

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY AMBLER, JUAN E. FLORES,
and WILLIAM WHEELER

Appeal 2007-0761
Application 09/907,610¹
Technology Center 2100

Decided: July 16, 2007

Before: ALLEN R. MACDONALD, JEAN R. HOMERE, and JAY P.
LUCAS, *Administrative Patent Judges.*

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DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal from a final rejection of claims 1 to 24 under authority of 35 U.S.C. § 134. The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

¹ Application filed July 19, 2001. Appellants claim the benefit under 35 U.S.C. § 119 of provisional application 60/276,846, filed 03/16/2001. The real party in interest is Lockheed Martin Corp. of Bethesda, MD.

Appellants' invention relates to a system and method for easily changing the display language of a user interface of a computer program so the program may be used in different countries. In the words of the Appellants:

To accomplish these and other objects of the invention, a system and method are provided that allow users to easily and immediately switch between available languages, without interrupting application program operation and without requiring intervening translation steps to update a displayed user interface according to a selected language. The system and method of the present invention also facilitates adding and editing a wide array of languages and language-specific user interface attributes, without modifying the application program and without requiring significant, if any, programming skills.

(Specification 7).

Claim 1 is exemplary:

1. A computer implemented system for displaying language-specific attributes of a user interface in a desired language, said system including
 - a reference source including data corresponding to the language-specific attributes for a plurality of languages including the desired language, each said language-specific attribute including control text corresponding to a respective interface control and an identifier including a value corresponding to each of said plurality of languages,
 - means responsive to selection of a value included in said identifier for defining language-specific attributes included in the interface in accordance with said identifier included in the reference source, and
 - means for generating the user interface, including the language-specific attributes of the interface defined with said data from the reference source, on a visual display.

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The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Sameth	US 5,882,202	Mar. 16, 1999 (filed Nov. 27, 1996)
Mullaney	US 5,917,484	Jun. 29, 1999 (filed Feb. 24, 1997)
Kennelly	US 6,559,861 B1	May 6, 2003 (filed Mar. 9, 1999)

Rejections:

- I: Claims 1 to 8, 11 to 20, and 22 to 24 stand rejected under 35 U.S.C. § 102(e) for being anticipated by Kennelly.
- II: Claims 9 and 21 stand rejected under 35 U.S.C. 103(a) for being obvious over Kennelly in view of Mullaney.
- III: Claim 10 stands rejected under 35 U.S.C. 103(a) for being obvious over Kennelly in view of Sameth.

Appellants contend that the claimed subject matter is not anticipated by Kennelly, or rendered obvious by Kennelly alone, or in combination with Mullaney or Sameth, for reasons to be discussed more fully below. The Examiner contends that each of the three groups of claims is properly rejected.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not

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to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).²

We affirm.

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 102(e) and § 103(a). The issue turns on whether the Kennelly reference teaches the elements of claims 1 to 8, 11 to 20, and 22 to 24 sufficiently to anticipate them, and whether the teachings of Kennelly's multi-language user interface can be combined with the teachings of icons in Mullaney and audio files in Sameth to render claims 9, 10, and 21 obvious over the respective references.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

Findings with respect to the rejection of claims 1 to 8, 11 to 20, and 22 to 24 under 35 U.S.C. § 102(e).

1. Appellants have invented a user interface system and method by which the Graphical User Interface (GUI) of a computer program can be adapted to display one of several languages quickly and without

² Appellants have not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group, except as will be noted in this opinion. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See In re Young*, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991). *See also* 37 C.F.R. § 41.37(c)(1)(vii).

the need for special programming skills. (Brief 7). Language specific attributes are assigned an identification number (IDs) (Specification 11 middle), with these IDs being arranged as keys to a database (Figure 3), and with attributes in the same language having related IDs (e.g. IDs starting in the 100's (e.g. 101, 102 ...) signify English, IDs in the 500's signify French). (See Specification page 11). The invention uses a database of the terms in the different languages, called a Language Resource Control File (LRCF), with appropriate programming, to put the proper language words into the GUI in response to the user selecting the desired language. See Figure 2 of the Specification, where the user clicks the flag indicating the country using the desired language. Attributes that are changed include fonts, alphabet characters, audio data, and of course, words. (Specification 12-14).

2. The Examiner has cited Kennelly, which teaches a GUI that comprises a set of web pages designed for a visual display. "The user interface includes a set of pages that are represented by a set of corresponding management objects." (Col. 1, l. 43). The user selects from a menu a language which will be stored in box 52 (Figures 2 and 3), for example with a mouse, "The user can select the desired language in box 218, e.g. with a mouse". (Col. 9, l. 13). For example the identifier 54 represents English, and 56 represents Japanese. Wording, characters, fonts, formatting and other attributes are all changed depending on the language. (Col 9, l. 20, and col. 11, middle). The choices for all the different languages are stored in data files, such as #160. (Col. 3, l. 20).

3. The Examiner has read the elements of the rejected claims on Kennelly on an element by element basis. (Answer 3 to 8). Appellants have raised a number of challenges to this rejection. (Brief 16 to 23).
4. Appellants indicate that Examiner has erred because certain elements of the claims are not in the Kennelly reference. They indicate (Brief 18 *ff*) that these omissions include control text for the GUI, IDs for the plurality of languages, means for generating the user interface, language specific interface attributes. The Examiner has supported his rejection by a recitation of the claimed elements in the reference (Answer 3-8, 12).
5. Appellants argue that the reference requires an administrator's page, which is avoided by the Appellants' invention. However, the Examiner answers this objection, (Answer 10), by pointing out that the user makes his selection of languages right on the user interface.
6. Appellants argue that unexpected results are achieved by the Appellants' system. (Brief 22).
7. Regarding the dependent claims, as discussed in the Brief, page 22, the Examiner has addressed each of the recited limitation on pages 4 to 8 of the Answer, in which we do not find that the Examiner has erred.

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Findings with respect to the rejection of claims 9 and 21 for being obvious over Kennelly in view of Mullaney under 35 U.S.C. 103(a).

8. Examiner's reference Mullaney teaches a user interface in which a choice of languages can be made by the user "by navigating a graphical pointer over a pushbutton ... and clicking with a mouse, keyboard or the like" (Col 4, l. 45). The actual language control indicators are "stored as a single bitmap for ease of retrieval". (Col 4, l. 38).

Findings with respect to the rejection of claim 10 for being obvious over Kennelly in view of Sameth under 35 U.S.C. 103(a).

9. Sameth teaches a multi-language user interface for a system designed to teach languages. In addition to text, Sameth offers audio files in the respective languages. Sameth has been added as a secondary teaching to supplement Kennelly by showing that audio files in multi-language systems are old in the prior art. Appellants argue that there is no motivation to include this teaching with Kennelly. (Brief 25).
10. We find that Kennelly and Sameth are both addressing the same field of endeavor, multi-language GUIs. (See the respective references.).

PRINCIPLES OF LAW

On appeal, Appellants bears the burden of showing that the Examiner has not established a legally sufficient basis for the rejection of the claims.

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“In reviewing the [E]xaminer’s decision on appeal, the Board must necessarily weigh all of the evidence and argument.” *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

We note our reviewing court has recently reaffirmed that:

an implicit motivation to combine exists not only when a suggestion may be gleaned from the prior art as a whole, but when the ‘improvement’ is technology-independent and the combination of references results in a product or process that is more desirable, for example because it is stronger, cheaper, cleaner, faster, lighter, smaller, more durable, or more efficient ... In such situations, the proper question is whether the ordinary artisan possesses knowledge and skills rendering him *capable* of combining the prior art references.

DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co., 464 F.3d 1356, 1368, 80 USPQ2d 1641, 1651 (Fed. Cir. 2006) (emphasis in original).

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

Our reviewing court states in *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) that “claims must be interpreted as broadly as their terms reasonably allow.

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References within the statutory terms of 35 U.S.C. § 102 qualify as prior art for an obviousness determination only when analogous to the claimed invention. *In re Clay*, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992). Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); *see also In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979) and *In re Bigio*, 381 F.3d 1320, 1325, 72 USPQ2d 1209, 1212 (Fed. Cir. 2004).). Furthermore, “‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

However, our reviewing court has held that nonfunctional descriptive material cannot lend patentability to an invention that would have otherwise been anticipated by the prior art. *In re Ngai*, 367 F.3d 1336, 1339,70 USPQ2d 1862,1864 (Fed. Cir. 2004). *Cf. In re Gulack*, 703 F.2d 138 1, 1385,217 USPQ 401,404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

ANALYSIS

Appellants contend that Examiner erred in rejecting claims 1 to 24 under 35 U.S.C. 102(e) and 103(a). Reviewing the findings of facts cited above, we conclude that claims 1 to 8, 11 to 20, and 22 to 24 were properly rejected for being anticipated by Kennelly under 35 U.S.C. 102(e). The prima facie case was presented by the Examiner, and supported by Findings of Fact #1 to #3 above. Appellants' contentions of error by the examiner were reviewed, but found not to be supported by the record. (FF 4-7). It is questionable whether Appellants' argument concerning the requirement for an administrator's page is reflected in the claimed subject matter. (FF 5). As the Kennelly reference teaches the claimed elements, as indicated above, the contention of the Appellants concerning unexpected results is not considered persuasive in this discussion of anticipation. (FF 6).

Appellants further contend that the rejection of claims 9, 10, and 21 under 35 U.S.C. 103(a) was not supportable. On review, we found that the prima facie case was presented by the Examiner, and that the traverse by Appellants was not substantiated. (FF 8-11). Appellants argue that the Examiner has not demonstrated a "reference to a graphic file for a control icon corresponding to the interface control means". (Brief, 24, bottom). We do not find Appellants' argument convincing, in view of the Mullaney disclosure.

Appellants contend that the Kennelly and Sameth references were improperly combined. We find that Examiner's explanation of the rejection (Answer 10) and Response to Arguments (Answer 18) fully support the

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rejection based on both Kennelly and Sameth, with due recitation of the motivation to combine the references.

The issue of non-functional descriptive material was not raised by the Appellants or the Examiner, and is not necessary for a resolution of the issue in this appeal. However, we note that the nature of the icons indicating the selected language is highly suggestive of that doctrine of law.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner did not err in rejecting claims 1 to 24. The rejection of those claims is affirmed, under their respective statutory bases.

DECISION

The Examiner's rejection of claims 1 to 24 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).

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AFFIRMED

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