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Muncy, Geissler, Olds & Lowe, P.C. 4000 Legato Road Suite 310 Fairfax, VA 22033			OLSHANNIKOV, ALEX	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MATTHEW JOLDA, NILS KOETTER,
and WILLIAM LATHROP

Appeal 2019-003294
Application 13/836,191
Technology Center 2100

Before ELENI MANTIS MERCADER, ADAM J. PYONIN, and
GARTH D. BAER, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's Final rejection of claims 1, 4, 5, 13–17, and 21–23, which are all pending claims. Appeal Br. 13–16. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

BACKGROUND

A. The Invention

Appellant's invention is directed to a “touch bar [] configured to receive user touch input, and a proximity sensor disposed on the console surface, the proximity sensor configured to detect a user gesture” in which an “interactive touch surface is configured to receive sliding user input across the interactive touch surface to navigate through content options and is configured to receive pressing user input for selecting the content options.” Abstract. Independent claim 1 is representative and reproduced below:

1. A touch bar, comprising:
an interactive touch surface, the interactive touch surface comprising a capacitive surface having a plurality of interactive zones, each interactive zone including a content option, configured to detect user touch input for controlling a separate vehicle-mounted display screen, each interactive zone corresponding to an interactive icon on the separate vehicle-mounted display screen,
wherein the interactive touch surface is configured to receive sliding user input across the interactive touch surface to navigate through the content options and is

¹ We use “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Volkswagen AG and Audi AG as the real party in interest. Appeal Br. 2.

configured to receiving pressing user input for selecting the content options, and

wherein upon receiving the sliding user input the content options in the interactive zones change to provide additional interactive icons not initially presented on the separate vehicle-mounted display screen and not initially associated with the interactive touch surface.

Appeal Br. 13 (Claims Appendix).

B. The Rejections on Appeal²

The Examiner rejects claims 1 and 4 under 35 U.S.C. § 103(a) as unpatentable over Colgate (US 2007/0236450 A1; Oct. 11, 2007) and Missig (US 2011/0302532 A1; Dec. 8, 2011). Final Act. 7.

The Examiner rejects claims 5, 14–17, 21, and 23 under 35 U.S.C. § 103(a) as unpatentable over Colgate, Missig, Szelove (US 2012/0132746 A1; May 31, 2012) (hereinafter “Szelove ’12”), and Szelove (US 2009/0079705 A1; Mar. 26, 2009) (hereinafter “Szelove ’09”). Final Act. 9.

The Examiner rejects claim 13 under 35 U.S.C. § 103(a) as unpatentable over Colgate, Missig, Szelove ’12, and Buttolo (US 2013/0270896 A1; Oct. 17, 2013). Final Act. 14.

The Examiner rejects claim 22 under 35 U.S.C. § 103(a) as unpatentable over Colgate, Missig, and Zadesky (US 2007/0052691 A1; Mar. 8, 2007). Final Act. 15.

² The rejection of claims 1, 4, 5, 13–17, and 21–23 under 35 U.S.C. § 101 has been withdrawn in the Answer. *See* Final Act. 6, Ans. 3–4.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments. Arguments Appellant could have made but chose not to make are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We adopt the Examiner's findings and conclusions as our own, and add the following primarily for emphasis.

A. Obviousness Rejection of Claim 1

Appellant first argues that Missig “does not teach or suggest that movement of the selection indicator by touch gestures on the touch pad 450 provide additional interactive icons **not initially presented on the separate vehicle-mounted display screen.**” Appeal Br. 11 (emphasis in original).

We do not find this argument persuasive. Regarding the claimed “upon receiving the sliding user input the content options in the interactive zones change to provide additional interactive icons not initially presented on the separate vehicle-mounted display screen,” the Examiner finds that

it is clear from the from the Figures 5Q-5T of Missig that when a user moves their finger 5050 down on the touch-sensitive surface 452, the content on the display 450 begins to scroll up. As a result, new content is displayed, including “Advertisement 3” and even the top of another content item which is below “Advertisement 3”.

Ans. 5. The Examiner's finding is confirmed by the text supporting the Figures, stating that

[f]or example, in FIGS. 5Q-5T, in response to receiving an input that corresponds to a first gesture (e.g., contact 5044 and ***subsequent movement of the contact across the touch-sensitive surface 452*** in FIG. 5Q) the object selection indicator 5010 is moved to the updated location (e.g., a location proximate to the “government” hyperlink 5006-5 in FIG. 5R), and ***the user***

interface scrolled upwards on the display (e.g., as illustrated in FIGS. 5S-5T) so as to display the object selection indicator 5010 proximate to the center of the predefined region 5038, as illustrated in FIG. 5T.

Missig ¶ 275 (emphasis added). The Examiner further finds, and we agree, that

the touch-sensitive surface 452 can be divided into interactive zones which correspond to different content options which are presented on display 450. Once a user performs a sliding user input on the touch-sensitive surface 452, the content presented on display 450 scrolls and displays new content.

Ans. 6. Missig teaches a sliding user input on the touch-sensitive surface that performs a scrolling action and displays new content including a hyperlink (corresponding to an icon) that is selectable via a “tap gesture” on the “touch-sensitive surface 452.” See Missig ¶¶ 275, 281.

Appellant next argues “Missig does not teach or suggest that **the content options in the interactive zones change**, which are on the touchbar, to provide additional interactive icons **not initially presented on the interactive touch surface.**” Appeal Br. 11 (emphasis in original). Appellant’s argument is not commensurate with the scope of the claim, which states that “additional icons” are not “initially *associated* with the interactive touch surface.”³

³ Appellant appears to additionally argue in the Reply that the touch bar is also configured to display icons or “content options.” See Reply Br. 3–4, quoting Spec. ¶ 33. Should there be further prosecution, the Examiner may wish to consider whether the disclosure contains sufficient enablement or written description support.

Additionally, Appellant attacks Missig individually. “[O]ne cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). For example, the Examiner finds, and we agree, that “Colgate teaches a VFHD that controls the main display. The VFHD is matched one to one to a position in a section of the visual display. Thus, the VFHD contains various zones mapped to the icons on the visual display.” Final Act. 7, citing Colgate Figs. 1 and 20, ¶¶ 53, 11. Appellant does not address this finding.

Accordingly, we sustain the obviousness rejection of independent claim 1, as well as independent claims 5 and 15 commensurate in scope, and all dependent claims not argued separately. *See* Appeal Br. 9–11.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 4	103(a)	Colgate, Missig	1, 4	
5, 14–17, 21, 23	103(a)	Colgate, Missig, Sizelove '12, Sizelove '09	5, 14–17, 21, 23	
13	103(a)	Colgate, Missig, Sizelove '12, Buttolo	13	
22	103(a)	Colgate, Missig, Zadesky	22	
Overall Outcome			1, 4, 5, 13–17, 21–23	

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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)(1)(iv).

AFFIRMED