The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EDWARD S. BEEMAN
and
GORDON R. NUTTALL

Appeal No. 2006-0567
Application 09/938,256

ON BRIEF

Before THOMAS, KRASS, and BARRETT, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1 and 3 through 27.

Representative claim 1 is reproduced below.

1. A method for facilitating image retrieval, comprising:

querying a user as to at least one attribute of an image the user wishes to retrieve by posing a series of explicit questions to the user;

receiving explicit user responses to the posed questions; and

presenting at least one image to the user based upon the user responses.

The following references are relied on by the examiner:

Kagami et al. (Kagami)	5,974,422	Oct. 26, 1999
Zhu et al. (Zhu)	6,345,274	Feb. 5, 2002 (filed June 29, 1998)

Claims 1 and 3 through 27 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Zhu in view of Kagami. The examiner has set forth a new rejection beginning at page 5 of the Answer under 35 U.S.C. § 102(b) of claims 1 through 27 [sic, 1 and 3 through 27] as being anticipated by Kagami.[1]

Rather than repeat the positions of the appellants and the examiner, reference is made to the Brief and Reply Brief for appellants' positions, and to the Answer for the examiner's positions.

[1] As set forth at pages 2 and 3 of the Answer, the examiner has withdrawn an outstanding rejection of certain dependent claims under the second paragraph of 35 U.S.C. § 112.

OPINION

For the reasons set forth by the examiner in the Answer, as expanded upon here, we sustain the rejection of claims 1 and 3 through 27 under 35 U.S.C. § 103.

Both the examiner and appellants recognize that Zhu does not teach the claimed feature of a series of explicit questions to the user. On the other hand, the background of Zhu makes clear that his invention stems from a history in the art of what has been characterized as query processing. In fact, the "Summary of the Invention" at column 3, line 26, characterizes Zhu's invention as a "system for user preference-based query processing." Rather than posing to the user of Zhu's system explicit questions, the examiner is correct in the assessment of Zhu at page 4 of the Answer as embellished upon in the remarks at pages 7 and 8 as well, that Zhu may be fairly characterized as presenting to the user a series of implicit or implied questions to therefore invoke from the user a response as to his or her preference with respect to certain data items, such as image components and/or depictive features in images. Even though figures 7, 8 and 9 of Zhu depict actual questions with question mark punctuation within the decision blocks in these figures,

they appear not to be actually displayed to the user. Nevertheless, the underlying logic of Zhu is clearly a query-based processing system as Zhu plainly states.

The three functional phases of Zhu are discussed initially at column 5, lines 5-10. The second of these phases is discussed as having two options beginning at line 4 of column 6. The capturing of user preference understanding information is stated to be derived by the use of various user interactions, which in turn have two options to acquire user preferences. The initial option is the query-based option which yields a response set, such as discussed at the bottom of page 7 of the Answer. According to the discussion here, it appears to us that the artisan would have quickly realized that in figure 7, the system is actually asking the user “do you want to supply me with your preferences?” This is done by inviting the user to select or enter a query image in S310. To the extent the desired image has not actually been retrieved, decision block S337 also effectively asks the user to enter specific examples and/or counterexamples in step 340 by first effectively asking the question in decision block S337 “do you have any examples or counterexamples for me?” This is discussed at the bottom of column 7 of Zhu.

Correspondingly, for the actual image retrieval or third functional phase, figure 9 first effectively represents a flow diagram of a system logic that effectively asks the question "do you have a query image and preference file combination for me?" The user responds, selects an image and a generated response is displayed to the user. This is discussed beginning at the bottom of column 9. A corresponding alternative embodiment in figure 10 is an information retrieval that effectively only asks the user "do you have a user preference file for me?"

Therefore, to the extent argued in the Brief and Reply Brief, we do not agree with appellants' view expressed there that Zhu does not ask the examiner-characterized implicit questions. We do not agree with the characterization at page 3 of the Reply Brief that the artisan would view Zhu as not teaching or suggesting querying a user at all on the basis of our earlier remarks. It is also noteworthy to study appellants' observation at the middle of page 3 of the Reply Brief that "the Zhu system ***receives*** a search query ***input by the user***." A study of Zhu leads the reader to conclude that it is not the user who queries the system but the system that queries the user as implicitly

admitted by appellants in this statement since appellants recognize that the Zhu system receives a search query input from the user, thus necessitating a search query to be outputted to the user from which a received response may be captured.

Since we agree with the examiner's view that Zhu does pose the examiner-characterized implicit questions to a user, we do not agree with appellants' ultimate conclusion that there was no motivation for the artisan to have combined Zhu with Kagami. If Zhu does not pose any form of questions to the user, we would tend to agree with appellants' view that there would have been no motivation to have combined Zhu with Kagami as expressed initially at pages 12 and 13 of the principal Brief on appeal.

The basic premise of the examiner's position at page 4 of the Answer is that it would have been obvious for the artisan to have combined the teaching of Kagami's disclosure of posing a series of explicit questions to users and then receiving explicit user responses thereto as a means of enhancing the implicit question approach the examiner has characterized in Zhu which fails to expressly disclose explicit questions to the user. This basic position of the examiner is recognized at page 4 of the Reply Brief. Since we agree with the examiner's basic view that

Zhu sets forth the series of examiner-characterized implicit questions to the user to capture user responses, the position in the Brief and Reply Brief that Zhu actually teaches against or otherwise contradicts a combination with Kagami, the weight of the evidence clearly does not support such a position.

As to Kagami, the examiner's remarks as to the teaching value of this reference at page 10 of the Brief as well as corresponding positions in the Reply Brief recognize that Kagami does teach proposing explicit questions to a user to elicit specific responses from a user. As to this recognition, we also note Kagami's initial discussion of kansei at column 1; the examiner relied upon teaching at column 3, lines 1-11, which has a corresponding teaching at column 10; as well as the showings in figures 6, 9A, 9B, 10, 11B and 13 through 15.

In view of the foregoing, we have sustained the examiner's rejection of independent claims 1, 11 and 16. As to the respective dependent claims, the examiner has set forth specific correlations among the two references relied upon in the initial statement of the rejection at pages 4 and 5 of the Answer. Appellants' corresponding arguments beginning at page 14

of the principal Brief on appeal are unpersuasive of patentability of all dependent claims. These positions amount to only general assertions with respect to Zhu and Kagami. There are no specific arguments here, let alone even a recognition as to what the examiner considers in Zhu and Kagami to meet the respective requirements of each of the noted dependent claims. Therefore, on the basis of the weight of the arguments and evidence before us as between appellants and the examiner as to all dependent claims on appeal, the examiner's position is clearly persuasive of unpatentability.

We turn now to the rejection of claims 1 and 3 through 27 under 35 U.S.C. § 102 over Kagami alone. Before we address the merits of this rejection, we note that representative independent claim 1 in its preamble merely recites a method for facilitating image retrieval. This image retrieval is not positively recited in the body of the claim but is merely implied to the reader from the use of the language "the user wishes to retrieve" in the first stated clause of this claim. Additionally, there is no actual statement of a retrieval of information based upon the presentation of explicit questions to the user and the user's responses even at the end of the claim where at least

one image is “presented” to the user based upon the user’s responses. Because there is clearly no positive recitation of image retrieval in independent claim 1, there can be no statement associated with this claim that this claim requires the searching of an image database as well.

With these remarks in mind, we do not agree with appellants’ characterization at the bottom of page 6 of the Reply Brief, which serves as a restatement of the identical comments at page 10 of the principal Brief on appeal, that Kagami does not teach image retrieval at all. In recognizing the examiner’s position in the newly stated rejection in the Answer at the top of page 7 of the Reply Brief, appellants do not assert to us that Kagami does not teach receiving explicit user responses as claimed and presenting at least one image to the user based upon user responses as claimed. The simple assertion is that Kagami does not teach querying a user as to any attribute of an image that a user wishes to retrieve. In view of our foregoing remarks as to Kagami, this position is misplaced.

Figure 1 of Kagami also shows a storage unit 203 and an output device 206 which are also depicted in another form in figure 2. Figure 4 depicts an output logic flowchart step number

405 which presents to the user a synthesized output based upon user specified style elements, criteria or attributes such as color, shape or form depicted in other figures in Kagami. Figure 6 of Kagami also outputs a design image to the user based upon an analyzed user's sensibilities as expressed at logic element 603 which is also discussed at column 9. To the extent broadly recited in representative independent claim 1 on appeal, Kagami clearly teaches the retrieval of a synthesized image object from the storage elements 203 for presentation on the image output device 206 of figures 1 and 2.

We do not sustain the examiner's rejection of all dependent claims set forth initially at pages 6 and 7 of the Answer as to the newly stated rejection under 35 U.S.C. § 102. Beginning at the bottom of page 7 through the end of the Reply Brief, appellants present specific arguments challenging the examiner's correlation as to the features recited in the dependent claims. Because the examiner has not filed a separate Supplemental Answer for our consideration as to these allegations relative to the dependent claims in the Reply Brief, the rejection of them under 35 U.S.C. § 102 is not sustained.

In summary, we have sustained the examiner's rejection of all claims on appeal, claims 1 and 3 through 27, within 35 U.S.C. § 103. As to the rejection of all claims on appeal under 35 U.S.C. § 102, we have sustained only the rejection of independent claims 1, 11 and 16 on appeal. Therefore, the decision of the examiner is affirmed.

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

AFFIRMED

JAMES D. THOMAS Administrative Patent Judge	)
ERROL A. KRASS Administrative Patent Judge	) BOARD OF PATENT) APPEALS AND) INTERFERENCES
LEE E. BARRETT Administrative Patent Judge	)

JDT:psb

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