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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CYPRUS LAKE SOFTWARE, INC.
Patent Owner and Appellant

Appeal 2020-005815
Reexamination Control 90/014,250
United States Patent 9,423,954 B2
Technology Center 3900

Before JOHN A. JEFFERY, MARC S. HOFF, and KARL D. EASTHOM,
Administrative Patent Judges.

JEFFERY, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. §§ 134 and 306 the Examiner's decision to reject claims 14–16. We have jurisdiction under 35 U.S.C. §§ 134 and 306.

We AFFIRM.

¹ Appellant identifies the real party in interest as Cyprus Lake Software, Inc. Appeal Br. 3.

STATEMENT OF THE CASE

This proceeding arose from a request for *ex parte* reexamination filed on January 2, 2019 of United States Patent 9,423,954 (“the ’954 patent”), issued to Morris on August 23, 2016.

The ’954 patent describes a mobile device graphical user interface that changes the size of adjacent, non-overlapping windows via a touchscreen. *See generally* ’954 patent col. 20, l. 11 – col. 22, l. 29; Fig. 6A. Claim 14 is illustrative and reproduced below:

14. An apparatus, comprising:
 - at least one processor configured for coupling with memory and a touchscreen, and
 - further configured for:
 - storage of a plurality of applications including a first application, a second application, and a third application, utilizing the memory, the applications including a first program component and a second program component;
 - detection of a first user input;
 - in response to the first user input, presentation of, utilizing the touchscreen, a first window associated with the first program component including at least one user interface element;
 - detection of a second user input in connection with the at least one user interface element of the first window;
 - in response to the second user input in connection with the at least one user interface element of the first window, creation of a second window associated with the second program component and presentation thereof, utilizing the touchscreen, adjacent to and not overlapping with respect to the first window, for presenting, in the second window, data associated with the at least one user interface element of the first window;
 - detection of a third user input; and
 - in response to the third user input, change, utilizing the touchscreen, the presentation

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of the first window and the second window, such that a first size of the first window and a second size of the second window are both changed, and the second window remains adjacent to and not overlapping with respect to the first window.

RELATED PROCEEDINGS

Appellant informs us that this appeal is related to six *ex parte* reexamination proceedings involving six different patents, namely (1) 90/014,332; (2) 90/014,467; (3) 90/014,329; (4) 90/014,310; (5) 90/014,333; and (6) 90/014,331. Appeal Br. 4.

THE REJECTIONS

The Examiner rejected claims 14 and 15 under 35 U.S.C. § 103 as unpatentable over Kim (US 2008/0158189 A1; published July 3, 2008) and Seo (US 2010/0066698 A1; published Mar. 18, 2010). Final Act. 7–11.²

The Examiner rejected claim 16 under 35 U.S.C. § 103 as unpatentable over Kim, Seo, and Jobs (US 2005/0149879 A1; published July 7, 2005). Final Act. 11–12.

THE OBVIOUSNESS REJECTION OVER KIM AND SEO

Regarding independent claim 14, the Examiner finds that Kim’s apparatus includes, among other things, (1) a first application (multitasking program); (2) a second application (broadcast viewing program); and (3) a

² Throughout this opinion, we refer to (1) the Final Office Action mailed August 27, 2019; (2) the Appeal Brief filed March 25, 2020 (“Appeal Br.”); and (3) the Examiner’s Answer mailed May 5, 2020 (“Ans.”).

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third application (other disclosed applications, such as photo album, messaging, or folder applications). *See* Final Act. 7–11; Ans. 5–6. According to the Examiner, these three applications include respective “program components,” including (1) a first program component that is any part of Kim’s multitasking program; and (2) a second program component that is any part of the broadcast viewing program. Ans. 5–6.

Although the Examiner acknowledges that Kim does not state explicitly that the controller in Figure 1 is a processor, the Examiner cites Seo as teaching this feature in concluding that the claim would have been obvious. Final Act. 8.

Appellant argues that Kim’s task list and associated multitasking function are not part of an application, namely a software function that performs a specific function, but are rather general system functions performed by the operating system. Appeal Br. 7–9, 11–19, 23–30. Appellant argues other recited limitations summarized below.

ISSUE

Under § 103, has the Examiner erred by finding that Kim and Seo collectively would have taught or suggested an apparatus configured to store three applications including first and second program components as recited in claim 14, where these components are those of different applications as recited in claim 15?

ANALYSIS

Claim 14

As noted above, claim 14 recites, in pertinent part, three applications that include first and second program components. Because this dispute turns on the meaning of the term “application,” we therefore begin by construing this term.

The Specification does not define the term “application,” unlike many other terms whose concrete definitions leave no doubt as to their meaning. *See, e.g.*, ’954 patent col. 5, ll. 58–61 (defining “device” and “node” explicitly); col. 6, ll. 29–36 (defining “Z-order” and “Z-value” explicitly); col. 6, ll. 37–41 (defining “user interface (UI) element handler” explicitly); col. 6, ll. 41–43 (defining “program entity” explicitly); col. 6, l. 63 – col. 7, l. 9 (defining “presentation space” explicitly); col. 7, ll. 10–13 (defining “program” or “executable” explicitly); col. 7, ll. 27–46 (defining “addressable entity” explicitly); col. 24, ll. 58–64 (defining “a,” “an,” and “the” explicitly).

In other words, the ’954 patent is replete with concrete definitions of various terms that limit their interpretation to those definitions, yet the patent does not define the very term in dispute, namely an “application.” We, therefore, construe the term with its broadest reasonable interpretation in light of the Specification and consistent with the construction articulated by the District Court in related litigation, namely a software program that performs a specific function. *Accord* Appeal Br. 8 (quoting the court’s construction).

Based on this construction, we see no error in the Examiner's reliance on Kim's multitasking and broadcast viewing programs for teaching the recited first and second applications, respectively. *See* Ans. 5–6. As shown in Kim's Figures 2A and 2B, movable menu bar 124 includes a button 125 that is used to execute mobile terminal functions or menus. Kim ¶ 36; Figs. 2A–B. This functionality is shown in Kim's Figure 4, where the device executes a certain function in step S50 responsive to touching a particular execution button 125 in step S40. *See* Kim ¶ 51.

These particular functions invoked upon touching the corresponding button 125 include (1) a text messaging function shown in Figures 6A and 6B; (2) a photo album function shown in Figure 7; and (3) a multitasking function shown in Figure 9. *See* Kim ¶¶ 51–61. As Kim's paragraph 61 explains, the multitasking function fetches and displays, as text and/or icons, a list of tasks available for multitasking. From this list, the user then selects multiple tasks, such as the broadcast viewing and photo album functions 127 and 129, that are performed simultaneously. Kim ¶ 61.

Based on this functionality, we see no error in the Examiner's finding that Kim's multitasking function is an "application," namely a software program that performs a specific function, specifically multitasking, consistent with the term's broadest reasonable interpretation in light of the Specification. *Accord* Ans. 12, 17 (noting that Kim's multitasking function is a *specific* function initiated by selecting button 125 for the *specific* purpose of multitasking other applications). That Kim's multitasking function in Figure 9 is listed among other applications invoked by selecting button 125, namely text messaging and photo album functions in Figures 6A

and 7, respectively, as the Examiner indicates (Ans. 9–11) only further bolsters the notion that Kim’s multitasking function is just one of several applications selected via button 125.

Appellant’s contention that Kim’s task list and associated multitasking function are not applications, but rather general system functions that are part of the device’s operating system (Appeal Br. 7–9, 11–19, 23–30) is unavailing. First, even assuming, without deciding, that Kim’s multitasking function in Figure 9 executes a system command or communicates with the operating system to produce a task list, that alone does not preclude the associated multitasking software from being considered an “application” under its broadest reasonable interpretation, namely a software program that performs a specific function, including multitasking. *Accord* Ans. 14 (noting this point).

Nor do we see error in the Examiner’s finding that Kim’s applications, include respective “program components,” including (1) a first program component that is any part of Kim’s multitasking program; and (2) a second program component that is any part of Kim’s broadcast viewing program. Ans. 5–6. Although the ’954 patent’s column 7, lines 14 to 16 notes that a program or executable *component* can include an *application*—the very opposite to the recited *applications* that include program *components*—the ’954 patent nevertheless notes in column 8, lines 49 to 53 that components can be at least partially included in an application. Despite this contradiction, nothing in the claim or the ’954 patent precludes the recited program components from including the various portions of the respective broadcast viewing and multitasking programs as the Examiner indicates

(Ans. 5–6) given the scope and breadth of the term “program component”—a term that is not defined in the ’954 patent, unlike the many other terms whose concrete definitions leave no doubt as to their meaning as noted previously.

We reach this conclusion despite the ’954 patent distinguishing operating system 120 from applications 122 in the execution environment of Figure 1. *See* ’954 patent col. 4, ll. 35–38. Leaving aside the fact that the ’954 patent does not define the term “application” unlike the many other terms that the patent defines clearly and unambiguously as noted previously, nothing on this record precludes Kim’s multitasking function from being considered an “application” under its broadest reasonable interpretation even assuming, without deciding, that at least some of Kim’s multitasking functionality involves the operating system.

Appellant’s reliance on the previously-filed Smith Declaration³—a declaration that was not provided to the Board in connection with the Appeal Brief—is unavailing. *See* Appeal Br. 15, 19. Leaving aside Appellant’s failure to make this evidence of record in this appeal, much less Dr. Bederson’s countervailing declaration,⁴ Dr. Smith’s averments in paragraphs 19 to 29 of his declaration that Kim’s multitasking functionality is part of the operating system is undercut by Dr. Bederson’s averments to the contrary in paragraphs 74 to 84 of his declaration. Although we appreciate Dr. Smith’s insights in this regard, the probative value of his declaration is diminished

³ *See* Declaration of Michael J. Smith filed July 29, 2019 (“Smith Decl.”)

⁴ *See* Declaration of Benjamin B. Bederson, Ph.D. filed Jan. 2, 2019. (“Bederson Decl.”).

significantly by Dr. Bederson’s countervailing declaration—both of which the Examiner considered in concluding that claim 14 would have been obvious. *See* Ans. 2.

We further note that claim 14 recites, quite broadly, that the three recited applications include first and second program components, but does not specify that *each* application includes those components. Therefore, nothing in the claim precludes the Examiner’s mapping (1) the recited first program component to any part of Kim’s multitasking application, and (2) the recited second program component to any part of Kim’s broadcast viewing application. *See* Ans. 5–6. To the extent that Appellant contends that *each* of the three recited applications must include *both* recited components (*see* Appeal Br. 7–8, 27–29), such an argument is not commensurate with the scope of the claim.

Therefore, we are not persuaded that the Examiner erred in rejecting claim 14.

Claim 15

We also sustain the Examiner’s rejection of claim 15 reciting, in pertinent part, the first and second program components are components of different applications. *See* Final Act. 11. As noted previously, we see no error in the Examiner’s mapping Kim’s multitasking and broadcast viewing programs to the recited first and second applications, respectively. *See* Ans. 5–6, 19 (reiterating this mapping as “Interpretation I”). Nor do we see error in the Examiner’s finding that these different applications include respective “program components,” namely (1) a first program component that is any

part of Kim's multitasking program; and (2) a second program component that is any part of Kim's broadcast viewing program. *See* Ans. 5–6, 19. Because we find no error in the Examiner's first articulated interpretation that maps the first application to Kim's multitasking application and its associated components, including those associated with the task list, we need not address the Examiner's alternative interpretation that maps the recited first program component to Kim's photo album application. *Accord* Ans. 19 (noting this point).

Appellant's contentions, then, regarding the alleged shortcomings of the Examiner's *second* alternative interpretation based on the photo album component (Appeal Br. 9–10, 19–23) do not persuasively rebut the Examiner's findings and conclusions based on the *first* alternative interpretation. *See* Final Act. 9–11. Nevertheless, to the extent that Appellant's arguments regarding the Examiner's second interpretation, including the cited prior art's alleged failure to create a second window associated with the second program component responsive to detecting a second user input in connection with the first window's user interface element and presenting data associated with the user interface element in the second window, somehow also apply to the first alternative interpretation (*see id.*), we find such arguments unavailing.

Therefore, we are not persuaded that the Examiner erred in rejecting claim 15.

THE OBVIOUSNESS REJECTION OVER KIM, SEO, AND JOBS

We also sustain the Examiner’s obviousness rejections of claim 16 over Kim, Seo, and Jobs. Final Act. 11–12. Because this rejection is not argued separately with particularity (see Appeal Br. 10), we are not persuaded of error in this rejection for the reasons previously discussed.

CONCLUSION

The Examiner’s decision rejecting claims 14–16 is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
14, 15	103	Kim, Seo	14, 15	
16	103	Kim, Seo, Jobs	16	
Overall Outcome			14–16	

REQUESTS FOR EXTENSIONS OF TIME

Requests for extensions of time in this ex parte reexamination proceeding are governed by 37 C.F.R. § 1.550(c). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

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