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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN M. CASEY and BRUCE A. PHILLIPS

Appeal 2019-003209
Application 13/855,502
Technology Center 2400

Before ALLEN R. MacDONALD, JAMES B. ARPIN, and
IRVIN E. BRANCH, *Administrative Patent Judges*.

ARPIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) the Examiner’s decision rejecting claims 1–20, all of the pending claims. Appeal Br. 3.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

¹ “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party-in-interest as Century Link Intellectual Property LLC. Appeal Br. 3.

² In this Decision, we refer to Appellant’s Appeal Brief (“Appeal Br.,” filed October 1, 2018) and Reply Brief (“Reply Br.,” filed March 18, 2019); the Final Office Action (“Final Act.,” mailed May 4, 2018) and the Examiner’s Answer (“Ans.,” mailed January 18, 2019); and the Specification (“Spec.,” filed April 2, 2013). Rather than repeat the Examiner’s findings and Appellant’s contentions in their entirety, we refer to these documents.

STATEMENT OF THE CASE

The recited devices, systems, and methods relate “to systems and methods for image capture, and in particular to systems and methods for associating information with a captured image.” Spec. ¶ 5.

As noted above, claims 1–20 are pending. Claims 1, 2, and 11 are independent. Appeal Br. 26–27 (claims 1 and 2), 28–29 (claim 11) (Claims App.).

Claim 11 recites “[a] method for obtaining location information in relation to an object.” *Id.* at 28. Claim 1 recites,

[a] wireless communication device, comprising: a wireless radio; a location sensor; a direction sensor; an image sensor; a distance sensor; a display device; a microprocessor communicably coupled with the wireless radio, the location sensor, the direction sensor, the image sensor, the distance sensor, and the display device; and a computer readable medium, wherein the computer readable medium includes instructions executable by the microprocessor to

perform functions substantially as recited in claim 11.³ *Id.* at 26. Claim 2 recites “[a] system for providing descriptive information about an object, the system comprising: a location sensor; a direction sensor; an image sensor; a display device; a microprocessor; and a computer readable medium, wherein the computer readable medium includes instructions executable by the microprocessor to” perform functions as recited in claim 11. *Id.* at 27.

³ Claim 1 recites that the computer readable media includes instructions executable by the microprocessor to “update the descriptive information in real time when the image sensor captures images of different objects.” Appeal Br. 27 (Claims App.). This limitation is not recited in claim 2 or 11, but is recited in claims 9 and 18, which depend from claims 2 and 11, respectively. *Id.* at 28, 29.

Claims 3–10 depend directly from claim 2, and claims 12–20 depend directly from claim 11. *Id.* at 26–30.

Claim 11, reproduced below with disputed limitations emphasized, is illustrative.

11. A method for obtaining location information in relation to an object, the method comprising:

capturing video with an imaging device, the imaging device comprising an image sensor,

a direction sensor, a location sensor, a display device, and a microprocessor;

detecting, with the location sensor, a first location, the first location being a location of the location sensor;

capturing video with the image sensor, the video comprising a plurality of images;

determining, with the direction sensor, a direction of the image sensor;

calculating, with the microprocessor, a second location based at least in part on the first location and the direction, the second location being a location of an object in the captured images;

providing, with the imaging device, the location of the object to a query database;

receiving, from the query database, descriptive information about the object; and

displaying, with the display device, at least some of the descriptive information along with a live display of the video received from the image sensor as the plurality of images are being captured, wherein the descriptive information comprises at least one of historic information, access rates, driving directions, parking information, walking directions, and menus.

Id. at 28–29 (emphasis added).

REFERENCES AND REJECTION

The Examiner relies upon the following references:

Name ⁴	Reference	Issued/Publ'd	Filed
Kimura	US 5,913,078	June 15, 1999	Aug. 15, 1997
Clapper	US 6,023,241	February 8, 2000	Nov. 13, 1998
Ellenby	US 2002/0140745 A1	Oct. 3, 2002	Jan. 24, 2001

The Examiner rejects claims 1–20 under 35 U.S.C. § 103 as obvious over the combined teachings of Kimura, Ellenby, and Clapper. Final Act. 3–7. We review the appealed rejection for error based upon the issues identified by Appellant, and in light of the contentions and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). The Examiner and Appellant focus their findings and contentions on claim 11; so do we. *See* Appeal Br. 15–23; Ans. 4; Reply Br. 4–8. Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). Unless otherwise indicated, we adopt the Examiner's findings in the Final Office Action and the Answer as our own and add any additional findings of fact for emphasis. We address the rejection below.

ANALYSIS

Obviousness Over Kimura, Ellenby, and Clapper

1. Claim 11

As noted above, the Examiner rejects claim 11 under 35 U.S.C. § 103 as obvious over the combined teachings of Kimura, Ellenby, and Clapper. Final Act. 3–5, 6. The Examiner finds that Kimura teaches or suggests the

⁴ All reference citations are to the first named inventor only.

majority of the limitations of independent claim 11. *See id.* at 3–4. The Examiner finds, however, that Kimura “does not explicitly teach [receiving] descriptive information about the object from the query database; and captured, wherein the descriptive information comprises at least one of historic information, access rates, driving directions, parking information, walking directions, and menus.” *See id.* at 4. Nevertheless, the Examiner finds Ellenby teaches or suggests these limitations (*see id.* at 4 (citing Ellenby ¶¶ 130–137, 351–355); Ans. 4 (citing Ellenby, Figs. 45, 47, 48)) and a person of ordinary skill in the relevant art would have had reason to combine Kimura’s teachings with those of Ellenby to achieve the methods recited in claim 11 (*see id.* at 4). *See also* Spec. ¶ 11 (“As a more specific example, the object can be a restaurant, and the information about the object includes *a menu for the restaurant.*” (emphasis added)); Ellenby ¶ 319 (“In response to addressing the restaurant, a computer make take an action whereby the user receives *a menu of the afternoon specials* presented on the display of the device for convenient review.” (emphasis added)).

The Examiner finds, however, that neither Kimura nor Ellenby teaches or suggests displaying “at least some of the descriptive information along with a live display of the video received from the image sensor as the plurality of images are being captured,” as recited in claim 11. *See* Final Act. 4. Nevertheless, the Examiner finds, “[i]n the same field of endeavor, Clapper discloses at least some of the descriptive information along with a live display of the video received from the image sensor as the plurality of images are being captured (column 5 lines 40-59)” and a person of ordinary skill in the relevant art would have had reason to combine Kimura’s and

Ellenby's teachings with those of Clapper to achieve the methods recited in claim 11. *See id.* at 5.

Appellant contends the Examiner errs with respect to the rejection of claim 11 for two reasons. For the reasons given below, Appellant's reasons are not persuasive.

First, Appellant contends that Clapper fails to teach or suggest, "[d]isplaying descriptive information along with a live display of the video." Appeal Br. 16. In particular, Appellant contends,

while Clapper teaches the display of information recorded by the camera "as well as [Global Positioning System (GPS)] information such as current time and location or mapping information," the Appellant respectfully submits that the display of information recorded by the camera is entirely different from the "live display of the video received from the image sensor as the plurality of images are being captured" recited in claim 11.

Id.; *see* Clapper, 2:16–19 ("[a] display screen 20 may display information recorded by the camera 18 as well as GPS information such as current time and location or mapping information. The screen 20 may, for example, be a liquid crystal display (LCD)."). Further, Appellant contends:

Even when a user is prompted to capture an image in Clapper, there is no indication or disclosure that the GPS data is displayed as the image is being captured. Clapper merely discloses that "[o]nce the image is received, the GPS data may be superimposed by the software over the image" and "whenever this point is recalled, the associated multimedia information, including audio, video, GPS and other appended data, in one embodiment in accordance with the invention, may be accessed and recalled for collective display." Clapper, col. 4, line 65 - col. 5, line 17. There is no indication that the received image is displayed on a display device in Clapper. At most, Clapper teaches that the received image is displayed with the GPS information when the point is recalled from storage.

Appeal Br. 18 (emphases added); *see* Clapper, Fig. 6. Thus, Appellant concludes Clapper only teaches or suggests the storage and retrieval of video and/or an image associated with GPS information, *not* the live display of video. *See* Appeal Br. 17; *see also* Reply Br. 5 (“Clapper merely discloses that GPS coordinates may be stored along with media content. *See* Clapper, col. 4, lines 12–19. However, although GPS coordinates in Clapper may be stored with media content, this does not mean that the GPS coordinates are displayed with a live display of video content.”). We disagree.

The Examiner finds, “Clapper discloses that digital image data is *either displayed or stored* which provides additional indication that the capture video data is displayed in real-time (Clapper: column 2 lines 27 - 40).” Ans. 4 (emphasis added). In particular, Clapper discloses, “[t]he controller 28 may in turn cause the image *to be displayed on the display 20 or to be stored on the storage device 32* in some embodiments.” Clapper, 2:36–38 (emphasis added). Thus, Clapper teaches or suggests that the captured images may be displayed, and need not be stored.

Clapper's Figure 6 is reproduced below.

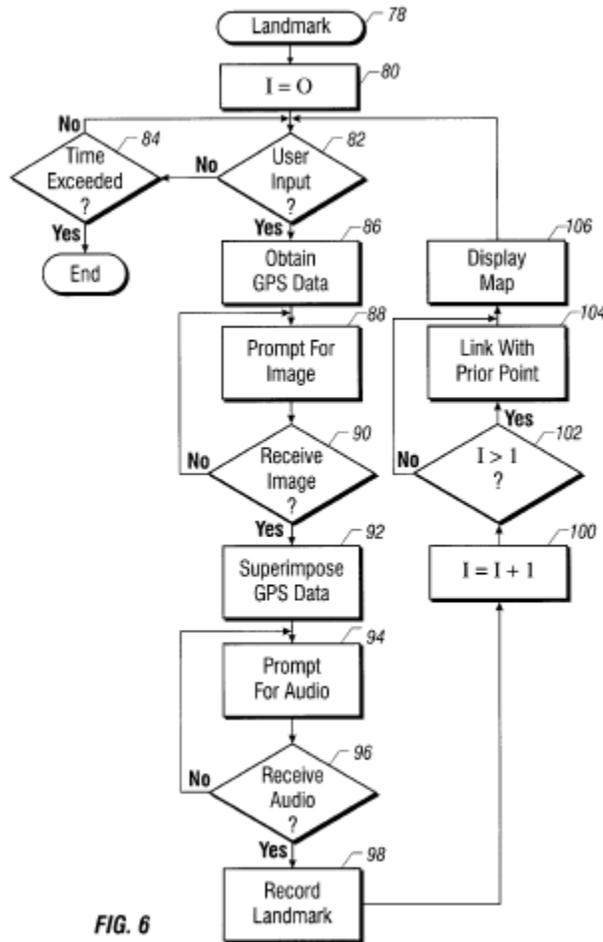


Figure 6 depicts “a flow chart for one embodiment of software for providing a record of multimedia stored at a variety of different locations in accordance with the invention.” Clapper, 1:58–60.

Referring to Figure 6, Clapper explains that software 78 enables “[t]hat information, which may include information about a plurality of different locations, may be linked together *so that it may be serially displayed or displayed in any particular order* the user wishes using a map display for example to facilitate selection of the information to be displayed.” *Id.* at 4:40–45. Further, Clapper explains, “[w]hen the user

provides a video . . . input, as indicated in diamond 82, *the current GPS data* is obtained, as indicated in block 86.” *Id.* at 4:53–55 (emphasis added).

Moreover, Clapper explains:

If an image is not stored, as indicated in diamond 90, the user may be prompted for image entry. *Once the image is received, the GPS data may be superimposed by the software over the image.* In other words, the GPS data may, in one embodiment, be provided in graphical form as an overlay or window within the digital image.

Id. at 4:64–5:2 (emphases added); *but see* Appeal Br. 18 (citing Clapper, 4:65–5:17). Thus, like the claimed methods, after the image is obtained, the steps of “providing, with the imaging device, the location of the object to a query database; [and] receiving, from the query database, descriptive information about the object” are performed. Appeal Br. 29 (Claims App.). Nevertheless, Appellant considers the claim to recite display of the images *and* descriptive information “as the plurality of images are being captured.” Clapper teaches or suggests that if the video images are to be displayed – not stored, the GPS data is obtained and then superimposed on the images. *See* Clapper, Fig. 6 (items 82, 86, 88, 90, 92); *see also id.*, Fig. 7 (“GPS data” 110). Thus, we are persuaded Clapper teaches or suggests “displaying, with the display device, at least some of the descriptive information along with a live display of the video received from the image sensor as the plurality of images are being captured,” as recited in claim 11.

Second, Appellant contends Ellenby fails to teach or suggest “the descriptive information comprises at least one of historic information, access rates, driving directions, parking information, walking directions, and *menus.*” Appeal Br. 21 (emphasis added). In particular, Appellant contends:

Ellenby discloses that “[a]fter a brief introductory phase, the system programmed to deliver information of greater utility, shows what is for lunch. FIG. 47 includes a mobile unit 471 being pointed via address indicator 472 at the pizza restaurant 473, where a response further shows a text list presented on display screen 474, including a pizza menu 475, and specifically ‘Four Cheese’ pizza 476.’ Ellenby, ¶ 0353. *Although Ellenby may display a menu, there is no indication that the menu may be displayed along with a live display of video received from the image sensor.*

Id. at 22 (emphasis added). Further, Appellant contends that Clapper does not teach or suggest this missing limitation. *Id.*

Nevertheless, the Examiner relies on the *combined* teachings of Ellenby and Clapper to teach or suggest this limitation. *See* Final Act. 4–5; Ans. 4. Initially, we agree with the Examiner that Ellenby discloses descriptive information, including a menu (Ellenby, Fig. 47), associated with an image of an object, such as a restaurant. *See* Ans. 4; *see also* Ellenby, Fig. 48, ¶ 354 (“In this case as illustrated in FIG. 48, a map 481 of the neighborhood is played at the output user interface, a display 482, as yet another type of multi-media information element associated with the object Tony Anita’s Pizza 483.”). As Ellenby explains, “[d]igitally recorded information such as video files, text fields, icons, photographs, control objects, et cetera, among others, are examples of multimedia data which may be included in an object record as ‘information elements’.” Ellenby ¶ 355.

Appellant may not attack the references individually to overcome the rejection when the Examiner relies of their combined teachings to show obviousness. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Thus, we agree with the

Examiner that the combined teachings of the applied references teach or suggest this limitation.

We are not persuaded the Examiner errs in finding that claim 11, as well as claims 1 and 2, which are not argued separately, is obvious over the combined teachings of Kimura, Ellenby, and Clapper. *See* Appeal Br. 22–23. Further, with the exception of claims 9, 10, 18, and 19, Appellant does not challenge the rejection of the dependent claims separately. *See id.* at 23–25. On this record, then, we also are not persuaded the Examiner errs in finding claims 3–8, 12–17, and 20 obvious over the combined teachings of Kimura, Ellenby, and Clapper. Consequently, we sustain the obviousness rejection of claims 1–8, 11–17, and 20.

2. *Claims 9 and 18*

As noted above, the Examiner also rejects claims 9 and 18 under 35 U.S.C. § 103 as obvious over the combined teachings of Kimura, Ellenby, and Clapper. Final Act. 6, 7. Claim 9 depends directly from independent claim 2 and recites, in the systems of claim 2, “the instructions are further executable by the microprocessor to update the descriptive information in real time when the image sensor captures images of different objects.” Appeal Br. 28 (Claims App.). Claim 18 depends directly from independent claim 11 and recites substantially the same limitation to the methods of claim 11. *Id.* at 29.

As noted above, claim 1 recites that “the computer readable medium includes instructions executable by the microprocessor to: . . . *update the descriptive information in real time when the image sensor captures images of different objects.*” *Id.* at 27 (emphasis added); *see supra* note 3. The Examiner finds Kimura teaches or suggests this limitation. Final Act. 4

(citing Kimura, 5:35–49). The Examiner refers to the rejection of claim 1 to support the rejection of claims 9 and 18. *Id.* at 6, 7.

Appellant contends the Examiner errs in rejecting claims 9 and 18 for two reasons. First, Appellant contends that neither Kimura nor Ellenby nor Clapper teaches or suggests displaying “at least some of the descriptive information along with a live display of the video received from the image sensor as the plurality of images are being captured,” as recited in their base claim. Appeal Br. 23. For the reasons given above with respect to claims 1, 2, and 11, we do not find this reason persuasive. Second, Appellant contends that

although the GPS data, in Clapper, may be associated with one or more video clips, there is no indication that the GPS information may be updated in real time when the image sensor captures images of different objects. Thus, Clapper cannot be used to teach or suggest updating the descriptive information in real time when the image sensor captures images of different objects, as recited by pending claim [9 or]18.

Id. at 23–24. Nevertheless, the Examiner relies on Kimura, not Clapper, to teach or suggest this limitation. Final Act. 4.

Appellant does not contend that Kimura fails to teach or suggest the corresponding limitation of claim 1. Further, Kimura discloses, “[i]t is preferable that *when each information is detected, contents of the detection are recorded at a prescribed position on control section 5 and each data is displayed on the display section 15 simultaneously.*” Kimura, 15:45–48 (emphasis added). Thus, on this record, we are not persuaded the Examiner errs in rejecting claims 9 and 18 as obvious over the combined teachings of Kimura, Ellenby, and Clapper, and we sustain that rejection.

3. *Claims 10 and 19*

As noted above, the Examiner also rejects claims 10 and 19 under 35 U.S.C. § 103 as obvious over the combined teachings of Kimura, Ellenby, and Clapper. Final Act. 6, 7. Claim 10 depends directly from independent claim 2 and recites, in the systems of claim 2, “the instructions are further executable by the microprocessor to associate the location from the location sensor with successive frames of the image from the image sensor.” Appeal Br. 28 (Claims App.). Claim 19 depends directly from independent claim 11 and recites substantially the same limitation to the methods of claim 11. *Id.* at 29.

The Examiner finds, “[Kimura] in view of Ellenby discloses the system of claim 2, wherein the instructions are further executable by the microprocessor to associate the location from the location sensor with successive frames of the image from image sensor (column 11 lines 66 - column 12 lines 6).” Final Act. 6. In particular, referring to Kimura’s Figure 4, Kimura discloses:

FIG. 4 shows an example of a display of data written in a photographed image plane.

Images are displayed on the upper part of the photographed image plane and data are displayed on the lower part thereof.

Data (1) represent a year, a month, a day, an hour and a minute of photographing, (2) represents a latitude *of a photographing position*, and (3) represents a longitude.

Kimura, 11:66–12:6 (emphasis added). Thus, the Examiner finds the combined teachings of Kimura and Ellenby teach or suggest this limitation.

Appellant disagrees and contends that although Kimura may teach or suggest associating the location *of* the location sensor with an image,

Kimura does not teach or suggest associating the location *from* the location sensor *in successive frames* of the image, as recited in claims 10 and 19. Appeal Br. 24–25. The Examiner makes no response to this contention. *See* Ans. 4.

In the absence of any response from the Examiner to Appellant’s contention, we cannot sustain the rejection of claims 10 and 19. On this record, we are persuaded the Examiner errs in rejecting claims 10 and 19 under 35 U.S.C. § 103 as obvious over the combined teachings of Kimura, Ellenby, and Clapper.

DECISION

1. The Examiner does not err in rejecting claims 1–9, 11–18, and 20 under 35 U.S.C. § 103, as obvious over the combined teachings of Kimura, Ellenby, and Clapper.
2. The Examiner errs in rejecting claims 10 and 19 under 35 U.S.C. § 103, as obvious over the combined teachings of Kimura, Ellenby, and Clapper.
3. Thus, on this record, claims 1–9, 11–18, and 20 are not patentable, but claims 10 and 19 are not unpatentable.

CONCLUSION

We affirm the Examiner’s rejection of claims 1–9, 11–18, and 20, but reverse the Examiner’s rejection of claims 10 and 19.

In summary:

Claims Rejected	35 U.S.C. §	Basis/Reference(s)	Affirmed	Reversed
1–20	103	Kimura, Ellenby, Clapper	1–9, 11–18, 20	10, 19

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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-IN-PART