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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RICHARD WILLIAMSON, CHRISTOPHER BLUMENBERG,
MIKE MATAS, KIMON TSINTERIS, RYAN STAAKE, and ALEX KAN

Appeal 2019-001695
Application 13/917,603
Technology Center 2600

Before ALLEN R. MacDONALD, JAMES B. ARPIN, and
IFTIKHAR AHMED, *Administrative Patent Judges*.

MacDONALD, *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 1–20. We have jurisdiction under
35 U.S.C. § 6(b).

We affirm.

¹ Appellant (Inventors) identifies Apple, Inc. (Applicant) as the real party-in-interest. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Claims 1–4 and 10 are illustrative of the claimed subject matter
(emphasis, formatting, and bracketed material added):

1. A computer-implemented method, comprising:
 - [A.] presenting *a two-dimensional map* containing a specified location on a display with *a field of view* that is pointed downward toward a *street surface*;
 - [B.] while presenting the two-dimensional map with the field of view that is pointed downward toward the street surface, receiving user input *requesting a three-dimensional panorama view* of the specified location; and
 - [C.] in response to the user input requesting the three-dimensional panorama view of the specified location, presenting an animated sequence transitioning from the two-dimensional map to the three-dimensional panorama view of the specified location, where the animated sequence presented in response to the user input includes
 - [i.] zooming into the specified location on the two-dimensional map,
 - [ii.] transitioning from the zoomed two-dimensional map to the three-dimensional panorama view with a field of view showing a street surface at the specified location, and
 - [iii.] spinning the three-dimensional panorama view such that the field of view tilts up from the street surface to a horizon in the three-dimensional panorama view of the specified location.
2. The method of claim 1, wherein the user input includes selection of a user interface element for invoking the three-dimensional panorama view of the specified location.
3. The method of claim 2, wherein the *animated sequence is presented* after completion of the selection of the user interface element for invoking the three-dimensional panorama view of the specified location.

4. The method of claim 1, wherein the two-dimensional map and the three-dimensional panorama view are both displayed in a ***portrait orientation***, and the method further comprises:
 - [D.] upon completion of the animated sequence, receiving a second user input rotating the display to a ***landscape orientation***; and
 - [E.] ***presenting an orientation overlay*** on the three-dimensional panorama view, where the orientation overlay indicates a direction and an angular extent of the field of view.

10. The method of claim 1, further comprising:
 - [D.] receiving a notification that ***no panorama view*** for the specified location ***is available***;
 - [E.] presenting the animated sequence ***using a placeholder panorama*** in place of the three-dimensional panorama view;
 - [F.] upon completion of the animated sequence,
 - [i.] presenting an orientation overlay on the placeholder panorama, where the orientation overlay indicates a direction and an angular extent of the field of view of the placeholder panorama; and
 - [ii.] presenting a perspective view of a street name annotation and a perspective view of a navigation indicator pointing in the direction shown in the orientation overlay.

REFERENCES²

The Examiner relies on the following references:

Name	Reference	Date
Hancock	US 5,642,106	June 24, 1997
Chen	US 6,268,864 B1	July 31, 2001
Du	US 2003/0011599 A1	Jan. 16, 2003
Oh	US 2006/0132482 A1	June 22, 2006
Chau	US 2008/0292213 A1	Nov. 27, 2008
Banerjee	US 2008/0312819 A1	Dec. 18, 2008
Douris	US 2009/0289956 A1	Nov. 26, 2009
Williamson	US 8,493,408 B2	July 23, 2013

Google Earth User Guide (“Google Earth” hereinafter); ©2007 Google.

Google Earth now available for the iPhone (“Google Earth iPhone” hereinafter); October 26, 2008;
<http://googlemobile.blogspot.com/2008/10/google-earth-now-available-for-iphone.html>.

REJECTIONS

A.

The Examiner rejects claims 1, 12, and 17 under 35 U.S.C. § 101 “because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more.” Final Act. 2–4.

With respect to this rejection, we select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv). Appellant does not separately argue claims 12

² All citations herein to patent and pre-grant publication references are by reference to the first named inventor only.

and 17. Except for our ultimate decision, we do not discuss the merits of the § 101 rejection of claims 12 and 17 further herein.

B.

The Examiner rejects claims 1–3, 12–14, 17, and 18 under 35 U.S.C. § 103 as unpatentable over the combined teachings of Google Earth, Chen, and Oh. Final Act. 14–19. As to this § 103 rejection, Appellant presents separate arguments for claims 1 and 3. Appeal Br. 21–33. Appellant does not argue separate patentability for claims 2, 12–14, 17, and 18. With respect to this rejection, we select:

- claim 1 as the representative claim for claims 2, 12, 13, and 17; and
- claim 3 as the representative claim for claims 14 and 18.

Except for our ultimate decision, we do not discuss the merits of the § 103 rejection of claims 2, 12–14, 17, and 18 further herein.

The Examiner rejects claims 4 and 11 under 35 U.S.C. § 103 as unpatentable over the combined teachings of Google Earth, Chen, Oh, and Google Earth iPhone. Final Act. 20–21. Appellant presents separate arguments for claim 4. Appeal Br. 33–35. Appellant does not argue separate patentability for claim 11. With respect to this rejection, we select claim 4 as the representative claim for claim 11. Except for our ultimate decision, we do not discuss the merits of the § 103 rejection of claim 11 further herein.

The Examiner rejects claim 10 under 35 U.S.C. § 103 as unpatentable over the combined teachings of Google Earth, Chen, Oh, and Hancock.³ Final Act. 26–27. Appellant presents separate arguments for claim 10. Appeal Br. 35–37.

The Examiner rejects claims 5–9, 15, 16, 19, and 20 under 35 U.S.C. § 103 as unpatentable over the combined teachings of Google Earth, Chen, and Oh, in various combinations with other references. Final Act. 21–26. Appellant does not present separate arguments for claims 5–9, 15, 16, 19, and 20. Thus, the rejections of these claims turns on our decision as to claim 1.

C.

The Examiner rejects claims 1–3, 7–9, 11–14, 17, and 18 on the ground of nonstatutory double patenting as unpatentable over claims 1, 3, 5, 7–9 and 11 of U.S. Patent No. 8,493,408 in view of Oh. Final Act. 4–10.⁴

The Examiner rejects claim 4 on the ground of nonstatutory double patenting as unpatentable over claims 1 and 3 of U.S. Patent No. 8,493,408 in view of Oh and Google Earth. Final Act. 10–11.

The Examiner rejects claims 5, 6, 15, 16, 19, and 20 on the ground of nonstatutory double patenting as unpatentable over claims 1 and 3 of U.S. Patent No. 8,493,408 in view of Oh and Banerjee. Final Act. 11–13.

³ Misspelled as “Plancock” in the Final Action. Final Act. 26–27.

⁴ Independent claims 1, 12, and 17 are rejected on the ground of nonstatutory double patenting as being unpatentable over claim 1 of U.S. Patent No. 8,493,408 in view of Oh. Final Act. 7. Therefore, the rejection of dependent claims 2, 3, 7–9, 11, 12, 14, and 18 is similarly based on Oh.

The Examiner rejects claim 10 on the ground of nonstatutory double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 8,493,408 in view of Oh and Hancock. Final Act. 13–14.

Appellant does not present arguments contesting these nonstatutory double patenting rejections of claims 1–20.

In the Answer, the Examiner states “Every ground of rejection set forth in the [Final] Office action dated 12-15-17 from which the appeal is taken is being maintained by the examiner.” Ans. 2. In addition, the nonstatutory double patenting rejections of claims 1–20 are repeated. Ans. 3–13.

Because Appellant’s Appeal Brief does not present arguments contesting the nonstatutory double patenting rejections, we summarily affirm the Examiner’s double patenting rejections. Except for our ultimate decision, the merits of these rejections are not discussed further herein.

OPINION

We review the Examiner’s rejections in light of Appellant’s Appeal Brief and Reply Brief arguments.

A. USPTO § 101 Guidance

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101 under the *Alice/Mayo* Framework.⁵ 2019 Revised Patent Subject Matter Eligibility Guidance, 84

⁵ *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208 (2014); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012).

Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”).⁶ “All USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes) (“Step 2A, Prong One”); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).⁷

2019 Revised Guidance, 84 Fed. Reg. at 52–55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look, under Step 2B, to whether the claim:

⁶ In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance. USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

⁷ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* 2019 Revised Guidance - Section III(A)(2), 84 Fed. Reg. 54–55.

- (3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

2019 Revised Guidance, 84 Fed. Reg. at 52–56.

B. Examiner’s § 101 Rejection - *Alice/Mayo* - Part 1

2019 Revised Guidance Step 2A – Prong One

Applying the *Alice/Mayo* analysis, the Examiner determines that claim 1 recites an abstract idea:

Claim(s) 1, 12 and 17 is/are directed to a series of steps that transition map data in an animated sequence from a street view to a panoramic horizon view.

Final Act. 2.

The [claim] limitations are ***nothing more than mathematical algorithms*** that process data within a generic computing environment. There are no additional elements that may qualify as significantly more than the judicial exception. The claims simply describe the concept of gathering map images with a computer and modifying map data into a different map view. This idea is similar to the basic concept of manipulating information ***using mathematical relationships*** that courts have found to be an abstract idea. This process ***can also be achieved with pencil and paper***; and with a humans abstract thought process. The claim amounts to a “black box” described only in terms of inputs and outputs and is not specific to any particular invention by the inventor. [] *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. ___, 134 S. Ct. 2347 (2014).

Final Act. 3 (emphasis added).

C. Appellant's § 101 Arguments & Panel's Analysis
2019 Revised Guidance Step 2A – Prong 1

Appellant contends:

The Final Office Action's conclusion that the claims are directed to an abstract idea is improper because it . . . fails to meaningfully articulate and apply what the claim is directed to.

Appeal Br. 8.

Under the Revised Guidance:

To determine whether a claim recites an abstract idea in Prong One, examiners are now to: (a) identify the specific limitation(s) in the claim under examination (individually or in combination) that the examiner believes recites an abstract idea; and (b) determine whether the identified limitation(s) falls within the subject matter groupings of abstract ideas enumerated in Section I of the 2019 Revised Patent Subject Matter Eligibility Guidance.

2019 Revised Guidance, 84 Fed. Reg. at 54.

Even though the Examiner's Final Action was issued prior to the 2019 Revised Guidance, we follow the 2019 Revised Guidance in our review to determine whether the Final Action provides sufficient articulated reasoning as to why claim 1 recites an abstract idea or other patent-ineligible concept (e.g., a law of nature). That is, we ask whether the rejection adequately address both (a) and (b) *supra*.

We conclude, the § 101 rejection on appeal does not sufficiently articulate how any claim limitation(s) fall within one of the subject matter groupings of abstract ideas enumerated in Section I of the 2019 Revised Guidance. Appellant's arguments persuade us the Examiner fails to provide sufficient articulated reasoning to support a conclusion that the specific claim limitations that the Examiner labels as included in the abstract idea fall

within one of the three groupings of abstract ideas identified in the 2019 Revised Guidance or otherwise recite an abstract idea. Therefore, we do not sustain the rejection of claim 1 under 35 U.S.C. § 101.

D. § 103 – Claim 1

D. 1.

Appellant raises the following argument in contending that the Examiner errs in rejecting claim 1 under 35 U.S.C. § 103.

Appellant does not concede that Google Earth is prior art as no evidence has been presented that it qualifies as a printed publication as of the priority date. The 2007 copyright date on the document does not establish that the document was sufficiently publicly available prior to November 19, 2008.

Appeal Br. 21 n.65.

We are unpersuaded by Appellant’s argument.

[T]he examination context involves a burden-shifting framework under which the USPTO can shift the burden to the applicant to come forward with rebuttal evidence or argument to overcome a prima facie case. *Ex Parte Albert*, 18 USPQ 2d 1325 (BPAI 1984) (“[T]he Examiner met his burden of proof by setting forth the nominal publication date. . . . The Patent and Trademark Office is in no position to establish any thing beyond that. ***The burden is clearly upon appellants to disprove the prima facie publication date established by the examiner.***”); see also *In re Antor Media Corp.*, 689 F.3d 1282, 1287-89 (Fed. Cir. 2012) (establishing a burden-shifting framework regarding presumptive enablement of a prior art printed publication cited by an examiner); *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (establishing that the prima facie case is a procedural device that shifts the burden of production to the applicant and that the USPTO sets forth a prima facie case when its rejection satisfies the notice requirement of 35 U.S.C. § 132); *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993) (establishing a burden-shifting framework regarding prima facie cases of

obviousness); *In re Best*, 562 F.2d 1252, 1255 (CCPA 1977) (establishing a burden-shifting framework regarding rejections based on findings of inherency).

Ex parte Grillo-Lopez, Appeal 2018-006082 (PTAB Jan. 31, 2020) (Precedential) (emphasis added).

We determine the Google Earth copyright date is sufficient to establish the Examiner has met his burden of proof by setting forth a nominal publication date in 2007. We do not find evidence presented by Appellant that would lead us to conclude the Google Earth document was not sufficiently publicly available prior to November 19, 2008.

Separately, our review of the Google Earth document determines that it invites the reader to download and install the Google Earth application at page 1 and references Version 4.1 of Google Earth at page 3 thereof. Further evidence establishes that this version of Google Earth was the current version for four months spanning May-August 2007. *See* Google Earth 4.1 released; <https://www.zdnet.com/article/google-earth-4-1-released/May-12-2007>; “Google just recently released Google Earth 4.1”. Google Earth 4.2 Released – New Night Sky Feature; Google Earth Blog; August 22, 2007; https://www.gearthblog.com/blog/archives/2007/08/google_earth_42_rele.html.

D. 2.

Also, Appellant raises the following arguments in contending that the Examiner errs in rejecting claim 1 under 35 U.S.C. § 103.

Google Earth certainly does not disclose “an animated sequence transitioning from the two-dimensional map to the three-dimensional panorama view of the specified location” in response to user input requesting the three-dimensional panorama view of the specified location while presenting a two-

dimensional map with the field of view that is pointed downward toward the street surface.

Appeal Br. 24.

Chen does not provide “an animated sequence” or transition “from the two-dimensional map to the three-dimensional panorama view.” Chen certainly does not disclose “an animated sequence transitioning from the two-dimensional map to the three-dimensional panorama view of the specified location” in response to user input requesting the three-dimensional panorama view of the specified location while presenting a two-dimensional map with the field of view that is pointed downward toward the street surface.

Appeal Br. 24–25.

Oh certainly does not disclose the specific animated sequence including zooming into the specified location on the two-dimensional map, transitioning from the zoomed two-dimensional map to the three-dimensional panorama view with a field of view showing a street surface at the specified location, and spinning the three-dimensional panorama view such that the field of view tilts up from the street surface to a horizon in the three-dimensional panorama view of the specified location.

Appeal Br. 26.

We are not persuaded by Appellant’s arguments. First, Appellant does not address the actual reasoning of the Examiner’s rejection. Instead, Appellant attacks each of the Google Earth, Chen, and Oh references individually for lacking a teaching that the Examiner relied on a combination of Google Earth, Chen, and Oh to show. For example, the rejection does not rely on Google Earth or Chen for teaching the “three-dimensional panorama view” (Appeal Br. 24–25) aspect disputed by Appellant. *See* Final Act. 16 (finding Oh teaches, “three-dimensional panorama view of the specified location”). Further, the rejection does not rely on Oh for teaching the “tilts up” (Appeal Br. 26) aspect disputed by Appellant. *See* Final Act. 6 (finding

Google Earth teaches, “the field of view tilts up from the street surface to the horizon”). One cannot show nonobviousness by attacking references individually when the rejection is based on a combined teachings of the references. *In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *see also In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (explaining the relevant inquiry is whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the *combined teachings* of those references).

D. 3.

Further, Appellant raises the following arguments in contending that the Examiner errs in rejecting claim 1 under 35 U.S.C. § 103.

Taking the collective disclosure of Google Earth, Chen and Oh, the references still fail to teach “*an animated sequence transitioning from the two-dimensional map to the three-dimensional panorama view of the specified location*,” as none of the references mention transitioning from the two-dimensional map to the three-dimensional panorama view of the specified location. Likewise, the references fail to teach an “*animated sequence presented in response to the user input includes zooming into the specified location on the two-dimensional map, transitioning from the zoomed two-dimensional map to the three-dimensional panorama view with a field of view showing a street surface at the specified location, and spinning the three-dimensional panorama view such that the field of view tilts up from the street surface to a horizon in the three-dimensional panorama view of the specified location*” as none of the references discloses such a sequence in response to a user input.

Appeal Br. 26 (emphasis added).

We are not persuaded by Appellant’s argument. Appellant merely recites the particular language of claim 1 and asserts none of the cited prior art references disclose the claim limitations. Without more, this fails to

constitute an argument on the merits. *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011).

D. 4.

Furthermore, Appellant raises the following arguments in contending that the Examiner errs in rejecting claim 1 under 35 U.S.C. § 103.

To establish a *prima facie* case of obviousness under M.P.E.P. §§ 2141-43, Office personnel are required to provide a reasoned explanation as to why the invention claimed would have been obvious to a person of ordinary skill in the art at the time of the invention. *See* M.P.E.P. § 2143; see also M.P.E.P. § 2142.79 However, the Final Office Action’s stated explanation does not provide such a reasoned explanation to support its conclusion.

Appeal Br. 27.

It is unclear from this analysis whether the Final Office Action intends to invoke one of, both of, or a mixture of the exemplary rationales of MPEP §§ 2143(I)(E) and 2143(I)(G), but the requirements are not met.

Appeal Br. 28.

Appellant quotes the Examiner’s reasoning:

One of ordinary skill in the art could have a reasonable expectation of success to combine two like systems where both systems process animated data. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the invention of Google Earth with the features of *panoramic images* as taught by Chen. The motivation would have been panoramic images are *extremely well known* in the art and would have been obvious to at least try *in* the “horizon view” of Google Earth.

Appeal Br. 27 (quoting the Final Action at page 16, lines 1–8) (emphasis added).

One of ordinary skill in the art could have a reasonable expectation of success to combine two like systems where both

systems use maps. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify the invention of Google Earth as modified by Chen with the features of 2D to 3D transition as taught by Oh. The motivation would have been a viewer receives a *sense of the connectedness* of the scenes from the transitional images (abstract).

Appeal Br. 28 (quoting the Final Action at page 17, line 16 through page 18, line 2) (emphasis added).

Appellant then argues that the Examiner’s “obvious to try rationale” and “teaching, suggestion, or motivation rationale” (i.e., “connectedness”) are flawed (*id.* at 28–29) and “the Final Office Action simply appears to use hindsight” (*id.* at 29–31).

We are not persuaded by Appellant’s arguments. First, although Appellant reads the Examiner’s phrase “obvious to try in” as an obvious to try rationale, we read the Examiner’s combination of the teachings of Google Earth and Chen as one of mere substitution. We agree with the Examiner that a “panoramic image” (taught by Chen) would have been obvious to try *in place of* (substituted for) the “horizon view” taught by Google Earth.

[W]hen a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.

KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 416 (2007)

Second, we disagree with Appellant’s argument that the Examiner errs in modifying the combined teachings of Google Earth and Chen using the teachings of Oh based on the reasoned motivation that “a viewer receives a sense of connectedness of the scenes from the transitional images.” Oh, Abstract. Appellant repeatedly points out the importance of a user’s

“mental” connection of the starting and ending views (images). Spec. ¶¶ 67, 70, 73. This is exactly the issue addressed by Oh’s inter-scene transition method. “Assuming a simple case of two panoramic scenes, even when the acquisition positions are very close, it is often difficult for the viewer to mentally connect the two scenes.” Oh ¶ 5.

Third, we have reviewed the rejection for improper hindsight and find none. Contrary to Appellant’s hindsight argument, we conclude the Examiner’s rejection of claim 1 takes into account only knowledge that was within the level of ordinary skill in the art at the time the invention was made. *See In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971).

E. § 103 – Claim 3

Appellant raises the following arguments in contending that the Examiner errs in rejecting claim 3 under 35 U.S.C. § 103.

The Final Office Action asserts that it would be obvious to a person of ordinary skill in the art to manually select the sequence of operations, and—relying on *In re Venner*, 120 USPQ 192—that the claims merely automate manual activity which has accomplished the same result involving only routine skill in the art. The Final Office Action’s reliance on *In re Venner* is mistaken.

First, *as discussed above*, none of the references, alone or in any combination, establish the sequence of operations. Thus, even though a person of ordinary skill in the art might be able to manually select multiple navigation buttons in Google Earth to perform claimed the animated sequence, the animated sequence of claim 1 is not obvious by any means (nor would it result in transitioning from two-dimensional map to a three-dimensional panoramic view).

[Second, g]iven that the claimed animated sequence is not obvious and the claim is not replacing a manual activity which has accomplished the same result, *In re Venner is inapplicable*.

Appeal Br. 32 (emphasis added).

We are not persuaded by Appellant’s argument. As to Appellant’s “First” argument, for the reasons discussed *supra*, we find Appellant’s arguments unpersuasive with respect to claim 1.

As to the second argument, we find Examiner’s reliance on *In re Venner* to be unnecessary. The Examiner cites to paragraphs 69–73 of Oh as teaching “a method provides a transition, in a computer system having a display that simulates motion between a first scene and a second scene. The method includes receiving an indication of a viewpoint in the second scene towards which a transition is to be made.” We conclude that the claimed “animated sequence is presented . . .” is taught by Oh as simulates motion at paragraph 71.

To simulate motion, “transitional objects” are created. Transitional scenes incorporating these transitional objects are displayed to simulate motion from the first scene to the second scene.

Oh ¶ 71.

F. § 103 – Claim 4

F. 1.

Appellant raises the following argument in contending that the Examiner errs in rejecting claim 4 under 35 U.S.C. § 103.

The Final Office Action (page 20), relying on Google Earth page 8, suggests that Google Earth (in view of Chen) “teaches presenting an orientation overlay . . . where the orientation overlay indicates a direction and an angular extent of the field of view.” Page 8, however, discloses navigation controls which do not indicate the direction and the angular extent of the field of view.

Appeal Br. 34.

As to Appellant's assertion, we are not persuaded. We agree with the Examiner that moving the "tilt slider 1" ("[m]ove the slider") and rotating the "navigation ring 6" ("drag the rotation ring") indicates a direction and an angular extent of the field of view.

F. 2.

Also, Appellant raises the following argument in contending that the Examiner errs in rejecting claim 4 under 35 U.S.C. § 103.

[The] "iPhone" and its "features of orientation" have not been qualified as prior art. These terms are not explained in any detail and *it is unclear under what basis the Final Office Action intended to qualify as prior art* (e.g., a patent application, printed publication, public use, on sale, etc.). Thus, without further evidence, "iPhone" and its "features of orientation" have not been qualified as prior art.

Appeal Br. 34 (emphasis added).

As to Appellant's argument, we are not persuaded. The Examiner finds:

Google Earth as modified by Chen and Oh fails to teach the map and the panorama are both displayed in a portrait orientation (*It is well known the iPhone can operate in either the landscape or portrait orientation*), and the method further comprises: upon completion of the animated sequence, receiving a second user input rotating the display to a landscape orientation; (*user rotates the iPhone to landscape orientation*).

Final Act. 20 (emphases added). Thus, we understand the Examiner finds that a person of ordinary skill in the art would understand the operation of an iPhone. As the MPEP explains,

Any obviousness rejection should include, either explicitly or implicitly in view of the prior art applied, an indication of the level of ordinary skill. A finding as to the level of ordinary skill

may be used as a partial basis for a resolution of the issue of obviousness.

...

“A person of ordinary skill in the art is also a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 421, 82 USPQ2d at 1397. “[I]n many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.” *Id.* at 420, 82 USPQ2d at 1397. Office personnel may also take into account “the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 418, 82 USPQ2d at 1396.

In addition to the factors above, Office personnel may rely on their own technical expertise to describe the knowledge and skills of a person of ordinary skill in the art. The Federal Circuit has stated that examiners and administrative patent judges on the Board are “persons of scientific competence in the fields in which they work” and that their findings and that their findings are “informed by their scientific knowledge, as to the meaning of prior art references to persons of ordinary skill in the art.” *In re Berg*, 320 F.3d 1310, 1315, 65 USPQ2d 2003, 2007 (Fed. Cir. 2003).

MPEP § 2141(II)(C). Thus, we are persuaded that the Examiner’s findings are sufficient to support this rejection.

Here the Applicant is Apple, Inc. Thus, Applicant is well positioned to respond to the Examiner’s determination that the Apple “iPhone” and its “features of orientation” are prior art as to this application on appeal. See for example, Forstall et al., US 2008/0165144 A1, published July 10, 2008, entitled “Portrait-Landscape Rotation Heuristics for a Portable Multifunction Device” and assigned to Apple Inc.

G. § 103 – Claim 10

Appellant raises the following argument in contending that the Examiner errs in rejecting claim 10 under 35 U.S.C. § 103.

The solution of Hancock pointed to in the Final Office Action-using dead-reckoning and the visual gyroscope when a map of the roadway is not available-has nothing to do with the user interface handling of missing data of panoramic views.

Appeal Br. 37.

As articulated by the Federal Circuit, the Examiner’s burden of proving non-patentability is by a preponderance of the evidence. *See In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) (“preponderance of the evidence is the standard that must be met by the PTO in making rejections”). “A rejection based on section 103 clearly must rest on a factual basis[.]” *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). “The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.” *Id.* We conclude the Examiner’s analysis fails to meet this standard because the rejection does not adequately explain the Examiner’s findings of fact.

Particularly, we agree with Appellant that the language of claim 10 requires “a placeholder [view] in place of [an unavailable] view,” and we disagree with the Examiner’s reasoning that Hancock alone without more is sufficient to show the disputed claim limitation. We conclude, consistent with Appellant’s arguments that there is insufficient articulated reasoning to support the Examiner’s finding that Hancock discloses the argued claim limitation.

Therefore, we conclude that there is insufficient articulated reasoning to support the Examiner's final conclusion that claim 10 would have been obvious to one of ordinary skill in the art at the time of Appellant's invention.

CONCLUSION

Appellant has shown the Examiner erred in rejecting claims 1, 12, and 17 under 35 U.S.C. § 101, as being directed to patent-ineligible subject matter.

Appellant has shown the Examiner erred in rejecting claim 10 as being unpatentable under 35 U.S.C. § 103.

The Examiner has not erred in rejecting claims 1–9 and 11–20 as being unpatentable under 35 U.S.C. § 103.

The Examiner's rejection of claims 1, 12, and 17 as patent ineligible under 35 U.S.C. § 101 is **reversed**.

The Examiner's rejection of claim 10 as being unpatentable under 35 U.S.C. § 103 is **reversed**.

The Examiner's rejections of claims 1–9 and 11–20 as being unpatentable under 35 U.S.C. § 103 are **affirmed**.

The Examiner's provisional rejection of claims 1–20 as being unpatentable on the ground of nonstatutory double patenting is **affirmed**.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 12, 17	101	Eligibility		1, 12, 17
1-20		Non-statutory Double Patenting	1-20	
1-20	103	Google Earth User Guide, Chen, Oh, the iPhone, Hancock,	1-9, 11-20	10
Overall Outcome			1-20	

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