g) generating menu configuration information by the server using the prepared menu definitions and the predefined menu identifier including the identified locations within the menu structure;

h) transmitting the generated menu configuration information by the server to the consumer electronics device;

i) rearranging, by the consumer electronics device, ordering of the hierarchical arrangement of the plurality of menu items on the plurality of menus of the consumer electronics device using the generated menu configuration information,

j) wherein rearranging the ordering of the hierarchical arrangement includes moving the plurality of menu items to:

1) locations that need to scroll through fewer menu items than prior to the rearrangement;

2) locations that need to navigate through fewer menu levels than prior to the rearrangement; and

3) locations in the menus that are easier to access than prior to the rearrangement.

(Appeal Br. 20–21) (Claims App.).

STATEMENT OF THE REJECTIONS

Claims 1, 3, 4, 8, 13, 14, 17, and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over King (US 2008/0144793 Al; published June 19, 2008), Nunome (US 2003/0028539 Al; published Feb. 6, 2003), and Fukumoto (US 2002/0054146 Al; published May 9, 2002). Final Action mailed Jan. 12, 2018 ("Final Act."), 10–17.

Claims 5 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over King, Nunome, Fukumoto, and Elumalai (US 2008/0229239 Al; published Sept. 18, 2008). Final Act. 17–20.

Claims 6 and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over King, Nunome, Fukumoto, and Lin (US 2002/0048283 Al; published Apr. 25, 2002). Final Act. 20–21.

Claim 7 stands rejected under 35 U.S.C. § 103 as being unpatentable over King, Nunome, Fukumoto, and Fleishman (US 2008/0126984 Al; published May 29, 2008). Final Act. 22–23.

Claims 9, 11, and 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over King, Nunome, Fukumoto, and Baumgartner (US 2005/0160458 Al; published July 21, 2005). Final Act. 23–26.

STANDARD OF REVIEW

The Board conducts a limited *de novo* review of the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

EXAMINER'S DETERMINATIONS

The Examiner finds that King teaches limitations f) through i) of independent claim 1. Final Act. 11. That is, the Examiner finds that King teaches the steps of preparing menu definitions by the server, generating menu configuration information, transmitting the generated menu configuration to the consumer electronics device, and the consumer electronics device rearranging the ordering of the hierarchical arrangement of menu items on the menus. *Id.*

The Examiner relies on Nunome for teaching the limitations a) through e) of independent claim 1. *Id*. at 12–14. That is, the Examiner

relies on Nunome for teaching the steps of receiving a menu customization request at a server, identifying the consumer electronics device, generating a predefined menu identifier, identifying the plurality of menus and menu items, and "identifying, by the server, locations within the menu structure where the plurality of menu items are to be placed." *Id*.

The Examiner relies on Fukumoto for teaching the final limitation, limitation j), of claim 1, which further specifies how the menu items are arranged. *Id*. at 15. The Examiner also sets forth motivation for combining the noted teachings of King, Nunome, and Fukumoto. *Id*. at 14–15.

Appellant presents two sets of arguments—a first set regarding Nunome's teachings (Appeal Br. 12–14) and a second set regarding Fukumoto's teachings (*id*. at 14–15). We address these arguments separately below.

CONTENTIONS AND ANALYSIS

I.

Appellant first disputes the Examiner's finding that Nunome teaches or suggests claim 1's limitations d) and e). Appeal Br. 12. As noted above, these limitations read as follows:

> d) identifying the plurality of menus and a plurality of menu items by the server using the predefined menu identifier, wherein the plurality of menu items is made up of items within a specific menu of the plurality of menus and is configured in a hierarchical arrangement;
>
> e) identifying, by the server, locations within the menu structure where the plurality of menu items are to be placed.

In particular, Appellant argues that that this claim language requires that "when the consumer electronics device runs a third party application,

the server will identify the device and obtain the predefined menu identifier[,] which identifies the location within the menu structure where the menu items are to be placed." *Id*. Appellant argues that the following passage of Appellant's Specification supports this functionality:

> The second purpose of the predefined menu identifiers is to identify the locations within the menu structure where unknown dynamic items will be placed. *For example, if the consumer runs an application that was written by* a *third party that provides menus to the consumer, the device code can search for* a *menu with* a *particular predefined identifier that would indicate where to place menu items dynamically generated by an application*. In this case, the menus are only included as markers to particular places in the menu definitions and would not be displayed to the user.

Spec. col. 18, l. 18–col. 19, l. 4, *cited in* Appeal Br. 12 (emphasis added by Appellant).

Appellant argues that the passages of Nunome cited by the Examiner do not teach this claim language for the following reasons:

> [T]he cited passages of Nunome seem to show menu identification information in isolation, there is no reference to these IDs being used to identify the menus and menu items, where the menu items are made up of items within a specific menu and are configured in a hierarchical arrangement. Further, there is no reference to these IDs identifying the locations within the menu structure where the menu items are to be placed.

Appeal Br. 14.

The Examiner responds, pointing to Nunome's menu table 23, which is stored in menu information DB 14. Examiner's Answer mailed September 10, 2018 ("Ans."), 6 (citing Nunome FIG. 4A). The Examiner explains, and we agree, how "[t]he information stored in said menu table 23

gives a clear view of the hierarchical structures to different menus." *Id*. As the Examiner explains,

> Menu table 23 includes a unique menu ID for each record in the table, where the menu attribute column indicates each record as a menu item, a menu, or both. The menu table 23 further includes a parent ID for each record that is a menu item nested under a menu, where parent ID indicates the menu ID that the menu item is nested under. For example, the first record in the menu table 23 has a menu ID of "Menu001". According to the menu attribute, it is both a menu and also a menu item nested under the menu "Menu200". The second and the third records in the menu table 23 indicating that "Menu002" and "Menu003" respectively are menu items nested under menu "Menu001". Therefore, the menu table 23, which defines the menu elements and hierarchical structures to the plurality of menus, is utilized by the customer management server 10 to construct the menus to be sent to the user terminal 100. Thus, the menu table 23 identifies each menu item uniquely with the unique menu IDs.

Ans. 6.

Appellant's arguments are unpersuasive. The Examiner has provided a factual basis supporting the finding that Nunome's ID is being used to identify the menus and menu items, where the menu items are made up of items within a specific menu and are configured in a hierarchical arrangement. We agree with the Examiner and adopt these findings as our own.

We next turn, then, to Appellant's remaining argument that "there is no reference to these IDs identifying the locations within the menu structure where the menu items are to be placed." Appeal Br. 14. To this argument, the Examiner responds,

> customer management server 10 can identify where each menu items are to be placed in the menu hierarchy by identifying the menu item by its menu ID using the menu table 23, where the combination of the menu attribute and the parent ID allows the

> customer management server 10 give the information needed to construct the menu to be sent to the user terminal 100.

Ans. 6–7 (citing Nunome ¶¶ 59, 61, 65, 76, 81, figs. 1, 2, 4A, 8A–C).

The Examiner's response indicates that the Examiner is interpreting the language of limitation e) more broadly than is Appellant. We understand Appellant to be arguing that limitation e) requires that the server identify locations within the menu structure where to place a plurality of new menu items that are dynamically generated by, for example, a third-party application. Appeal Br. 12 (citing Spec. col. 18, l. 18–col. 19, l. 4). In contrast, we understand the Examiner to be taking the position that limitation e) merely requires that the server identify locations within the menu structure where a plurality of existing menu items are to be placed when the device displays the menus and menu items to the user. *See* Ans. 6–7.

Limitation e) appears on its face to be written broadly enough to cover both the interpretation argued by Appellant and the interpretation taken by the Examiner. Appellant does not present persuasive arguments for why the Examiner's broader interpretation is unreasonable, and the record indicates that the Examiner's interpretation is not unreasonable.

Accordingly, Appellant does not demonstrate error in the Examiner's interpretation of claim 1's limitations d) and e) or in the Examiner's findings regarding Nunome. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). "It is the applicants' burden to precisely define the invention, not the PTO's." *In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997). Appellant always has the opportunity to amend the claims during prosecution, and broad interpretation

by the Examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404–05 (CCPA 1969).

II.

Appellant additionally argues that Fukumoto does not teach the last limitation of claim 1, which, as noted above, reads as follows:

> j) wherein rearranging the ordering of the hierarchical arrangement includes moving the plurality of menu items to:
>
> 1) locations that need to scroll through fewer menu items than prior to the rearrangement;
>
> 2) locations that need to navigate through fewer menu levels than prior to the rearrangement; and
>
> 3) locations in the menus that are easier to access than prior to the rearrangement.

Appellant argues,

> Although the cited passages of Fukumoto state that the customized menu scheme in menu hierarchy is configured to permit addition and deletion of a customized menu and allow the display at the highest hierarchical level of menu hierarchy, this does not mean that the menu is at: locations that need to scroll through fewer menu items than prior to the rearrangement; locations that need to navigate through fewer menu levels than prior to the rearrangement; and locations in the menus that are easier to access than prior to the rearrangement.

Appeal Br. 15.

To explain how Fukumoto teaches the first two manners of rearranging the menu items, the Examiner compares the original position of the "Bass" menu item, as depicted in Fukumoto's Figure 2, with the customized position of the "Bass" menu item, as depicted in Figure 5:

> Fukumoto teaches customizing menu having menu items adjusted and placed at the highest level of menu hierarchy to allow the user quick access without navigating to lower levels of

> the hierarchical menu structure as shown in figure 5. In figure 5, the customized menu includes menu items such as "Bass", "Vertical Size", "Language", and among others. The "Bass" menu item is derived from the "Sound Quality" menu, which is nested under the "Main Menu". Therefore, by moving the "Bass" menu item to the highest level in the menu hierarchy, [sic] allows the menu item to be accessed with [] the user navigating [through fewer] hierarchical level[s] (*e.g.* accessed directed from the highest menu in the hierarchy instead of navigating two hierarchy levels down).
>
> Further, the user selects the desired menu item by moving a cursor up and/or down in the menu until the desired menu item is reached. Therefore, by moving the "Bass" menu item to the highest level in the menu hierarchy, allows the menu item to be accessed with less user scrolling input (*e.g.* the first item in the highest level in the menu hierarchy instead of moving the cursor down to the least item (*e.g.* "Main Menu") in the highest menu, then moving the cursor down to the second item in the "Main Menu" (*e.g.* "Sound Quality"), finally, moving the cursor down to the third item in the "Sound Quality" menu.

Ans. 7–8 (paragraph formatting modified).

The Examiner additionally interprets the last recited manner of rearranging the menu items of "wherein rearranging the ordering of the hierarchical arrangement includes moving the plurality of menu items to: . . . locations in the menus that are easier to access than prior to the rearrangement," as follows:

> The last limitation (i.e. "locations in the menu that are easier to access") of limitation[] (j) has been interpreted to be merely a benefit of rearranging menu items, and it appears to be equivalent to the previous two limitations. The term "easier" is a subjective term and does not give explicit definition to allow one of ordinary skill in the art to discern to what degree of easiness when compared to prior to the rearrangement meets the limitation. As such, no patentable weight was given to said

> limitation. If the prosecution continues, the examiner will revisit this limitation under 35 U.S.C. § 112, second paragraph.

Ans. 8.

We understand the Examiner's position to be that the limitation's last recited manner of rearranging the menu items is merely a recitation of a benefit that inherently flows from the existence of the first two functionalities. Under that interpretation, the Examiner actually does give patentable weight to the limitation, but merely finds that this third functionality does not limit further the scope of the claim beyond the scope that is encompassed by the first two manners of rearranging the menu items.

Appellant does not allege the Examiner's claim interpretation is unreasonable. We, therefore, look to Appellant's Specification to determine if the Examiner's interpretation of the scope of the third manner of rearrangement is reasonable. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (during examination of a patent application, pending claims are given their broadest reasonable construction consistent with the Specification).

Appellant states in the "Summary of Claimed Subject Matter" section of the Appeal Brief, that the last limitation of claim 1 is supported by the Specification at page 42, line 22 to page 43, line 7. Appeal Br. 4. This cited passage appears as the last paragraph of the Specification's following disclosure:

> FIG. 2C is a flowchart 230 illustrating a method of collecting and analyzing dynamic system menu usage statistics/data on a consumer electronics device in accordance with one implementation of the present invention. In the illustrated implementation of FIG. 2C, menu usage data (such as how the user navigates through the menu) is monitored, tracked and accumulated, at box 232. The method also includes

> transmitting the collected menu usage data, at box 234, to a server for analysis, at box 236, to provide insight into the consumer usage of the menus and to improve the design of the menu interface. In one implementation, the consumer electronics device is triggered to send the menu usage data once a certain quantity of data has been collected by the consumer electronics device. The menu usage data include: frequency of the menu usage; day and time of the usage; a series of menu item clicks or selections to determine a sequence of activity or path taken by a consumer; a type of application launched; duration between two menu selections; and a frequency of language changes. The menu usage statistics may also include button presses on a remote control. In addition to the frequency of language changes, the languages that were chosen are of interest as is the language in use when other menu items are chosen. For example, if the statistics show that users have a hard time locating a particular menu item when the language is set to French, but not when the language is set to English or Spanish, then that could indicate that the French translation for that menu item may need to be reworded.
>
> *In another implementation*, the menu usage data is analyzed to improve a design of the menus on the consumer electronics device. For example, the menu usage data is analyzed to break down the analysis by the displayed language to identify a particular translation that may need improvement if a menu item is less used or harder to find when the menus are displayed in a particular language. *Other examples include* moving popular menu items to places that allow quicker access including (1) locations that need to scroll through fewer menu items, (2) locations that need to navigate through fewer menu levels, ***or*** (3) locations in the menus that are easiest to access.

Spec. 41:16 – 43:10 (emphasis added).

This passage of Appellant's Specification indicates that moving menu items to (1) locations that require less scrolling, (2) locations that require navigation through fewer menu levels, and (3) "locations in the menus that are easiest to access" (or "easier to access," as claimed), are all specific

examples of how popular menu items more generally can be moved "to places that allow quicker access." Spec. 42:6–10. By specifying that these three examples of how to move menu items to places that allow quicker access are "other examples" (Spec. 43:6), Appellant's Specification only indicates that these three examples are separate and distinct from improving menu designs by analyzing the languages in which the user determines it to be hard to find menu items.

We see nothing in the cited portion of Appellant's Specification indicating that the Examiner's interpretation of the third functionality is unreasonable. We, instead, agree that the third recited functionality reasonably can be interpreted as constituting a generic catchall recitation that includes the first two functionalities of moving a menu item to the top of the menu and moving the menu item to a less nested menu.

Accordingly, Appellant does not demonstrate error in the Examiner's interpretation of claim 1's final limitations or in the Examiner's findings regarding Fukumoto.[3]

[3] Because we are a tribunal of appellate review, we do not address, *sua sponte*, the question of whether the relied upon passage of Appellant's Specification, which only employs the logical disjunction "or" to set forth three alternative manners for moving popular menu items to places that allow quicker access, provides adequate written description to support the last limitation of independent claim 1, which uses the logical conjunction "and" to claim a method that employs all three manners simultaneously. Rather, we leave this question for the Examiner to explore upon any further prosecution on the merits. *See Frye*, 94 USPQ2d 1075 (The Board conducts a limited *de novo* review of the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon.).

CONCLUSIONS

For the foregoing reasons, Appellant has not persuaded us of error in the Examiner's obviousness rejection of independent claim 1. Accordingly, we sustain the Examiner's rejection of that claim of claims 3, 4, 8, 13, 14, 17, and 21, which Appellant does not argue separately. Appeal Br. 15–16.

With respect to the remaining rejections of claims 5–7, 9, 11, 15, 18, and 23, Appellant does not separately argue these claims' patentability based upon either any additional claim language or any alleged deficiencies of the additionally cited references. Appeal Br. 16–18. Rather, Appellant only argues the patentability of these additional claims based upon the reasoning set forth in relation to claim 1. *Id*. For the reasons discussed above, then, we also sustain the rejections of claims 5–7, 9, 11, 15, 18, and 23.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1, 3, 4, 8, 13, 14, 17, 21	103	King, Nunome, Fukumoto	1, 3, 4, 8, 13, 14, 17, 21	
5, 18	103	King, Nunome, Fukumoto, Elumalai	5, 18	
6, 23	103	King, Nunome, Fukumoto, Lin	6, 23	
7	103	King, Nunome, Fukumoto, Fleishman	7	
9, 11, 15	103	King, Nunome, Fukumoto, Baumgartner	9, 11, 15	

Overall Outcome			1, 3–9, 11, 13–15, 17, 18, 21, 23	

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)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED