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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ARTHUR VAYSMAN and EDUARD ZASLAVSKY

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Appeal 2019-004570  
Application 13/098,663  
Technology Center 2400

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

CUTITTA, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 75–78.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b). Oral arguments were heard on June 18, 2020. A transcript of that hearing is being prepared and will be added to the record in due time.

We REVERSE.

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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(a). Appellant identifies the real party in interest as Shower Media, LLC. Appeal Br. 3.

<sup>2</sup> Claims 1–74 are cancelled. Appeal Br. 21.

CLAIMED SUBJECT MATTER

*Invention*

Appellant's invention "relates to a multiple display device control system and a method of controlling display of electronic program guide (EPG) application data on multiple display devices." Appeal Br. 3.<sup>3</sup>

*Illustrative Claim*

Claims 75 and 78 are independent claims. Claim 75 is illustrative and is reproduced below with disputed limitations italicized:

75. A multiple display device control system comprising:

a client device comprising:

a plurality of receivers configured to receive a plurality of video content streams, each video content stream comprising video content to be displayed;

a first video and data output interface port configured to provide, for display on a first display device, one of (i) the video content of the plurality of video content streams and (ii) electronic program guide (EPG) application data comprising a plurality of selectable elements each associated with the video content of one of the plurality of video content streams;

a second video and data output interface port configured to provide, for display on a second display device remote from the first display device, the other of the video content and the EPG application data for

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<sup>3</sup> We refer to: (1) the originally filed Specification filed May 2, 2011 ("Spec."); (2) the Final Office Action mailed August 13, 2018 ("Final Act."); (3) the Appeal Brief filed February 7, 2019 ("Appeal Br."); (4) the Examiner's Answer mailed March 15, 2019 ("Ans."); and (5) the Reply Brief filed May 15, 2019 ("Reply Br.").

simultaneous display with the one of the video content and the EPG application data on the first display device;

a remote control receiver device configured to receive a plurality of user input selections; and

a processor in communication with the plurality of receivers and the remote control receiver device; and

*a remote control device, in communication with the remote control receiver device of the client device, comprising a first user input selector provided on the remote control device and a second user input selector provided on the remote control device separate from the first user input selector, wherein configured to receive a first user input selection of the plurality of user input selections, provided via the first user input selector, changes a focus to one of the first display device and a second user input selection of the plurality of user input selections, provided via the second user input selector, changes the focus to the second display device,*

*wherein the change in focus, responsive to the first user input selection, enables selection of one of the plurality of selectable elements displayed on the first display device and disables selection of one of the plurality of selectable elements displayed on the second display device and the change in focus, responsive to the second user input selection, enables selection of one of the plurality of selectable elements displayed on the second display device and disables selection of one of the plurality of selectable elements displayed on the first display device, and*

selection of the one of the plurality of selectable elements displayed on one of the first display device and the second display device causes the video content associated with the one selectable element to be displayed on the other of the first display device and the second display device by tuning one of the receivers for the video content associated with the one selectable element.

## REJECTION

The Examiner rejects claims 75–78 under pre-AIA 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. Final Act. 4–6.

## OPINION

We review the appealed rejection for error based upon the issues identified by Appellant and in light of Appellant’s arguments and evidence. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2018).

The Examiner rejects claim 75 under 35 U.S.C. § 112, first paragraph. The Examiner finds lack of support in the Specification for the limitation:

a remote control device, in communication with the remote control receiver device of the client device, comprising a first user input selector provided on the remote control device and a second user input selector provided on the remote control device separate from the first user input selector, wherein configured to receive a first user input selection of the plurality of user input selections, provided via the first user input selector, changes a focus to one of the first display device and a second user input selection of the plurality of user input selections, provided via the second user input selector, changes the focus to the second display device,

as recited in claim 75. The Examiner finds “Figures 134 and 136 describe distinct embodiments and fail to show similar selectable elements (DISPLAY 1 and DISPLAY 2) on the remote control.” Final Act. 3. The Examiner notes that Figure 149 shows a remote control for multi-display applications but finds “[t]here is nothing in the specification that suggests that the multi-screen applications in FIGS. 134 and 136 including remote

control 8 and the remote control device 8 for multi-display applications shown in FIG. 149 can or should be combined.” Ans. 4.

Appellant relies on Figures 134–137, 149, 150 and paragraphs 118 and 342 to support the limitation at issue. Appeal Br. 10. Appellant argues that “the specification does suggest that FIGS. 134 and 136 should be combined with FIG. 149 . . . because the same reference numeral ‘8’ is used to identify the same feature (i.e., the remote control device) in FIGS. 134, 136 and 149.” *Id.* at 15.

We determine whether an applicant has satisfied the written description requirement by determining whether the patent specification describes the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. *Carnegie Mellon Univ. v. Hoffmann-La Roche Inc.*, 541 F.3d 1115, 1122 (Fed. Cir. 2008). We agree with Appellant that the disclosure in the originally filed application would have been sufficient to show one of ordinary skill had possession of the claimed multi-display control capability. As Appellant notes (Appeal Br. 17), “drawings alone may be sufficient to provide the ‘written description of the invention’ required by § 112, first paragraph.” *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1564, (Fed. Cir. 1991) (emphasis omitted). Figures 134–137 illustrate remote control 8 controlling a multi-display device comprised of a first display device and a second display device. Spec. ¶¶ 227–230. Although the remote control of Figures 134–137 does not illustrate multi-display control capability, this functionality is illustrated by remote control 8 of Figure 149. We agree with Appellant that “because the same reference numeral ‘8’ is used to identify” both the remote control in Figures 134–137 and in Figure 149, that a person

of ordinary skill in the art would have understood the originally filed application to disclose a remote control controlling a first and second display as set forth in claim 75. Appeal Br. 15–16.

As set forth above, claim 75 recites wherein receiving “a first user input selection . . . via the first user input selector, changes a focus to one of the first display device and a second user input selection of the plurality of user input selections, provided via the second user input selector, changes the focus to the second display device.” Appellant relies on Figures 134–137, 149, 150 and paragraphs 118 and 342 to support this limitation. Appeal Br. 10.

The Examiner finds the “specification and figures fail to provide support for” change in focus, as recited in claim 75, because “Para. 0127 describes that ‘focus’ relates to highlighted or otherwise emphasized screen element. However, [the] claimed ‘focus’ suggests [the] screen itself and not highlighted or otherwise emphasized screen element.” Final Act. 3; Ans. 5 (emphasis omitted).

Appellant argues “in the [Specification] a particular display has ‘focus’ because it can receive an input from the user. Likewise, the highlighted screen element, like the cursor position, also has focus because it indicates where the input is received.” Appeal Br. 19.

We agree with Appellant that the disclosure in the originally filed application would have been sufficient such that “a person of ordinary skill the art would understand that ‘the focus indicates the component of the graphical user interface which is selected to receive input.’” *Id.* at 18. Appellant adds, “the person skilled in the art would understand that within a graphical user interface (i.e. the Windows Operating) system, a particular

window can have focus and so can individual components within the window. *Id.*

Moreover, we note that Appellant’s originally filed Specification discloses that “FIG. 149 shows remote control that allows subscribers to *change focus from one display to another* for multi-display applications.” Spec. ¶¶ 342, 118 (emphasis added); *see* Reply Br. 3 (citing Spec. ¶¶ 118, 342). Accordingly, we determine there is sufficient support in the Specification for a first and second user input selection changing a focus to one of the first and second display device, as recited in claim 75.

Claim 75 further recites “wherein the change in focus, responsive to the first user input selection, enables selection of one of the plurality of selectable elements displayed on the first display device and disables selection of one of the plurality of selectable elements displayed on the second display device” and “the change in focus, responsive to the second user input selection, enables selection of one of the plurality of selectable elements displayed on the second display device and disables selection of one of the plurality of selectable elements displayed on the first display device,” Appellant relies on Figures 134–137, 150 and paragraph 342 to support this limitation. Appeal Br. 10.

The Examiner finds the Specification fails to support “disables selection of one of the plurality of selectable elements displayed on the second display device” and “disables selection of one of the plurality of selectable elements displayed on the first display device,” as recited in claim 75. Final Act. 3–4; Ans. 5. The Examiner does not provide a rationale for the rejection other than stating “the examiner fails to find the term ‘disable(s)’ anywhere in the originally filed specification.” Ans. 5.



Appellant argues that:

a person skilled in the art would understand from the specification that the change in focus from one display to another display enables a user to navigate the EPG data on the newly focused display device (e.g., Primary Display in FIG. 134 or Secondary Display in FIG. 136 and select one of the EPG elements (e.g., highlighted Mosaic element 8 in FIG. 134 or highlighted Title bar 13 in FIG. 136) of the EPG data on the newly focused display device and that the selection of EPG elements displayed on the other display device is disabled because the user is not able to navigate [to] the EPG data on the newly focused display device.

Reply Br. 4–5.

We agree with Appellant. Figure 134 of the Specification is reproduced below.

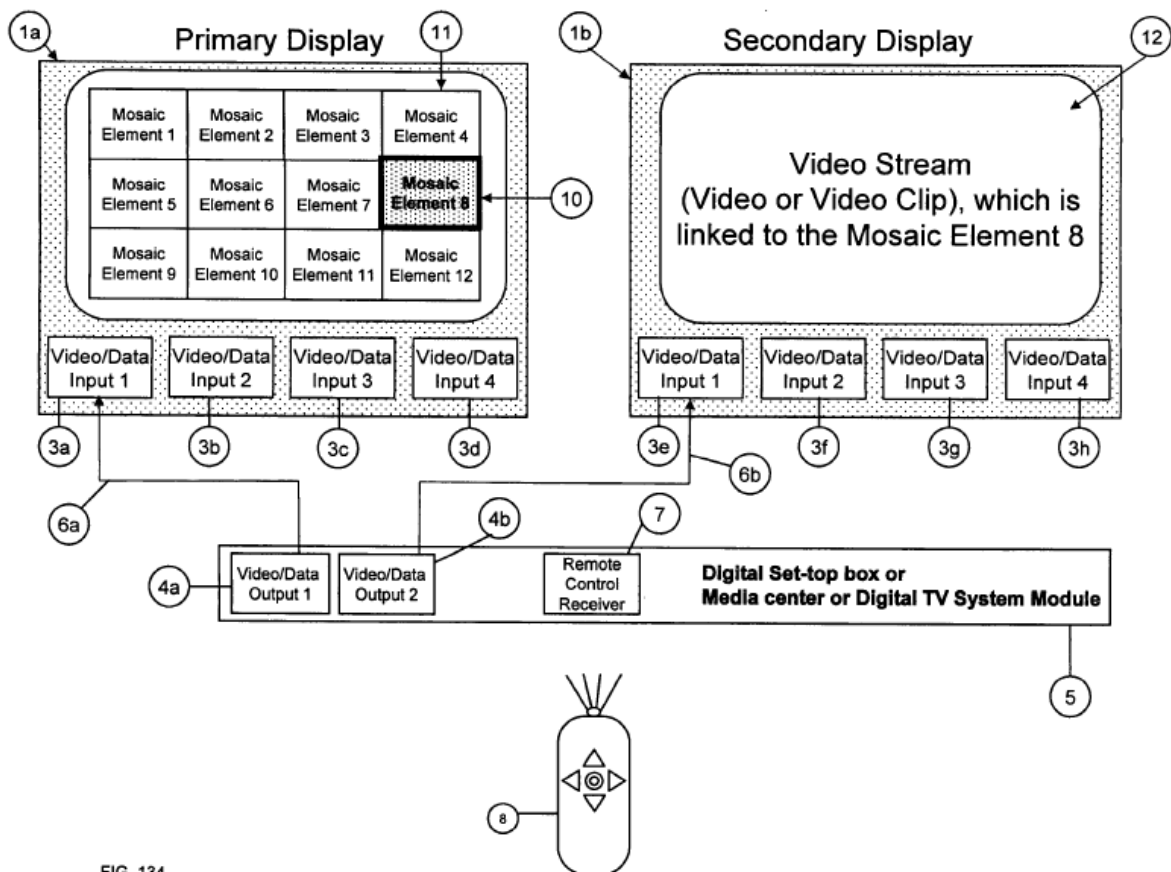


FIG. 134

Figure 134 shows remote control 8 controlling separate screens including a primary display and a secondary display. The primary display of Figure 134 allows selection of a mosaic element such as element 8, which results in playing of a video stream linked to mosaic element 8 on Secondary Screen. Figure 135 of the Specification (not depicted above) illustrates remote control 8 toggling screens such that the mosaic elements are displayed on the secondary display and the linked video stream is played on the primary display. Appellant argues, and we agree, that by disclosing switching screens so that only the video stream 12 is displayed on the secondary screen and not the mosaic elements 10, 11 (Figure 134), the Specification supports disabling the selection of one of the plurality of selectable elements on the second (i.e., secondary) display device, as claimed. Appellant argues, and we agree, that by disclosing switching of screens so that only the video stream 12 is displayed on the primary screen and not the mosaic elements 10, 11 (Figure 135), the Specification supports disabling the selection of one of the plurality of selectable elements on the first (i.e., primary) display device, as claimed. In addition, as Appellant notes, the Specification describes that Electronic Program Guide applications “can be created ‘on devices with more than one tuner that can simultaneously display video and applications graphics of that application on more than one display, for example allowing subscribers to view and navigate DMXEPG on one display, which can be a touch screen display, and view selected show on another display.’” Appeal Br. 8 (citing Spec. ¶ 31). Accordingly, we determine there is sufficient support in the Specification for disabling selection of one of the plurality of selectable elements on the first or second display device, as recited in claim 75.

In view of our discussion above, we do not sustain the 35 U.S.C. § 112, first paragraph rejection of independent claim 75. Independent claim 78 includes similar limitations and so we do not sustain that rejection. We also do not sustain the rejection of claims 76 and 77, which depend from independent claim 75.

### CONCLUSION

We reverse the Examiner's decision to reject claims 75–78 under 35 U.S.C. § 112, first paragraph.

### DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
75–78	112, first paragraph	Written Description		75–78

REVERSED