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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DANIEL JOHN WIGDOR, JARROD LOMBARDO,
ANNUSKA ZOLYOMI PERKINS, and SEAN HAYES

Appeal 2019-006116
Application 12/630,381
Technology Center 2100

Before JOHNNY A. KUMAR, STACEY G. WHITE, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1, 3–7, 9, 10, and 12–22. *See* Final Act. 1. Claims 2, 8, and 11 have been cancelled. Appeal Br. A-1, A-2, A-3. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ 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 Microsoft Technology Licensing, LLC. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to a three-state touch input system.

Specifically,

a touch screen input device is provided which simulates a 3-state input device such as a mouse. One of these states is used to preview the effect of activating a graphical user interface element when the screen is touched. In this preview state touching a graphical user interface element on the screen with a finger or stylus does not cause the action associated with that element to be performed. Rather, when the screen is touched while in the preview state audio cues are provided to the user indicating what action would arise if the action associated with the touched element were to be performed.

Spec. ¶ 5. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method performed on a computing device, the method comprising:
 - displaying a graphical user interface element on a touch screen;
 - receiving a first touch on the touch screen;
 - entering, in response to the received first touch and while continuing to receive the first touch, a first state that enables an audio cue that indicates information associated with the graphical user interface element when the first touch is at a location of the graphical user interface element;
 - receiving, while in the first state, an indication that the first touch is at the location of the graphical user interface element;
 - based at least on the indication that the first touch is at the location of the graphical user interface element, providing the audio cue that indicates the information associated with the graphical user interface element;
 - receiving, while in the first state, a second touch on the touch-screen while continuing to receive the first touch; and

performing, in response to the received second touch while continuing to receive the first touch, a function associated with the graphical user interface element.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Westerman	US 2008/0036743 A1	Feb. 14, 2008
Seymour	US 2010/0199215 A1	Aug. 5, 2010 (filed Feb. 5, 2009)
Fleizach	US 2010/0313125 A1	Dec. 9, 2010 (filed Sept. 23, 2009)
Wang	US 2011/0115746 A1	May 19, 2011 (filed Nov. 16, 2009)

REJECTION

Claims 1, 4–7, 9, 13–17, 19, and 20–22 stand rejected under 35 U.S.C. § 103 as unpatentable over Fleizach and Wang.

Claims 3, 12, and 18 stand rejected under 35 U.S.C. § 103 as unpatentable over Fleizach, Wang, and Westerman.

Claim 10 stands rejected under 35 U.S.C. § 103 as unpatentable over Fleizach, Wang, and Seymour.

OPINION

We have reviewed the Examiner's rejection in light of Appellant's arguments that the Examiner erred. In reaching this decision, we have considered all evidence presented and all arguments made by Appellant. We are not persuaded by Appellant's arguments regarding the pending claims that the Examiner erred.

The Examiner finds Fleizach teaches, “entering, in response to the received first touch and while continuing to receive the first touch, a first state that enables an audio cue that indicates information associated with the graphical user interface element when the first touch is at a location of the graphical user interface element,” as recited in claim 1. Final Act. 2–3; Ans. 7. More specifically, the Examiner finds Fleizach teaches “in response to the point of contact of the first finger, emitting accessibility information about the dictionary application icon 149-5, e.g., the spoken text ‘dictionary.’” Final Act. 3 (citing Fleizach ¶ 255, Figs. 5FF, 5GG).

Appellant argues the Examiner erred in finding Fleizach teaches a first touch that enables a computer device to enter a first state as recited in claim 1. Appeal Br. 11–12.² According to Appellant,

Fleizach does not describe entering a first state upon a first touch or while the first touch is maintained. Rather, Fleizach essentially skips entering into an exploration “state” and merely describes that once a user selects an icon (such as application labeled “dictionary”), the system will provide information about the icon, such as spoken text “dictionary”. See Fleizach, paragraphs 254 and 255. That is, the “triggering” event in Fleizach is a user simply selecting an icon.

Id. at 12.

We are not persuaded by Appellant’s argument that the Examiner erred. Fleizach paragraphs 254–256—which describes Figures 5FF and 5GG—recites how “the accessibility user interface facilitates use of two fingers on one or both hands to navigate through and activate user interface

² We note that the Reply Brief repeats the arguments set forth in the Appeal Brief. *Compare* Appeal Br. 11–14 *with* Reply Br. 2–5. Accordingly, we only cite to the Appeal Brief.

elements presented in the interface.” Fleizach ¶ 254. Fleizach describes how a first touch activates the accessibility cursor which enables audio associated with the name of various icons:

In UI 500FF, user selection gesture 578 begins with a first point of contact 578-1 at texting application icon 141. In response, accessibility cursor 502 is placed at texting application icon 141 and accessibility information about the texting application icon 141 is emitted, e.g., the spoken text “texting” or “texting application” or “tap to select texting.”

Id. Fleizach continues to describe on how different audio is presented as the user moves their finger to a new location with a different icon:

UI 500GG depicts that the user selection gesture’s point of contact has moved 578-3 to dictionary application icon 149-5. In response, the current focus and accessibility cursor 502 are placed at dictionary application icon 149-5, and accessibility information about the dictionary application icon 149-5 is emitted, e.g., the spoken text “dictionary” or “dictionary application” or “tap to select dictionary.”

Id. ¶ 255. Thus, the first touch triggers a state in which audio cues are given. Accordingly, we are not persuaded by Appellant’s argument the Examiner erred.

The Examiner further finds Wang, in combination with Fleizach, teaches “receiving, while in the first state, an indication that the first touch is at the location of the graphical user interface element” as recited in claim 1. Final Act. 3; Ans. 8. Specifically, the Examiner finds Wang teaches “receiving an indication that a first touch is at a location of a graphical user interface ([F]ig. 1; para [0062]: host application receives a touch event).” Final Act. 3; *see also* Ans. 8 (“Wang teaches sensing/receiving user’s input

at a location ([F]ig. 1; para [0062, 0063]: an interactive input system that intelligently selects the object).”).

Appellant argues that “Claim 1 does not recite ‘receiving an indication that a first touch is at a location of a graphical user interface’, rather, Claim 1 recites ‘receiving an indication that a first touch is at a location of a graphical user interface *element*.’” Appeal Br. 12. According to Appellant, “the Examiner [erred] in rejecting Claim 1 by omitting one of the features, which is not applied to any of the cited references. That is, simply touching a graphical user interface (as the Examiner asserts Wang describes) is very different from touching *a graphical user interface element*.” *Id.* at 12–13. Additionally, Appellant argues because Wang does not teach a first state as recited in claim 1, the Examiner relied on improper hindsight to select various elements. *Id.* at 13.

Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). The test for obviousness is not whether the claimed invention is expressly suggested in any one or all of the references, but whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the *combined teachings* of those references. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

In this case, the Examiner relies on Fleizach, not Wang, for the graphical user interface element. *See* Final Act. 2 (“Fleizach teaches a method performed on a computing device, the method comprising: displaying *a graphical user interface element* on a touch screen . . .”). Fleizach also is relied on to teach entering a first state. Ans. 7. Therefore, it

is inapposite for Appellant to argue that Wang does not also teach the limitations that the Examiner relied upon Fleizach to teach. Because Appellant is arguing the references individually and not addressing the combination the Examiner is relying on, Appellant's argument is not persuasive.

Furthermore, we are not persuaded by Appellant's argument that the Examiner relied on improper hindsight. In *KSR*, the Supreme Court held "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). We agree with the Examiner that the prior art contains known solutions that have been used to improve one device and that a person having ordinary skill in the art would have recognized that it could have been used to improve other prior art devices in a predictable way. Appellant has not argued that it would have been "uniquely challenging or difficult for one of ordinary skill in the art" to make the modifications suggested by the Examiner. See *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418). Therefore, we are not persuaded by Appellant's arguments that the Examiner erred in combining the prior art references.

Accordingly, we sustain the rejection of independent claim 1 along with independent claims 9 and 15—for which Appellant relies on the same arguments set forth above regarding claim 1—and dependent claims 4–9, 13–15, 17, 19, and 20–22, which are not argued separately. See Appeal Br. 14.

Additionally, Appellant does not specifically address dependent claims 3, 10, 12, and 18. *See generally* Appeal Br. Because we determine that the rejection of claim 1 is not erroneous for the reasons discussed above and Appellant has not argued that the Examiner erred with respect to claims 3, 10, 12, and 18, we sustain the rejections of these claims. *See Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (“If an appellant fails to present arguments on a particular issue — or, more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection.”).

CONCLUSION

The Examiner’s rejection is affirmed.

More specifically, we affirm the Examiner’s § 103 rejections of claims 1, 3–7, 9, 10, and 12–22.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 4–7, 9, 13–17, 19, 20–22	103	Fleizach, Wang	1, 4–7, 9, 13–17, 19, 20–22	
3, 12, 18	103	Fleizach, Wang, Westerman	3, 12, 18	
10	102	Fleizach, Wang, Seymour	10	
Overall Outcome:			1, 3–7, 9, 10, 12–22	

Appeal 2019-006116
Application 12/630,381

TIME PERIOD FOR RESPONSE

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