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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MATTHEW JOHN LAWRENSEN, TILL BURKERT, and  
JULIAN CHARLES NOLAN

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Appeal 2019-002015  
Application 14/890,554  
Technology Center 2600

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BEFORE ERIC B. CHEN, GREGG I. ANDERSON, and  
MICHAEL M. BARRY, *Administrative Patent Judges*.

ANDERSON, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

## INTRODUCTION

Appellant has submitted a “Response Reopening Prosecution under 37 CFR 41.39 (b),” dated July 21, 2020. We treat the response as a Request for Rehearing (“Request,” “Req. Reh’g”). *See* Office communication dated August 3, 2020 (“In the response submitted, Appellant did not submit an appropriate amendment or new evidence as to any claims rejected by the Board and therefore the response will be treated as a request for rehearing under 37 CFR 41.50(b)(2) and MPEP 1214.01.”).

The Request is directed to our Decision entered May 22, 2020 (“Decision,” “Dec.”). Req. Reh’g 9. In the Decision, we reversed the Examiner's final rejection of claims 32–37, 46–51, and 60–62 and issued a new ground of rejection of claims 32, 46, 61, and 62 under 35 U.S.C. § 103(a) as being unpatentable over Prasad (US 8,769,431 B1; July 1, 2014) and Terrero (US 2015/0234581 A1; Aug. 20, 2015). Dec. 5–8.

This Decision on the Request incorporates the earlier Decision. *See* 37 C.F.R. § 41.52(a)(1). We address the new arguments made in the Request. *See* 37 C.F.R. § 41.52(a)(3). In light of Appellant’s new arguments, we have granted Appellant’s request to the extent we have reconsidered our original Decision, but we decline to modify the Decision.

## ANALYSIS

The claims are to an electronic device having a touchscreen. The electronic device is used “while holding . . . in the hand” associated with “a digit to make a touch input to a touch screen.” Appeal Br. 18 (Claims Appendix, claim 32). The Request arguments relate primarily to claim 32’s recitation of “detecting that a user is reaching with a digit to make a touch input . . . to bring an estimated touch target within a defined reach.” *See*

Req. Reh’g 10 (“*None of the operations described by Prasad for positioning and sizing the SHUZ involve detecting that the user is reaching to make a touch input to an estimated touch target.*”). Appellant’s arguments are addressed below.

*1. Prasad does not disclose “reaching.”*

Appellant argues that Prasad’s teaching of “tracking” a user’s thumb is “not the same as or equivalent to” claim 32, which recites, in pertinent part

detecting that a user is *reaching with a digit* to make a touch input to the touchscreen by detecting a movement or orientation of the electronic device that is characteristic of the user extending the digit in a reaching motion with respect to the touchscreen while holding the electronic device in the hand associated with the digit, in conjunction with detecting that the digit of the user is in a reaching orientation with respect to the touchscreen.

Req. Reh’g 9–10 (citing Prasad 16:14) (emphasis added). Appellant characterizes Prasad as teaching “software applications putting their touch controls in a single-handed usability zone (SHUZ).”

Appellant explains Prasad’s single-handed operation of a touch screen with a user’s thumb is accomplished by sizing the screen, orienting it in landscape or portrait, and detecting which hand is holding the device. Req. Reh’g 10 (citing Prasad, Figs. 8D (step 1040), 8K, 21:3–21, 25:1–67, 26:1, 17). Based on the preceding, Appellant argues none of the operations of Prasad involve “*detecting that the user is reaching to make a touch input to an estimated touch target.*” *Id.* We disagree.

There is no dispute that in Prasad the user’s thumb is the digit used to touch a touchscreen. *See Prasad, Abs.* (“mobile electronic device having a

touchscreen for receiving user thumb input actions”). Appellant acknowledges that “Prasad may define the size of the SHUZ based on a default or typical thumb size and range of motion.” Req. Reh’g 10 (citing Prasad, 21:3–21). Prasad’s column 21 describes “a range of 1.5 to 4.5 for the length and girth of a thumb would likely cover most likely users.” Prasad, 21:5–7; *see also* Req. Reh’g 12 (citing Prasad column 21 generally).

The broadest reasonable interpretation of reach of a digit would include a range for that digit. Even more directly responsive to Appellant’s “reaching” argument is Prasad’s column 26, also cited by Appellant at page 12 of the Request. In column 26, Prasad explains that the SHUZ boundary as “slightly larger than the *reach* of the thumb.” Prasad, 26:16–17 (emphasis added).

For the above reasons, Appellant’s first argument is not persuasive.

2. *Prasad’s disclosure of estimating or tracking thumb position does not teach “detecting that a user is reaching.”*

Appellant next argues “the ‘estimating’ described by Prasad does not involve anything that can be construed as reach detection.” Req. Reh’g 10. Appellant argues

Tracking the actual location of the user’s thumb on the touchscreen is not the same as or equivalent to “detecting that a user is reaching with a digit to make a touch input to the touchscreen [] while holding the electronic device in the hand associated with the digit, in conjunction with detecting that the digit of the user is in a reaching orientation with respect to the touchscreen.”

*Id.* at 11. According to Appellant, Prasad only describes “tracking the location of the user’s thumb on the touchscreen and positioning the SHUZ in close proximity to the current location.” *Id.* Appellant argues the preceding

is neither the same nor equivalent to “detecting that a user is reaching with a digit to make a touch input to the touchscreen.” *Id.*

First, as discussed above Prasad discloses both “reaching” and “detection” without any need for estimating. Second, the estimation disclosed by Prasad is “based on an estimation of the location of the thumb” and is used to “automatically and intelligently” locate the SHUZ in the appropriate location. Prasad, 6:19–27. The SHUZ is created to be “naturally and comfortably covered by the thumb of the hand” holding the device. *Id.* at 3:39–41; *see also* Dec. 5–8 (citing preceding disclosures from Prasad).

The “central idea” of Prasad is that “the screen of the device simply does not exist beyond the *reach of the thumb* in which the device is held.” *Id.* at 3:43–45 (emphasis added). Based on the preceding disclosures of Prasad, a person of ordinary skill would have understood that Prasad teaches establishing an area on a touchscreen device for touch input by detecting the reach of a digit.

We are not persuaded that there is a distinction between “tracking the location” and “detecting.” *See* Req. Reh’g 11. Appellant does not explain how “tracking the location” of a digit differs from “detecting” a digit. Indeed, Prasad equates the two. Prasad, Fig. 8A (341 (“thumb detection and tracking”)), *see also id.* at 6:15–16 (“current *detected* thumb location is *tracked* on the touchscreen”) (emphasis added).

Appellant provides no evidence in support of the foregoing argument. Mere attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir.

1984). Attorney argument is not evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Nor can such argument take the place of evidence lacking in the record. *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977).

For the above reasons, Appellant’s second argument is not persuasive.

3. *Terrero does not teach an “estimated touch target.”*

Appellant’s arguments that Terrero does not teach “an estimated touch target” are not persuasive. Req. Reh’g 13. We agree with the Examiner that Figure 3 of Terrero and related description teach “temporarily adapting a screen” to “bring an estimated touch target (114<sub>1</sub>; Fig. 3) within a defined reach extent (116; Fig. 3).” Final Act. 2 (citing Terrero Fig. 3 (114)). With respect to object 114 of Figure 3, the user interface of Figure 3 can be resized to allow the user to select an object 114, which is the target. Terrero ¶ 41.

For the above reasons, Appellant’s third argument is not persuasive.

## DECISION

For the reasons above, we are not persuaded that our Decision misapprehended or overlooked any point of fact or law advanced by Appellants when issuing new grounds for rejection of claims 32, 46, 61, and 62 under 35 U.S.C. § 103(a) as being unpatentable over Prasad and Terrero.

We therefore decline to modify our original Decision entered May 22, 2020.

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REHEARING DENIED

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)(iv).