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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JOHN REHN

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Appeal 2019-003937  
Application 14/944,922  
Technology Center 2400

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Before JASON V. MORGAN, IRVIN E. BRANCH, and  
DAVID J. CUTITTA II, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

*Introduction*

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–7, 9–13, and 15. An oral hearing was held June 18, 2020. A transcript is being prepared and will be entered into the record in due course. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE and enter a NEW GROUNDS OF REJECTION.

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<sup>1</sup> 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 Axis AB. Appeal Br. 3.

*Summary of the disclosure*

Appellant's claimed subject matter relates to the formation of summary frames derived from video frames. Abstract.

*Exemplary claim (key limitations emphasized)*

1. A method for visualizing information of a digital video stream, the method comprising:

*merging groups of original image frames of the digital video stream into a series of merged image frames, wherein each merged image frame is generated from a different group of original image frames, and wherein each group of original frames includes no frames of any other group of original frames;*

storing the series of merged image frames;

*blending multiple series of merged image frames into a series of blended image frames, wherein each of the merged image frames contributes to a plurality of the blended image frames;*  
and

displaying, on a display, the series of blended image frames.

*The Examiner's rejections and cited references*

The Examiner rejects claims 1–6, 9–13, and 15 under 35 U.S.C. § 102(a)(1) as being anticipated by McLeish (AU 2009243430 A1; published June 16, 2011). Final Act. 9–12.

The Examiner rejects claim 7 under 35 U.S.C. § 103 as being unpatentable over McLeish and He (US 2010/0208142 A1; published Aug. 19, 2010). Final Act. 12–13.

ANALYSIS

Appellant contends the Examiner erred in relying on McLeish as anticipating claim 1 because each summary frame in McLeish contributes to

no “more than one [additional] summary frame.” Appeal Br. 12 (citing McLeish Fig. 4); *see also* Reply Br. 8. That is, Appellant argues “none of the merged frames (level 1 frames, including 404, 406, and the two immediately below) contribute to more than one blended frame.” Appeal Br. 13–14; Reply Br. 10. Appellant further argues McLeish’s Figure 6 merely illustrates “a structure of stored video, including multiple summary levels.” *Id.* at 14. That is, Appellant argues “Figure 6 is . . . deficient because it merely shows an implementation of generating the summary frames of Figure 4 and storing the summary frames to a storage device.” *Id.* at 15 (citing McLeish p. 18, ll. 8–9, p. 19, ll. 11–13).

We agree with Appellant that the Examiner’s findings and analysis fail to show that McLeish anticipates claim 1. In particular, in relying on Figure 4, the Examiner finds “merged frame 404 and 406 form a blended frame 407” (Final Act. 5), but the Examiner merely finds that “[i]f this process is carried further [then] more merged and blended frames *could* be obtained.” *Id.* But “inherent anticipation ‘may not be established by probabilities or possibilities.’” *King Pharm., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1275 (Fed. Cir. 2010) (quoting *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981)). More importantly, the Examiner’s findings fail to show that carrying the process of McLeish further would produce “a series of blended image frames, *wherein each of the merged image frames contributes to a plurality of the blended image frames*” (emphases added). That is, although McLeish depicts the next two merged image frames (unlabeled) being blended into a summary image frame 411, merged image frames 404 and 406 do not contribute to summary image frame 411, and the two unlabeled

merged image frames that contribute to summary image frame 411 do not contribute to summary image frame 407. McLeish Fig. 4.

Further, evidence of record suggests that the Examiner no longer holds that McLeish's Figure 4 discloses the claimed blending of merged frames (*see* Applicant-Initiated Interview Summary, \*4 (June 26, 2018) ("Interview Summary") ("This limitation discloses that each merged frame contributes to more than one blended frame, Fig 4 does not support this format")). The Examiner also does not cite to McLeish's level 3 frame 412, which we discuss below in setting forth new grounds of rejection.

We further agree with Appellant that the Examiner's findings do not show that McLeish's Figure 6 cures the deficiencies in the Examiner's reliance on McLeish's Figure 4. *See* Appeal Br. 14–17; Reply Br. 10–14. The Examiner correctly finds "that merged frames 603 and 605 contribute to blended frame 604." Interview Summary, at \*4. But the Examiner incorrectly finds "these two merged frames 603 and 605 also contribute to [the] blended frame *immediately below* blended frame 604." *Id.* (emphasis added); *see also* Ans. 17–20. Rather, as Appellant persuasively argues, "[t]he unnumbered frame below 604 is a level 2 frame which is derived from the third level 1 frame and the fourth level 1 frame." Appeal Br. 15. That is, the unnumbered frame below 604 in McLeish's Figure 6 is the same as level 2 frame 411 in McLeish's Figure 4. McLeish even depicts the frames using identical images. *Compare* McLeish Fig. 6 *with* Fig. 4. Moreover, the Examiner fails to cite to the level 3 frame depicted in McLeish's Figure 6 to the right of the frame below frame 604. This frame is equivalent to, and depicted as identical to, level 3 frame 412 in McLeish's Figure 4, which, as

noted above, the Examiner also did not cite. *Compare* McLeish Fig. 6 with Fig. 4.

For these reasons, we agree with Appellant that the Examiner's findings do not show that McLeish discloses "blending multiple series of merged image frames into a series of blended image frames, wherein each of the merged image frames contributes to a plurality of the blended image frames," as recited in claim 1. Accordingly, we do not sustain the Examiner's 35 U.S.C. § 102(a)(1) rejection of claim 1, and claims 2–6, 9–13, and 15, which contain similar recitations. The Examiner does not show that the disputed recitation is obvious in light of McLeish and He; therefore, we also do not sustain the Examiner's 35 U.S.C. § 103 rejection of claim 7, which depends from claim 1.

#### NEW GROUNDS OF REJECTION

Although we do not sustain the Examiner's 35 U.S.C. §§ 102(a)(1) and 103 rejections, we newly reject claims 1–4, 6, 9–13, and 15 under 35 U.S.C. § 102(a)(1) as being anticipated by McLeish and we newly reject claim 7 under 35 U.S.C. § 103 as being unpatentable over McLeish and He.

Specifically, we find that McLeish Figure 4 discloses "blending multiple series of merged image frames" (e.g., frames 404 and 406) "into a series of blended image frames" (e.g., frames 407 and 412), "wherein each of the merged image frames contributes to a plurality of the blended image frames." Claim 1 does not require that merged image frames contribute to all blended image frames without use of any intermediate blended image frames.

Furthermore, the contributions of merged image frames 404 and 406 to blended image frame 412 is evident in McLeish's depiction of how the

images blend. In particular, McLeish depicts the merged figures from merged frames 404 and 406 as part of (i.e., as contributing to) blended image frame 412. Similarly, McLeish also depicts the merged figures in the two frames directly below merged frame in blended image frame 412.

For these reasons, we find that McLeish discloses “blending multiple series of merged image frames into a series of blended image frames, wherein each of the merged image frames contributes to a plurality of the blended image frames,” as recited in claim 1.

We further finds that McLeish discloses “displaying, on a display, the series of blended image frames,” as recited in claim 1. Specifically, McLeish discloses allowing “the decoder that is currently playing a . . . summary stream at one level to change to a stream at a different level, but at the same position in time.” McLeish p. 20, ll. 4–6. McLeish explicitly discloses storing both level 2 and level 3 blended image frames. *Id.* Fig. 6. Thus, McLeish discloses enabling a decoder to change between displaying streams at level 2 and level 3 (i.e., the series of blended image frames generated by the merged frames). Therefore, McLeish discloses the recited displaying step of claim 1.

We adopt as our own the remaining Examiner’s findings, except as the findings pertain to the claim 5 recitation of “wherein a merged frame contributing weight is set to be constant for each of the blended image frames to which the merged image frame contributes.” In particular, McLeish’s Figure 4 illustrates that only two merged image frames (404 and 406) contribute to blended image frame 407, but it illustrates that four merged image frames (404, 406, and the two merged image frames depicted directly below merged image frame 406) contribute to blended image frame

412. Thus, the merged image frames of McLeish have less weight with respect to blended image frame 412 (seemingly one-fourth) than with respect to blended image frame 407 (seemingly one-half). Because our new grounds of rejection rely on both blended image frame 407 and 412, the findings underlying our new grounds of rejection do not support a finding that McLeish discloses the wherein recitation of claim 5. For these reasons, our new grounds of rejection do not include a rejection of dependent claim 5.

Accordingly, we newly reject claims 1–4, 6, 9–13, and 15 under 35 U.S.C. § 102(a)(1) as being anticipated by McLeish and we newly reject claim 7 under 35 U.S.C. § 103 as being unpatentable over McLeish and He.

#### CONCLUSION

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)</b>	<b>Affirmed</b>	<b>Reversed</b>	<b>New Ground</b>
1–6, 9–13, 15	102(a)(1)	McLeish		1–6, 9–13, 15	1–4, 6, 9–13, 15
7	103	McLeish, He		7	7
<b>Overall Outcome</b>				<b>1–7, 9–13, 15</b>	<b>1–4, 6, 7, 9–13, 15</b>

#### TIME PERIOD FOR RESPONSE

No time period for taking 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).

37 C.F.R. § 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of



Appeal 2019-003937  
Application 14/944,922

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. . . .

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

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

REVERSED  
37 C.F.R. 41.50(B)