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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 YASUHIKO NISHIMURA

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Appeal 2019-004074
Application 13/871,808[1]
Technology Center 2600

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Before JASON V. MORGAN, JON M. JURGOVAN, and
SCOTT RAEVSKY, *Administrative Patent Judges*.

JURGOVAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks review under 35 U.S.C. § 134(a) from a Final
Rejection of claims 1–3, constituting all of the claims pending in the
application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.[2]

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[1] We use the word "Appellant" to refer to "applicant" as defined in
37 C.F.R. § 1.42. According to Appellant, the real party in interest is
KYOCERA CORPORATION. Appeal Br. 2.

[2] Our Decision refers to the Specification ("Spec.") filed April 26, 2013 as
amended on June 10, 2015, August 10, 2015, and October 18, 2018; the
Final Office Action ("Final Act.") mailed July 18, 2018; the Appeal Brief
("Appeal Br.") filed December 18, 2018; the Examiner's Answer ("Ans.")
mailed March 1, 2019; and the Reply Brief ("Reply Br.") filed April 30,

CLAIMED INVENTION

The claims relate to an electronic device (claims 1 and 2) and control method (claim 3) for turning pages of a browser or electronic book. Spec. ¶¶ 2, 4. The electronic device has a display unit, a contact unit, and a control unit. *Id.* ¶ 6, Fig. 1. The display unit overlaps the contact unit to form a touchscreen. *Id.* ¶ 2. The electronic device also has a pressure detection unit configured to detect pressure on the contact unit. *Id.* ¶ 7. When the contact unit is touched by a contact object (stylus or finger), the control unit begins sensing pressure with the pressure detection unit and turns the pages for display commensurate with the amount of pressure sensed. *Id.* ¶¶ 20–21. For example, relatively weak pressure may result in turning pages one page at a time, while relatively strong pressure may result in turning two pages at a time. *Id.* ¶¶ 23–24. The control unit repeats turning pages until contact is no longer detected by the contact unit. *Id.* ¶ 22.

Claims 1 and 3 are independent, and claim 2 depends from claim 1. The argued claim limitations are shown in *italics*:

> 1. An electronic device comprising:
> a display unit;
> a contact unit having a touch face and to be contacted by a contact object, the touch face overlapping the display unit; and
> a control unit configured to:
> display a current page on the display unit,
> perform a first step of detecting data corresponding to pressure based on a press on the displayed current page on the display unit overlapping the contact unit and,
> perform a second step of determining a volume of pages based on the detected data, displaying, directly after displaying the current page, a next page that is a distance from the current

page by the determined volume, and setting the next displayed page as the current page, wherein

the control unit repeatedly performs the first step and the second step *without release of a contact on the contact unit while repeating the first and second steps with a continuous application of non-zero pressure of the contact on the contact unit without a detected position of the contact object on the touch face changing.*[3]

Appeal Br. 12 (Claims App.).

REJECTIONS AND EVIDENCE[4]

Claims 1–3 stand rejected under 35 U.S.C. § 103 over McNamara (US 2011/0039602 A1, February 17, 2011) and Kim (US 2012/0098836 A1, April 26, 2012). Final Act. 3–10.

Claims 1–3 stand rejected under 35 U.S.C. § 103, based on alternative findings and analysis, over Kim and McNamara. Final Act. 10–18.

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[3] We suggest the Examiner consider whether the Specification describes the positive limitation of flipping pages as long as contact is detected by the contact detection unit but does not support the negative limitation of flipping pages "without release of a contact" under 35 U.S.C. § 112. *See* Spec. ¶ 22. Also, we suggest the Examiner consider whether the Specification supports <u>continuous</u> flipping of pages based on non-zero <u>pressure</u> sensed by the pressure detection unit—the control unit determines that pages are to be continuous flipped based on <u>contact</u> sensed by the contact unit. *Id.*

[4] In the Final Office Action, claims 1–3 were rejected under 35 U.S.C. § 112. Final Act. 2–3. However, the Examiner withdrew the § 112 rejection in the Answer. Ans. 3. Accordingly, the § 112 rejection is not before us and we do not address it further in this decision.

ANALYSIS

Standard of Review

We undertake a limited *de novo* review of 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*, Appeal No. 2009-006013, 2010 WL 889747 (BPAI Feb. 26, 2010) (precedential).

§ 103 Rejections

A patent claim is unpatentable under 35 U.S.C. § 103 if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) where present, objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

A. § 103 Rejection over McNamara and Kim

<u>Claim 1</u>

For the emphasized language in claim 1 above, the Examiner finds that McNamara teaches performing page flipping/skipping whenever a touch is detected and while pressure is maintained, which suggests the limitation of claim 1 reciting "without release of a contact on the contact unit." Final Act. 5–6 (citing McNamara ¶ 56). The Examiner also finds that Kim teaches continuously turning pages based on sensed pressure, and the speed

of turning pages varies by the amount of pressure applied. *Id.* at 6 (citing Kim ¶ 48, Fig. 7 [step 703]). The Examiner finds it would have been obvious to implement Kim's continuous detection/variable speed concept for user convenience in an e-book context. *Id.* at 6–7 (citing Kim ¶¶ 5, 33).

Appellant argues that McNamara and Kim fail to disclose "consecutive control, without releasing the pressure, of volume to be skipped encompassing one page to multiple pages based on the acquired pressure data," as allegedly recited in claim 1. Appeal Br. 7; Reply Br. 2. Claim 1, however, recites no such limitation. Specifically, there is no mention in claim 1 of skipping pages, or that the volume of pages skipped is variable from one to multiple pages, or that the volume of pages skipped varies according to the amount of pressure applied. Accordingly, Appellant's argument hinges on language that is not present in claim 1. Limitations not appearing in a claim cannot be relied upon for patentability. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

We further note that, for applications in examination before the Office, claim terms are given their broadest reasonable interpretation consistent with the specification in which they appear. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). The Specification does not mention a "volume of pages" or "determining a volume of pages" let alone define what these terms mean. Applying the plain meaning, for example, the claimed terms could mean determining to flip a volume of one page continuously while a user contacts a display screen with a predetermined pressure, which is exactly what Appellant describes in the Background (Spec. ¶ 2).

Furthermore, as the Examiner finds (Final Act. 5–6), McNamara teaches varying the number of pages to skip by pressing against a touch surface with a certain magnitude of force (McNamara ¶¶ 75, 80, 81), and Kim teaches turning pages continuously with variable speed according to the applied pressure level (Kim ¶¶ 45, 48). Appellant's argument does not persuade us that the claim language distinguishes over the reference teachings.

Accordingly, Appellant's argument is not persuasive to show Examiner error.

Claims 2 and 3

Appellant relies on the same argument for claims 2 and 3 as for claim 1. Appeal Br. 9. For the same reason, we find Appellant's argument unpersuasive. *See* 37 C.F.R. § 31.47(c)(1)(iv) (failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately).

B. *§ 103 Rejection over Kim and McNamara*

Claim 1

For the emphasized language of claim 1 shown above, the Examiner alternatively finds Kim discloses that the tempo of turning pages can be controlled proportionally to the sensed pressure level on a dome key. Final Act. 12 (citing Kim ¶ 45, Fig. 7 [steps 707, 709]). The Examiner states that "Kim teaches of [sic] turning/transitioning the pages and one of ordinary skill in the art would realize that it could easily/simply be designed to skip the intervening pages and simply render the final page to be output" as a matter of design choice. Final Act. 12–13. The Examiner further finds that

McNamara, in the context of turning pages of an e-book, teaches the use of pressure of varying magnitude on a touch screen to determine a proportional number of objects, such as pages, to be skipped for display. Final Act. 13 (citing McNamara ¶¶ 25, 58, 71, 75, 80, Figs. 1, 5A–5D, 6, 7A). The Examiner finds McNamara's page turning/transitioning could be implemented with Kim by simple substitution of one known device for another performing the same or similar function. *Id.* The Examiner also finds one of ordinary skill in the art would have combined McNamara's page turning with Kim to make the device "adjust[] to the user's tastes, making it a comfortable reading." Final Act. 13–14.

Appellant again argues that "claim 1 provides consecutive control, without releasing the pressure, of volume to be skipped encompassing one page to multiple pages based on the acquired pressure data." Appeal Br. 9. As noted, and contrary to Appellant's assertion, claim 1 does not recite the argued feature. Specifically, there is no mention in claim 1 of skipping pages, or that the volume of pages skipped is variable from one to multiple pages, or that the volume of pages skipped varies according to the amount of pressure applied. Accordingly, Appellant's argument is not commensurate in scope with the claim as recited, and is thus unpersuasive. *See Self*, *supra*.

Also, as noted, the broadest reasonable interpretation of the argued claim terms could merely mean determining to flip a volume of one page continuously while a user contacts a display screen with a predetermined pressure, as described in the Background (Spec. ¶ 2).

In any case, as the Examiner finds (Final Act. 11–13), Kim teaches turning pages continuously with variable speed according to the applied pressure level (Kim ¶¶ 45, 48), and McNamara teaches varying the number

of pages to skip by pressing against a touch surface with a certain magnitude of force (McNamara ¶¶ 75, 80, 81). Appellant's argument fails to distinguish the claim over the combined teachings of Kim and McNamara.

Appellant also argues "a person of ordinary skill in the art referring to Kim would not have combined Kim's page turning with McNamara's skipping pages to arrive at the combination of features recited in claim 1." Appeal Br. 9. Specifically, Appellant argues that combining Kim and McNamara would lead away from Kim and change Kim's principle of operation, which is "to provide paper-book-like operation to an e-book reader device by displaying an action of turning the right page to the left as if turning pages of a paper book." *Id.* at 10 (citing MPEP § 2143.01 VI); Reply Br. 4–6. Appellant does not explain, however, why skipping a group of pages in an e-book is not similar to turning a group of pages of a paper book. Thus, we are not persuaded that the combination of Kim and McNamara leads away from Kim or would change Kim's principle of operation.

In the Reply Brief, Appellant argues that the claim recites displaying the next page after skipping pages that are not displayed. Reply Br. 4–5. As we noted above, and as Appellant argues (Appeal Br. 10), the claim is sufficiently broad that the "volume" could be set to one page in which case there are no skipped pages that are not displayed.

Accordingly, we do not find Appellant's arguments persuasive to show Examiner error.

Claims 2 and 3

Appellant relies on the same argument for claims 2 and 3 as for claim 1 with respect to the Examiner's alternative findings and analysis for

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rejecting claim 1 as obvious. Appeal Br. 11. For the stated reasons, we do not find Appellant's argument persuasive to show Examiner error. *See* 37 C.F.R. §31.47(c)(1)(iv).

CONCLUSION

The Examiner's rejections of claims 1–3 under 35 U.S.C. §103 are affirmed.

Claims Rejected	35 U.S.C. §	References	Affirmed	Reversed
1–3	103	McNamara, Kim	1–3	
1–3	103	Kim, McNamara	1–3	
Overall Outcome			1–3	

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