

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2006-1137
Application No. 09/680,389

ON BRIEF

Before HAIRSTON, JERRY SMITH, and BARRY, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-45.

The disclosed invention pertains to an integrated time line for editing.

Representative claim 1 is reproduced as follows:

- 1 . A method for processing a presentation of a time based stream of information, the method comprising:
 - A) providing a user interface having functionality to display only a single graphical representation of a time line for positioning at least one reference to a visual time based stream of information in a presentation, the reference including one of at least two types of edit feature;
 - B) displaying the single graphical representation of a time line on the user interface;

- C) displaying a reference with an edit feature on the user interface; and
- D) dragging the reference over the single graphical representation of the time line to insert the edit feature into the presentation.

The examiner relies on the following reference:

Klingler et al. (Klingler) 5,404,316 Apr. 4, 1995

The following rejection is on appeal before us:

1. Claims 1-45 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Klingler.

Rather than repeat the arguments of appellant or the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of anticipation relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the brief along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer. Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered and are deemed to be waived. See 37 C.F.R. §41.37(c)(1)(vii)(2004).

It is our view, after consideration of the record before us, that the evidence relied upon by

the examiner does support the examiner's rejection of claims 1-45. Accordingly, we affirm.

We consider the anticipation of the following single logical group of claims, as presented and argued by appellant:

- Group I: claims 1-45 stand or fall together.

With respect to a rejection under 35 U.S.C. §102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. Perricone v. Medicis Pharmaceutical Corp., 432 F.3d 1368, 1375-6, 77 USPQ2d 1321, 1325-6 (Fed. Cir. 2005), citing Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc., 976 F.2d 1559, 1565, 24 USPQ2d 1321, 1326 (Fed. Cir. 1992). To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (internal citations omitted). "Every element of the claimed invention must be literally present, arranged as in the claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (internal citations omitted).

GROUP I, claims 1-45

We now consider the examiner's rejection of claims 1-45 under 35 U.S.C. § 102(b) as being anticipated by Klingler. Appellant has grouped claims 1-45 as standing or falling together and has presented claim 1 as the representative claim. Group I includes independent claims 1, 10, 16, 22, 28, 34 and 40. Because independent claim 1 is the broadest claim, we will select independent claim 1 as the representative claim for this rejection. See 37 C.F.R. § 41.37(c)(1)(vii)(2004).

I. Appellant argues that Klingler does not teach "displaying the single graphical representation of a time line on the user interface," as claimed [brief, pages 5 and 6]. Specifically, appellant argues that Figures 6 and 17 of the Klingler reference illustrate alternate depictions of a Time View, neither of which includes only a single graphical representation of a time line, as claimed [*id.*]. With respect to Figure 6, appellant argues that Time View 74 displays a clip 112 of the movie along with up to eight horizontal sound bands 118, as disclosed by Klingler at col. 8, lines 16 and 33. Appellant therefore concludes that Klingler discloses as many as nine distinct time lines in Figure 6 [*id.*]. With respect to Figure 17, appellant argues that in addition to the selected clip 112, the alternate Time View 240 additionally displays three clips 242, 244 and 246, which correspond to input clips for operations performed to produce the selected clip 112 [*id.*]. Appellant argues that clips 242, 244 and 246 (as shown in Figure 17) are each being presented along a separate time line or track [*id.*].

In response, the examiner argues that each of the clips shown in Figure 6 does not play with its own time line, and that all video and audio clips shown in Figure 6 are associated with only a single time line in order to be synchronized [answer, page 7]. The examiner further argues that the video and audio clips shown in Figure 6 are not time lines [answer, page 8].

“During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification.” In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. In re Cortright, 165 F.3d 1353, 1358, 49 USPQ2d 1464, 1467 (Fed. Cir. 1999). Claim language is given its plain, ordinary, or accustomed meaning to one of ordinary skill in the relevant art, unless the applicant has imparted a novel meaning to the language. Teleflex, Inc. v. Ficoso N. Am. Corp., 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1380 (Fed. Cir. 2002). The words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). “The specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication.” Rhodia Chimie v. PPG Industries, Inc., 402 F.3d 1371, 1377, 74 USPQ2d 1321, 1325 (Fed. Cir. 2005), citing Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1577 (Fed. Cir. 1996) (internal citations omitted).

We note that the instant specification distinguishes a single visual time line over the prior art as offering the advantages of simplifying the editing process for the user in addition to

conserving space on the user interface as well as in storage [specification, page 5, lines 30-32].

The instant specification further defines the term visual time line 240 (see Fig. 6A) on page 27, lines 23-29, as follows:

The reference to each clip that is to be included in the presentation is positioned in the presentation by arranging the reference elements along a visual time line 240 in the order that the associated information will appear in the presentation. The visual time line 240 is for adding visual information, such as the time based stream of information in the form of full motion images, e.g., video and movies, motion graphics, e.g., animation, as well as still images, e.g., text, pictures, combinations thereof, and the like.

A basic canon of claim construction is that one may not read a limitation into a claim from the written description. Renishaw plc v. Marposs Societa' per Azioni, 158 F.3d 1243, 1248, 48 USPQ2d 1117, 1120 (Fed. Cir. 1998). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993). We find that appellant's arguments impermissibly construe the claimed "time line" as having all the characteristics of visual time line 240, as disclosed in the instant specification [page 27, line 26; see also Fig. 6A]. In the brief, appellant argues limitations in the specification that are not claimed [brief, page 5, ¶2]. Appellant further attempts to improperly construe claim 1 in light of the prior art [*id.*]. We note that the instant specification also discloses a second type of time line, i.e., audio time line 242 [page 27, line 29; see also Fig. 6A].

Significantly, we note that representative claim 1 is silent regarding any limitation that requires a visual time line of the type disclosed in the instant specification and argued by appellant in the brief. Claim 1 merely requires "displaying the single graphical representation of

a time line on the user interface.” We note that Fig. 6 of the Klingler patent clearly shows a graphical depiction of a single time line with elapsed time values indicated in minutes and seconds that is used for positioning at least one reference (i.e., see eight frame displays 116) to a visual time based stream of information, as claimed [see Fig. 6, i.e., the time line shown directly above framestrip 112]. We further note that Klingler discloses a time scale indicator 115 that adjusts the ratio of the number of frames per frame display 116 [col. 8, lines 21-29]. We find that Klingler’s teaching of a single time scale indicator 115 supports the examiner’s contention that all video and audio clips shown within Fig. 6 are synchronized to a single time line [Klingler, col. 8, line 21; see also answer, page 8].

Furthermore, we agree with the examiner that the video and audio clips shown within Figure 6 are distinguished from time lines. The Klingler reference specifically defines the meaning a “clip” in a manner corresponding to the plain and ordinary meaning of the term, see col. 2, lines 26-30:

As used herein, a video or movie may include one or more "clips" each of which are subsets of the movie. Each clip is itself a movie comprising a sequence of one or more frames of images (and, optionally, sound).

We note that appellant has defined a very similar meaning for the term “clip” in the instant specification, see page 2, paragraph 2:

A portion or portions of sequential information, also referred to as a “clip,” such as a continuum of segments, frame, block or footage, may be rearranged into a desired order.

We note that appellant’s definition of a clip, as set forth in the instant specification, is clearly distinguished from appellant’s definition of visual time line 240, discussed *supra*. We

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therefore find that the video and audio bands that appellant alleges are multiple time lines in Fig. 6 of the Klingler reference, are, in fact, clips when appellant's own definition of a clip is applied to the Klingler reference [brief, page 5].

In summary, we find that appellant has impermissibly read limitations from the specification into the claims to avoid the prior art by construing the claimed "time line" as having all the characteristics of visual time line 240, as disclosed within the instant specification. Accordingly, we will sustain the examiner's rejection of all claims on appeal for essentially the same reasons argued by the examiner. Therefore, the decision of the examiner rejecting claims 1-45 is affirmed.

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

AFFIRMED.

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