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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WALTER NISTICO, JAN HOFFMANN, and EBERHARD SCHMIDT

Appeal 2019-002929
Application 14/005,314
Technology Center 2400

Before CAROLYN D. THOMAS, JEREMY J. CURCURI, and GREGG I. ANDERSON, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 26–28, 30–36, and 38–45. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

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[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 Apple, Inc. Appeal Br. 1.

The present invention relates generally to a spectacle device for capturing at least one parameter of at least one eye of a test person. *See* Spec., Abstract.

Claim 26 is illustrative:

> 26. A head-mountable device comprising:
> a frame to mount the head-mountable device to a head of a user;
> an eye tracker that optically captures a gaze parameter of an eye of the user when the eye is in an optical capture range of the eye tracker; and
> a scene capturing assembly with an optical capture range that at least partly corresponds to an optical capture range of the eye, the scene capturing assembly including a first scene camera associated with a first field of view and a second scene camera associated with a second field of view that is different from the first field of view, the scene capturing assembly:
> selects one of the first scene camera and the second scene camera based on the gaze parameter; and
> outputs data that corresponds to the selected one of the first scene camera and the second scene camera.

Appellant appeals the following rejections:

R1. Claims 26–28, 32–36, and 40–44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mann (US 6,307,526 B1, Oct. 23, 2001) and Stafford (US 2011/0298829 A1, Dec. 8, 2011). Final Act. 2–6.

R2. Claims 30, 31, 38, 39, and 45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mann, Stafford, and Blomqvist (US 2008/0297474 A1, Dec. 4, 2008). Final Act. 6–8.

We review 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).

ANALYSIS

Claims 26, 30, 32–34, 38, 40–42, and 45

Appellant contends that "Mann fails to disclose two scene cameras with two different fields of view. Rather, Mann explicitly teaches two cameras that have 'exactly the same field of view' . . . Mann does not additionally disclose embodiment in which this is not true." Appeal Br. 4. Appellant further contends that "Stafford only teaches a single 'rear facing . . . camera.'" Appeal Br. 5. In other words, Appellant contends that neither Mann nor Stafford teaches or suggests two cameras with first and second fields of view, respectively, that are different. We disagree with Appellant.

The Examiner finds that Mann discloses "a second narrow-angle camera is different from the first wide-angle camera in that the second camera has been fitted with a lens of longer focal length." Ans. 11. Specifically, Mann discloses that the "second camera is one which has been fitted with a lens of longer focal length . . . The wide-camera **110** faces forward looking through a beamsplitter **130**. The narrow-camera **120** faces sideways looking through the beamsplitter. . . . and the optical axes of the two cameras are typically at 90 degree angles to each other." Mann 11:41–49.

We find that Mann's two cameras, having optical axes at 90 degree angles to each other and having wide versus narrow angles, clearly suggest to one of ordinary skill in the art "fields of view" that are different. Thus, we find unavailing Appellant's aforementioned contention that "Mann fails to disclose two scene cameras with two different fields of view," given that one of Mann's camera is a "wide-angle camera" and the other is a "narrow-angle camera." The fact that Mann's camera *may* "share a common view-

point" (*see* Mann 11:49–51) does not negate the fact that the fields of view are different in other ways, i.e., one narrower than the other.

Regarding Stafford's single camera argument noted *supra*, the Examiner concludes that "selecting and outputting a field of view from among two different fields of view associated with a single camera is not so different from selecting a camera from one of two cameras each associated with a different field of view." Final Act. 4–5. The Examiner further concludes:

> Since the core crux of the inventive concept is selecting and outputting between one of two fields of views based on an eye tracking parameter, whether a single camera is associated with the two fields of views or two cameras as associated with the two fields of views, the end result would still predictably be the same and any differences in implementation would simply be a matter of design choice.

Id. at 5. We agree with the Examiner.

Both Mann and Stafford teach two different fields of view, Mann using two cameras and Stafford using a single camera. Mann's fields of view were discussed above. We agree with the Examiner that Stafford's different fields of view include a portrait and a landscape view. *See* Ans. 11; *see also* Stafford ¶ 79. This is consistent with Appellant's Specification which discloses "[t]he field of view may change from a portrait orientation to a landscape orientation or vice versa." *See* Spec. 4:27–28; *see also* claim 27.

We now analyze whether the cited prior art teach "selects one of the first scene camera and the second scene camera *based on the gaze parameter*." Here, the Examiner relies upon Stafford to teach selecting a field of view based on a gaze parameter. *See* Final Act. 4. For example,

Stafford teaches selecting an orientation of a scene on a display in response to an eye tracker capturing a gaze parameter. *See* Stafford ("FIG. 4 illustrates the process of selecting view orientation based on player position . . . Facial recognition software . . . can detect one or more features of the face . . . For example, an algorithm may analyze the relative position, size, or shape of the eyes") (¶ 45). We find that at least Stafford's aforementioned teaching of a "position of the eyes" illustrate a "gaze parameter" consistent with Appellant's Specification. For example, Appellant's Specification similarly discloses that "the at least one captured parameter concerns an orientation and/or *a position* and/or an eyelid closure and/or a pupil diameter . . . of the at least one eye." Spec. 6:24–27 (emphasis added).

As such, we find unavailing Appellant's contention that "[w]hereas Stafford discloses selecting an 'orientation of a view shown on a display of a portable device' based on the 'position of the eyes in relation to the device,' Stafford fails to teach selecting a field of view of a scene camera based on the gaze of the user" (*see* Appeal Br. 6), given that the "position of the eyes" is clearly illustrated as a gaze parameter in Appellant's Specification. As such, we agree with the Examiner that in Stafford "some gaze parameter of a person is clearly involved with regards to selecting a field of view of the camera." *See* Ans. 12.

Accordingly, we sustain the Examiner's rejection of representative claim 26. Appellant's arguments regarding the Examiner's rejection of independent claims 34 and 42 rely on the same arguments as for claim 26, and Appellant does not argue separate patentability for the dependent claims,

except as noted below. *See* Appeal Br. 6–7. We, therefore, also sustain the Examiner's rejection of claims 30, 32, 33, 38, 40, 41, and 45.

Dependent claims 27, 31, 35, 39, and 43

Appellant contends that "Mann fails to disclose that 'the first field of view includes a portrait view and the second field of view includes a landscape view." Appeal Br. 6.

The Examiner "points out that Stafford discloses portrait and landscape modes/views with regard to the changing positions of the eyes of the person . . . Stafford discloses the limitation that Mann does not." Ans. 14. We agree with the Examiner.

Appellant's argument against Mann separately from Stafford does not show error in the combination made by the Examiner. One cannot show non-obviousness by attacking references individually, where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425–26 (CCPA 1981) ("The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.") (citations omitted).

Accordingly, we sustain the Examiner's rejection of claims 27, 31, 35, 39, and 43.

Dependent claims 28, 36, and 44

Appellant contends "Stafford fails to disclose 'capturing the gaze parameter comprises capturing a gaze *direction* parameter.'" Appeal Br. 7.

In response, the Examiner finds, and we agree, that Stafford's ability to detect the "position" of the eyes "clearly involves a gaze direction." *See* Ans. 15.

For example, Stafford discloses that "the process of selecting view orientation [is] based on player position" (¶ 45), and "objects on or around the user's head may be used to detect orientation. . . . These features alone or mixed with face features can be used to detect orientation and/or position relative to a screen of the portable device." ¶ 46. In other words, the claimed "gaze direction" *reads on* Stafford's ability to know the orientation and position of the eyes.

Accordingly, we sustain the Examiner's rejection of claims 28, 36, and 44.

CONCLUSION

The Examiner's rejections of claims 26–28, 30–36, and 38–45 as being unpatentable under 35 U.S.C. § 103 is affirmed.

In summary:

Claims Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**
26–28, 32–36, 40–44	103	Mann, Stafford	26–28, 32–36, 40–44	
30, 31, 38, 39, 45	103	Mann, Stafford, Blomqvist	30, 31, 38, 39, 45	
Overall Outcome			26–28, 30–36, 38–45	

No period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED