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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte OSAMU OTA and YASUNARI HATASAWA

Appeal 2019-002975
Application 15/036,481
Technology Center 2400

Before ALLEN R. MacDONALD, JEAN R. HOMERE, and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1 and 4–10, which are all of the claims pending in the application. Appeal Br. 1. Claims 2 and 3 were previously canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE and enter a NEW GROUND OF REJECTION UNDER 37 C.F.R. § 41.50(b).

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies Sony Interactive Entertainment Inc. as the real party in interest. Appeal Br. 2.

TECHNOLOGY

The application relates to image delivery. Spec. ¶ 1.

ILLUSTRATIVE CLAIM

Claim 1 is illustrative and reproduced below with the limitations at issue emphasized:

1. An image delivery device comprising:

an operation information acquisition section operable to acquire operation information;

an image information acquisition section operable to acquire image information generated on a basis of the operation information;

an allocation information generation section operable to generate allocation information representing allocation of numbers of bits during compression of the image information on the basis of the operation information;

a compression section operable to compress the image information on a basis of the allocation information; and

a transmission section operable to transmit the compressed image information,

wherein the allocation information generation section includes a base information generation portion adapted to generate, on a basis of act information representing behavior of a target to be operated in accordance with the operation information, base information with which image quality information is associated, the image quality information representing image quality level of each of a plurality of blocks into which the image information is divided, the image quality level being proportional to a number of bits allocated to each of the blocks, and

the allocation information generation section generates the allocation information on a basis of the last allocation information and the base information,

wherein the allocation information generation section includes:

*a weighting block adapted to assign a predetermined weight to the last allocation information;
and*

an addition block adapted to add the last allocation information with the predetermined weight to the base information.

REFERENCES

The Examiner relies on the following prior art references:

Name	Number	Date
Kenyon	US 2002/0065925 A1	May 30, 2002
Laan	WO 2009/073823 A1	June 11, 2009
Tokuda	JP 2006-121578 A	May 11, 2006

REJECTIONS ON APPEAL

Claims 1 and 6–10 stand rejected under 35 U.S.C. § 103 as obvious over Laan and Tokuda. Final Act. 7.

Claims 4 and 5 stand rejected under 35 U.S.C. § 103 as obvious over Laan and Kenyon. Final Act. 12.

The rejection under 35 U.S.C. § 101 was withdrawn. Ans. 3.

ISSUE

Did the Examiner err in finding Tokuda teaches or suggests the limitations italicized above in claim 1?

ANALYSIS

Claims 1 and 6–10

According to Appellant, the portions of claim 1 italicized above require that the current “allocation information” is determined based upon

“Base_Map + (Weighting_Factor * Previous_Allocation_Information).”

Appeal Br. 8–9 (formula reformatted for clarity). Appellant argues:

There is no disclosure in Tokuda that the allocation information (i.e., the weighting for the blocks) . . . is determined by using the last allocation information, weighting it using a predetermined weight, and adding it to the base information. Rather, it appears that the allocation information in Tokuda is based solely on the movement of the camera (e.g., a right move selects a first allocation information and a left move selects a second allocation information). Tokuda does not disclose at all that the previous allocation information is ever used for any purpose.

Appeal Br. 9.

The Examiner disagrees, finding that “a first compression distribution” is shown in Figure 4(b) of Tokuda and “[u]pon the capturing operation of panning, the compression distribution is variably changed . . . to a second distribution of Fig. 4(c).” Ans. 4. According to the Examiner,

the two weights (6’s) of the left column of the first compression distribution of the previous allocation information are weighted down/removed to result in two weights of a single column (the original right column of 6’s), which is added/combined with the second compression distribution of two new weights (2’s) of the base information. Such teaching of Tokuda clearly satisfies the requirement set forth by the recited subject matter.

Ans. 4.

We agree with Appellant that Tokuda’s actual description of the figures does not support the Examiner’s interpretation. Reply Br. 2. We agree with Appellant that “Fig. 4(c) of Tokuda is described as being a compression map when a right pan occurs and Fig. 4(b) is a compression map when no panning occurs. No weighted linear combination (i.e., addition) or weighting of these compression maps is ever described in Tokuda” *Id.* Appellant quotes paragraph 27 of Tokuda as stating: “In

FIG. 4 (b), when the camera operation is not performed, the center portion is the display range. . . . In FIG. 4 (c), when camera operation is performed and panning in the right direction, the right side portion is the display range.” *Id.* (emphasis omitted). Thus, the Examiner fails to provide sufficient support for interpreting Figures 4(b) and (c) as teaching “weights” that are “added/combined” as claimed.

Accordingly, we do not sustain the Examiner’s rejection of claims 1 and 6–10.

Claims 4 and 5

Although Appellant applies the same arguments to the rejection of claims 4 and 5 under § 103, considerable speculations and assumptions are necessary in order to determine what is being claimed. In particular, claim 4 depends from claim 2, which was previously canceled. Claim 5 depends from claim 4 and therefore indirectly depends from canceled claim 2. We do not think a rejection under § 103 should be based on speculations and assumptions about dependency from a canceled claim. *In re Steele*, 305 F.2d 859, 862 (CCPA 1962). “If no reasonably definite meaning can be ascribed to certain terms in the claim, the subject matter does not become obvious—the claim becomes indefinite.” *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970). Accordingly, we are constrained to reverse the Examiner’s rejection of claims 4 and 5 under § 103 pro forma.

REJECTION UNDER 37 C.F.R. § 41.50(b)

Claims 4 and 5

For the reasons discussed above, in a new ground of rejection using our authority under 37 C.F.R. § 41.50(b), we reject claims 4 and 5 under 35

U.S.C. § 112(b) as indefinite for depending on a canceled claim. *See also* MPEP § 608.01(n)(V).

OUTCOME

The following table summarizes the outcome of each rejection:

Claims Rejected	35 U.S.C. §	References / Basis	Affirmed	Reversed	New Ground
1, 6–10	103	Laan, Tokuda		1, 6–10	
4, 5	103	Laan, Kenyon		4, 5	
4, 5	112(b)	Indefiniteness			4, 5
Overall				1, 4–10	4, 5

TIME TO RESPOND

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides that “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” Section 41.50(b) also provides:

When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request

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for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

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. § 1.36(a)(1)(iv).

REVERSED;
37 C.F.R. § 41.50(b)