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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MIRON VRANJES, JESSE CLAY SATTERFIELD,
MATTHEW ISAAC WORLEY, CHAITANYA SAREEN,
NILS ANDERS SUNDELIN, RICHIE FANG, ALICE STEINGLASS,
ROBERT JAMES JARRETT, and KAIKAI WANG

Appeal 2019-002367
Application 13/862,481
Technology Center 2100

Before CARL W. WHITEHEAD JR., MICHAEL J. STRAUSS, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, *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 1–23, all the claims under consideration. 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(a). Appellant identifies the real party in interest as Microsoft Technology Licensing, LLC. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Invention

A “computer operating system does not typically give the user input into the initial placement of [a] launched application window.” Spec. ¶ 1.² Appellant’s claimed subject matter relates to “providing a deferred placement prompt when an application window is launched.” *Id.* at ¶ 2. Using “the deferred placement prompt, the user can provide a directional placement instruction (e.g., a ‘drag’ of the prompt, a selection of a screen region, a keyboard input) to indicate the user’s preference for placement of the launched window” thereby allowing “the user to provide placement input before the window is presented to the user.” *Id.* at ¶¶ 1, 2.

Exemplary Claim

Claims 1, 9, and 17 are independent. Claim 1, reproduced below with certain limitations at issue italicized, exemplifies the claimed subject matter:

1. A method comprising:

detecting an application launch event indicating a user selection to launch an application window of a first application;
and

presenting a deferred placement prompt in a user interface responsive to the detection, the deferred placement prompt being presented concurrently with an application window of a second different application within the user interface and being associated with presentation of the application window of the first application into the user interface;

² We refer to: (1) the originally filed Specification filed April 15, 2013 (“Spec.”); (2) the Final Office Action mailed June 1, 2018 (“Final Act.”); (3) the Appeal Brief filed November 8, 2018 (“Appeal Br.”); (4) the Examiner’s Answer mailed December 13, 2018 (“Ans.”); and (5) the Reply Brief filed January 28, 2019 (“Reply Br.”).

receiving a directional placement instruction associated with the deferred placement prompt, the directional placement instruction including an instruction to an operating system indicating a placement of the application window of the first application relative to the application window of the second different application within the user interface; and

initiating presentation of the application window in the user interface based on the directional placement instruction after the directional placement instruction is completed.

Appeal Br. 20 (§ VIII. Claims Appendix).

REFERENCES

The Examiner relies on the following prior art references:

Name	Number / Title	Date
Tsuruoka	US 2011/0154248 A1	June 23, 2011
Ricci	US 2013/0241720 A1	Sept. 19, 2013
Shiplacoff	US 2013/0346922 A1	Dec. 26, 2013
Raghu	US 8,633,913 B1	Jan 21, 2014
Vonshak	US 2014/0096049 A1	Apr. 3, 2014

REJECTIONS

The Examiner makes the following rejections:

Claims	Statute	Basis	Final Act.
1-4, 6-11, 13, 15-22	§ 103	Tsuruoka, Raghu, Vonshak	3
5, 12	§ 103	Tsuruoka, Raghu, Vonshak, Shiplacoff	15
14, 23	§ 103	Tsuruoka, Raghu, Vonshak, Ricci	16

OPINION

We review the appealed rejections for error based upon the issues identified by Appellant and in light of Appellant's arguments and evidence. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Arguments not made are waived. See 37 C.F.R. § 41.37(c)(1)(iv) (2018).

We disagree with Appellant that the Examiner errs and adopt as our own the findings and reasons set forth by the Examiner to the extent consistent with our analysis herein. Final Act. 3–6; Ans. 3–19. We add the following primarily for emphasis.

Claim 1 recites “receiving a directional placement instruction . . . indicating a placement of the application window of the first application relative to the application window of the second different application within the user interface.” Appeal Br. 35. The Examiner relies primarily on Raghu to teach or suggest this limitation. Final Act. 4–5 (citing Raghu 8:26–29 [sic] [recte 7:26–29], 3: 65–66, and Fig. 2C).

Figure 2C of Raghu is reproduced below with annotations added.

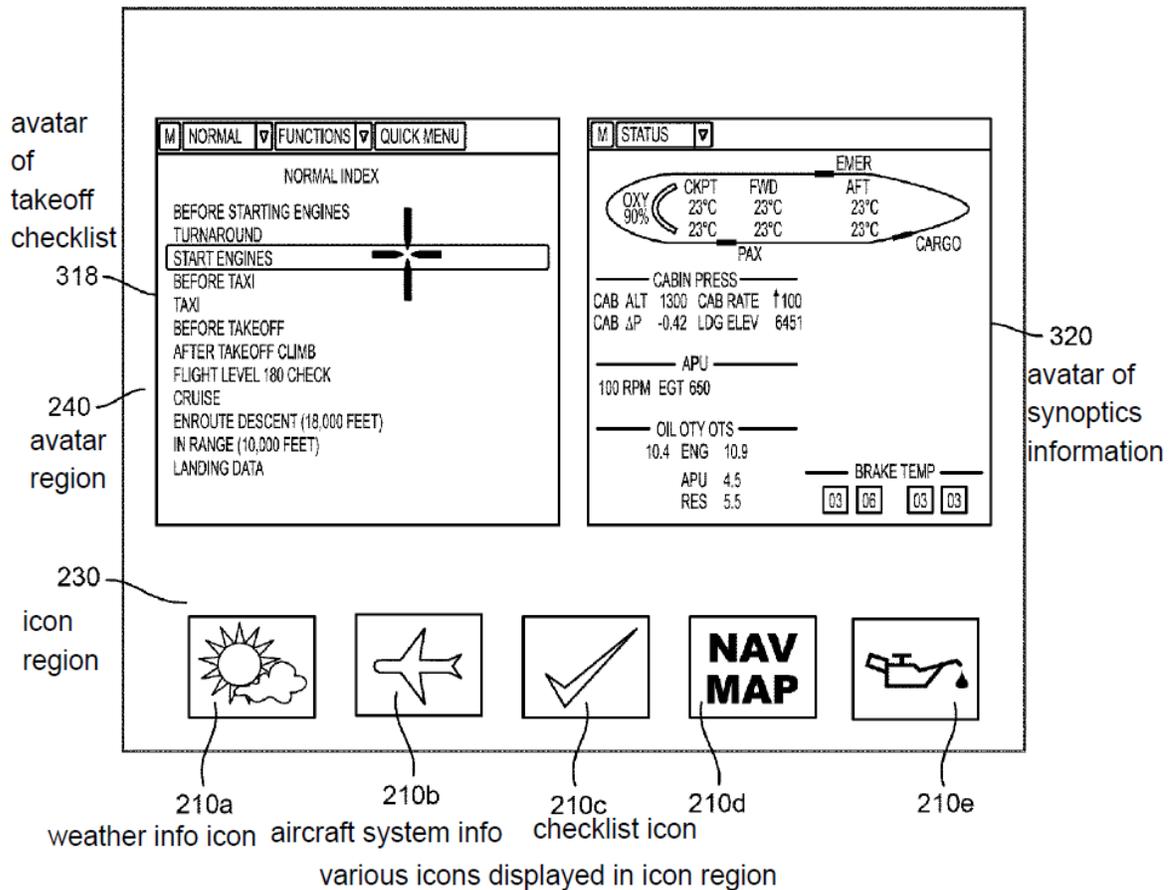


FIG. 2C

Figure 2C of Raghu depicts an avionics data display interface that displays icons in icon region 230 and avatars in avatar region 240. Raghu 6:18–37. “Icons are a symbolic representation of the aviation data. Raghu 6:21–23. An avatar is a scaled representation of a full-format image displaying live data obtained from different avionics systems and modules. Raghu 3:32–57. “For example, an avatar may display Synthetic Vision System (SVS) 302, primary flight display 304, topographical map 306, chart 308, airport map 310, Integrated Control Display Unit (ICDU) 312, radio tuning 314, Engine Indicating and Crew Alert System (EICAS) 316, checklist 318, synoptics information 320, and weather radar 322.” Raghu 6:38–46. Dragging an icon from icon region 230 to avatar region 240 causes an avatar corresponding to the icon to display in the avatar region. *See* Raghu 7:26–29 (“Dragging from an icon location 210 to an avatar location 212 causes the information symbolically represented by the icon to become scaled representation of the live data displayed in the selected avatar location.”). The Examiner relies on the dragging of an icon in the icon region to a particular location in the avatar region to teach or suggest the limitation at issue because the dragging of the icon causes an avatar to display at a particular location in the avatar region concurrently with another displayed application window. Final Act. 4.

Appellant argues that Raghu’s avatars are not associated with *different applications*. *See* Appeal Br. 8 (“Rather than allow for selective placement of windows associated with different applications, Raghu’s aviation display system includes features that allow the user to ‘switch between full-format images of live data or scaled-representations of the live data and an icon symbolic of live data.’”).

The Examiner, in turn, finds that “Raghu suggests that the windows [(avatars)] are of different applications.” Ans. 10 (citing Raghu 11:20–30, 9:45–55).

Appellant’s argument is unpersuasive because Appellant fails to establish that the Examiner’s interpretation of “application window,” as recited in claim 1, is unreasonably broad or inconsistent with Appellant’s Specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Appellant has not shown that the Specification defines expressly the term “application window,” nor does Appellant offer any other definition for the term. Rather, the Specification describes the term in non-limiting language by describing an “application window” in open-ended language as including “without limitation a window of the operating system components, an operating system utility, and a special purpose application program (e.g., a Web browser program, a word processing program, a spreadsheet program).” Spec. ¶ 11. In view of this open-ended description, Appellant fails to set forth any disclosure of an application in the Specification that is inconsistent with the Examiner’s interpretation. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Appellant, therefore, fails to demonstrate that the Examiner’s interpretation of “application window” as encompassing Raghu’s avatar window is inconsistent with Appellant’s Specification or is otherwise unreasonable. *In re Smith Int’l, Inc.*, 871 F.3d 1375, 1382–83 (Fed. Cir. 2017). As the Examiner determines (Ans. 10), in Raghu, different avatars receive data from different modules and systems that perform different functions, each of which different modules/systems can be reasonably interpreted as an application (Raghu 6:41–46).

Claim 1 further recites “presenting a deferred placement prompt in a user interface responsive to the detection, the deferred placement prompt being presented [(1)] concurrently with an application window of a second different application within the user interface and [(2)] being associated with presentation of the application window of the first application into the user interface.”

The Examiner finds both Tsuruoka and Raghu generally teach a deferred placement prompt. Final Act. 3–4; Ans. 13. More specifically, the Examiner finds Tsuruoka’s deferred placement prompt teaches or suggests limitation (2) and Raghu’s deferred placement prompt teaches or suggests limitation (1). Final Act. 3–5 (citing Tsuruoka ¶ 51, Raghu 8:34–38, 8:26–29). The Examiner determines that it would have been obvious,

to modify the method of Tsuruoka to allow the deferred placement prompt to be used with concurrently displaying applications as taught by Raghu. One would have been motivated to make such a combination so that the deferred placement prompt window displaying mechanism could be used more than one time, allowing any window use the same directional display mechanism regardless of displayed windows and thus resulting in greater ease of use for the user.

Final Act. 5.

Appellant argues that the Examiner cannot rely on two different references to teach different aspects of the deferred placement prompt. Appeal Br. 11–12. According to Appellant, “the Examiner impermissibly interprets the term ‘deferred placement prompt’ inconsistently” because the Examiner relies on Raghu to teach the first claimed aspect of the limitation, (1) and Tsuruoka to teach the second claimed aspect of the limitation, (2). *Id.* (emphasis omitted). Appellant further argues “the Office has shown

no evidence whatsoever from the cited references of knowledge of the skilled artisan suggesting any need for a prompt that provides such functionality” and therefore “Applicant’s specification appears to be the exclusive source that provides motivation” and it “logically follows that the motivation to combine Raghu and Tsuruoka been improperly gleaned from Applicant’s own specification and . . . is an exercise of impermissible hindsight.” *Id.* at 14–15.

According to the Examiner, (1) “[t]here is nothing improper with the office actions reliance on the teachings of multiple references to find specific limitations would have been obvious to a person of ordinary skill” and (2) Appellant “has not identified any knowledge relied upon by the Examiner that was gleaned only from Appellant’s disclosure and that was not otherwise within the level of ordinary skill in the art at the time of invention.” Ans. 13–14.

Appellant’s arguments that the Examiner (1) cannot rely on the combined teachings of Tsuruoka and Raghu and (2) must rely exclusively on the cited references for the motivation to combine are misplaced. Appeal Br. 14–15. The Supreme Court has rejected the rigid application of the “teaching, suggestion, or motivation” test for obviousness. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 422 (2007). Instead, the Court held that rather than being bound by the express teachings of the prior art, the Examiner “can consider the inferences and creative steps a person of ordinary skill in the art would employ” and that “[c]ommon sense teaches . . . that familiar items may have obvious uses beyond their primary purposes, and in 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.

The Examiner has provided reasoning to show that combining certain teachings of Tsuruoka and Raghu to arrive at the claimed deferred placement prompt was “well within the grasp of a person of ordinary skill in the relevant art and that the benefit of doing so would be obvious.” *Id.* at 400. Appellant fails to persuasively rebut the Examiner’s reasoning.

For the reasons discussed, Appellant has not persuaded us of reversible error in the Examiner’s obviousness rejection of independent claim 1. Accordingly, we sustain the Examiner’s rejection of that claim, as well as the rejection of independent claims 9 and 17, and dependent claims 2–8, 10–16, and 18–23, which Appellant does not argue separately with particularity. Appeal Br. 16–18.

CONCLUSION

We affirm the Examiner’s decision to reject claims 1–23 under 35 U.S.C. § 103.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–4, 6–11, 13, 15–22	103	Tsuruoka, Raghu, Vonshak	1–4, 6–11, 13, 15–22	
5, 12	103	Tsuruoka, Raghu, Vonshak, Shiplacoff	5, 12	
14, 23		Tsuruoka, Raghu, Vonshak, Ricci	14, 23	
Overall Outcome			1–23	

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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