

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIELE BAGNI and GERARD DE HAAN

Appeal No. 2004-0907
Application No. 09/192,674

ON BRIEF

Before BLANKENSHIP, SAADAT, and MACDONALD, Administrative Patent Judges.

BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-9, which are all the claims in the application.

We affirm.

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we will consider claim 9 first, and separately, because the claim contains only one of the features relied upon by appellants.

Claim 9 recites estimating motion vectors relating to first objects, and generating prediction errors relating to every occurrence of (smaller) second objects, wherein the prediction errors depend on motion vectors for the second objects only. Appellants argue that, based on the disclosure at column 5, lines 39 through 64 of Ng, the reference neither teaches nor suggests the recited “generating prediction errors in dependence on said second motion vectors only.”

However, the arguments are not responsive to the rejection that has been applied. Appellants are, instead, arguing an issue that is not in controversy. The examiner does not find that Ng teaches or suggests the claimed feature. The rejection relies on the noted section of Ng for a teaching of generating prediction errors dependent on motion vectors associated with the second (smaller) objects. The rejection relies on that teaching combined with de Haan, however, for suggestion of generating prediction errors in dependence on the second motion vectors “only.” (Answer at 3-5 and 10-11.)

The examiner bears the initial burden of presenting a prima facie case of unpatentability. If that burden is met, the burden of coming forward with evidence or argument shifts to the applicant. After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument. In

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re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Since appellants' arguments do not show error in the examiner's findings in support of the rejection, we sustain the rejection of claim 9.

The remainder of the claims (e.g., representative claim 1) recite the additional feature of filtering every occurrence of the first motion vectors to obtain second motion vectors for second objects. Appellants quote the right column of de Haan at page 373, lines 2 through 9, and submit that, based on that disclosure, it was evident that the reference neither teaches nor suggests the relied-upon feature.

Rather than repeating the examiner's reasonable and extensive findings herein, we refer to the examiner's position set out in the Answer. The de Haan reference, at pages 373 and 374, describes a block erosion process that the examiner relates to the operations described in the instant specification. Contrary to appellants' implication in the Brief, we do not find any statement in de Haan that the operation referenced in the relevant section "only" eliminates block boundaries from the vector field without blurring contours.

The reference section appears not to contain the term "MVPF" (i.e., motion vector post-filtering). However, we read the "MVPF" parenthetical in claim 1 as merely a reference to the instant disclosure, and not a limitation from the specification that is to be read into the claim. Moreover, particularly in light of the examiner's analysis, it is not seen how the verbal description of the MVPF "filtering" in the specification (at the lower portion of page 4) differs from the operation in the reference applied.

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We observe that the de Haan reference is cited in the instant specification (at 8), and appears to have been co-authored by an instant co-inventor. In any event, at least for the reason that the reference was cited in the specification, appellants should be in a position to provide salient reasons why the instant claims distinguish over the applied teachings and why the examiner errs in the rejection. Appellants could have, but chose not to, submit a reply brief to contest any of the examiner's findings in the Answer.

We conclude that the examiner's case for prima facie unpatentability has not been demonstrated to be in error, and thus sustain the rejection. We make our determinations on the record before us. We stress, however, that we are not inviting new arguments from appellants that could have been presented in a brief or reply brief. Arguments not relied upon are deemed waived. See 37 CFR § 1.192(a) ("Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.") and § 1.192(c)(8)(iv) (the brief must point out the errors in the rejection). See also 37 CFR § 41.37(c)(1)(vii) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)) ("Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown.").

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CONCLUSION

The rejection of claims 1-9 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a). See 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

HOWARD B. BLANKENSHIP)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
MAHSHID D. SAADAT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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ALLEN R. MACDONALD)	
Administrative Patent Judge)	

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