

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MING C. HAO, UMESHWAR DAYAL, MEICHUN HSU, DANIEL A. KEIM,
ADRIAN KRUG, and JULIAN LADISCH

Appeal No. 2005-0433
Application No. 09/982,481

ON BRIEF

Before BARRY, LEVY, and BLANKENSHIP, 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 1-32, which are all the claims in the application.

We affirm-in-part, and enter a new ground of rejection in accordance with 37 CFR § 41.50(b).

BACKGROUND

The invention relates to placement of data for visualization of multidimensional data sets. Representative claim 1 is reproduced below.

1. A method for arranging data, said method comprising:

receiving said data comprising a plurality of records, each said record having a plurality of attributes;

determining a set of attributes selected from said plurality of attributes, said set of attributes for placement of said plurality of records in a graphically displayable array, said graphically displayable array comprising a plurality of adjacent data points, each said data point representing one record of said plurality of records;

arranging said plurality of records to construct said graphically displayable array so that each of said adjacent data points is assigned a record.

The examiner relies on the following reference:

Tabei et al. (Tabei)	5,929,863	Jul. 27, 1999
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Claims 1-30 stand rejected under 35 U.S.C. § 102 as being anticipated by Tabei.

Claims 31 and 32 stand rejected under 35 U.S.C. § 103 as being unpatentable over Tabei.

We refer to the Final Rejection (Paper No. 7) and the Examiner's Answer (Paper No. 10) for a statement of the examiner's position and to the Brief (Paper No. 9) for appellants' position with respect to the claims which stand rejected.

OPINION

Prior art -- Tabei

Appellants group claims 1 through 30 together, and submit arguments relating to instant claim 1 in response to the § 102 rejection over Tabei. We select claim 1 as representative, consistent with the rules in effect at the time of filing the Brief. See 37 CFR § 1.192(c)(7) (2004).

Appellants argue that the examiner errs in the finding of anticipation because Tabei does not teach or suggest a plurality of adjacent data points in which each adjacent data point is assigned a record. According to appellants, Tabei shows (e.g., Figure 11) a graph comprising a plurality of adjacent data points, but not every possible data point in the graph is assigned a record; many “unassigned” data points exist between the plotted records.

The examiner responds (Answer at 12-13) that the arguments are not commensurate with the limitations of claim 1. The examiner finds, further, that Tabei’s teachings are not limited to the embodiments depicted in the figures. For a large number of records, the system is capable of drawing a graph such that each data point corresponds to a record; i.e., with no “unassigned” data points.

With respect to anticipation, “the first inquiry must be into exactly what the claims define.” In re Wilder, 429 F.2d 447, 450, 166 USPQ 545, 548 (CCPA 1970). Instant claim 1 recites that the graphically displayable array comprises “a plurality of adjacent data points, each said data point representing one record of said plurality of records,”

and arranging the plurality of records to construct the array such that each of the adjacent data points is assigned a record.

Claims are to be given their broadest reasonable interpretation during prosecution, and the scope of a claim cannot be narrowed by reading disclosed limitations into the claim. See In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550 (CCPA 1969). Notwithstanding the implications of appellants' argument, that data points are "adjacent" does not necessarily mean there is contact between the data points.¹ The word "adjacent" may require no more of the subjects than their being "close to" or "lying near." See, e.g., The American Heritage Dictionary, Second College Edition at 79 (1982 ed.).

Appellants have not shown error in the examiner's findings with respect to what Tabei teaches beyond the express embodiments described.² Aside from that, however, we note that instant claim 1 sets forth a "plurality" of records -- or, at a minimum, two. Tabei shows, in Figure 11, two displayed data points representing two records in the lower left rectangle of the (topmost) graph (i.e., 0 to 25 "profit" and 0 to 250 "sales"). The two data points are adjacent, at least in comparison with the data points that

¹ Moreover, it seems unlikely that any "data points" would be in contact in an "array."

² What a reference teaches is a question of fact. In re Baird, 16 F.3d 380, 382, 29 USPQ2d 1550, 1552 (Fed. Cir. 1994); In re Beattie, 974 F.2d 1309, 1311, 24 USPQ2d 1040, 1041 (Fed. Cir. 1992).

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indicate the remainder of the records. Each of the two data points in Figure 11 is assigned a record, consistent with what is actually required by instant claim 1.³

We thus are not persuaded that the rejection of representative claim 1 is in error. We sustain the rejection of claims 1-30 under 35 U.S.C. § 102 as being anticipated by Tabei.

We reverse, pro forma, the rejection of claims 31 and 32 under 35 U.S.C. § 103 over Tabei, since we are unable to ascertain the scope of the claims for any meaningful comparison with the prior art. The reversal of claims 31 and 32 is for the reason that rejections of claims over prior art should not be based on speculation and assumptions as to the scope of the claims. See In re Steele, 305 F.2d 859, 862, 134 USPQ 292, 295 (CCPA 1962). We note, however, that we are not persuaded by the position set out in the Answer that Tabei suggests a variable width column, or determines “a width of each of the columns, the width of some columns being different than the width of other columns,” based on the teachings relied upon in the reference.

New grounds of rejection

We enter the following new grounds of rejection against the claims in accordance with 37 CFR § 41.50(b): Claims 31 and 32 are rejected under 35 U.S.C.

³ We add that, even if “adjacent” were to require contact between data points, the claim 1 aspect would be met when (only) two of the data points of Tabei were not separated by an “unassigned” data point.

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§ 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention, and under 35 U.S.C. § 112, first paragraph, as appellants' disclosure fails to provide written description for the invention now claimed.

Base claim 31 recites "assigning records to every pixel in said columns...." The language seems to require assigning a plurality of records to each pixel in the columns, which does not appear consistent with formation of a "pixel bar chart." The claim next recites "applying a variable color to all of the pixels in all of the columns according to an attribute of said records." Applying a color to all of the pixels in all of the columns would result in all pixels being of the same color. Whatever a "variable color" may be, it is applied to all of the pixels in all of the columns -- as opposed to, for example, a unique color applied to each pixel -- resulting in, again, all the pixels being of the same "variable" color. We cannot ascertain the metes and bounds of the coverage of at least base claim 31.

Further, appellants' Brief does not point out support in the disclosure for the language of present claims 31 and 32. Cf. 37 CFR § 1.192(c)(5) (2004) ("*Summary of Invention*. A concise explanation of the invention defined in the claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.>").

To comply with the "written description" requirement of 35 U.S.C. § 112, first paragraph, an applicant must convey with reasonable clarity to those skilled in the art

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that, as of the filing date sought, he or she was in possession of the invention. The invention is, for purposes of the “written description” inquiry, whatever is now claimed. Vas-Cath, Inc. v. Mahurkar, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). For purposes of written description, one shows “possession” by descriptive means such as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. Lockwood v. American Airlines, Inc., 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997). We do not find such descriptive means in the disclosure for the inventions of claim 31 and claim 32.

CONCLUSION

The rejection of claims 1-30 under 35 U.S.C. § 102 is affirmed. The rejection of claims 31 and 32 under 35 U.S.C. § 103 is reversed, pro forma.

New rejections of claims 31 and 32 under 35 U.S.C. § 112, first and second paragraph are set forth herein.

This decision contains a new ground of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 CFR § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 CFR § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options

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with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

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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-IN-PART -- 37 CFR § 41.50(b)

LANCE LEONARD BARRY)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
STUART S. LEVY)	APPEALS
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HOWARD B. BLANKENSHIP)	
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