

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 DEBORA MARGARET HEJZA LITWILLER

Appeal No. 2007-0919
Application 10/179,555
Technology Center 2100

Decided: February 26, 2007

Before JOSEPH F. RUGIERO, JEAN R. HOMERE, and JAY P. LUCAS,
Administrative Patent Judges.

HOMERE, *Administrative Patent Judge.*

STATEMENT OF THE CASE

Appellant appeals from the Examiner's final rejection of claims 4 and 5 pursuant to 35 U.S.C. § 134. We have jurisdiction under 35 U.S.C. § 6(b) to decide this appeal.

The Examiner rejects claims 4 and 5 as follows:

Claims 4 and 5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Vanderheiden and Furuhata.

The Examiner relies on the following references:

Furuhata	5,943,043	Aug. 24, 1999
Vanderheiden	6,049,328	Apr. 11, 2000

Independent claim 4 is illustrative and representative of the Appellant's invention. It reads as follows:

4. A method for providing audible feedback to enable a visually impaired person to operate a multi-function machine, comprising:
 - (a) selecting either operating the multi-function machine in a first mode or operating the multi-function machine in a second mode, the first mode having an audible feedback function disabled, the second mode having the audible feed function enabled;
 - (b) providing a plurality of touchable elements to enable selection of a plurality of selection menu options associated with features of the multi-function machine;
 - (c) engaging one of the plurality of touchable elements to cause the engaged touchable element to be activated;

(d) activating a process associated with the activated touchable element when the multi-function machine is operating in the first mode;

(e) audibly informing a user of the selectable menu option associated with the activated touchable element when the multi-function machine is operating in the second mode and the activated touchable element has been non-consecutively engaged;

(f) activating a process associated with the activated touchable element and audibly informing a user of the selected menu option associated with the activated touchable element when the multi-function machine is operating in the second mode and the activated touchable element has been consecutively engaged; and

(g) audibly informing a user that the audible feedback function is being disabled when the first mode of operating the multi-function machine has been selected.

Appellant contends that claims 4 and 5 would not have been obvious over the combination of Vanderheiden and Furuhashi.¹ Particularly, Appellant contends that Vanderheiden does not fairly teach or suggest audibly informing a user that the audible feedback function is being disabled when the user transitions from a second mode to a first mode of operating the multi-function machine, as recited in claim 4 (Br. 5; Reply Br. 3).

¹ This decision considers only those arguments that Appellant submitted in the Appeal and Reply Briefs. Arguments that Appellant could have made but chose not to make in the Briefs are deemed to have been waived. *See* 37 CFR 41.37(c)(1)(vii) (eff. Sept. 13, 2004). *See also In re Watts*, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

The Examiner contends that Vanderheiden teaches the claimed audible informing step by providing a background sound in the second mode of operation that becomes silent when the first mode of operation is subsequently selected (Answer 7). According to the Examiner, by discontinuing the background sound as the user transitions from the second mode to the first mode of operation, Vanderheiden teaches audibly informing the user that the audible feedback function is being disabled (*Id.*). The Examiner therefore concludes that it would have been obvious to one of ordinary skill in the art to combine Vanderheiden with Furuhata to yield the claimed invention.

We affirm.

ISSUES

The *pivotal* issue on appeal before us is as follows:

(1) Under 35 U.S.C. § 103(a), would one of ordinary skill in the art, at the time of the present invention, have found that the Vanderheiden-Furuhata combination renders the claimed invention unpatentable when Vanderheiden teaches disabling the background sound as the user transitions from a second mode to a first mode of operation?

FINDINGS OF FACT

Appellant invented a method for providing audible feedback to enable a visually impaired person to navigate touch screen menu displays typically associated with multi-function office machines (Specification 1, ll. 5-8). Particularly, the invention aims at audibly informing the user when transitioning from the second mode of operation, which has the audible feedback function enabled, to the first mode of operation, which has the audible feedback function disabled (Specification 7, ll. 19-22). Appellant's invention further uses an ON/OFF switch to transition between the two modes of operation and includes a feedback sound file that is associated with the ON/OFF switch, which audibly informs the user the state of the switch, i.e., whether the audible feedback is enabled or disabled.

Vanderheiden discloses a touch screen system for people with disabilities. (Abstract). The touch screen system is equipped with a background sound (74) to indicate that an audio mode has been selected and is working properly (col. 7, ll 52-58). In particular, Vanderheiden explains that in the second (audio) mode of operation, the background sound audibly informs a user that the touch panel is being touched, but not with a virtual button (*Id.*). For example, figure 7 illustrates that the background sound is

produced when transitioning from the “NO TOUCH” state (102) to the “BLANK” state (100). The “NO TOUCH” state is entered when the finger is not touching the touch panel and the “BLANK” state is entered when the finger touches the background area of the touch panel—the area not within any virtual button (col, 8, ll. 41-47). In addition, an “UP-AUDIO RIDGE” sound is produced when the finger moves from the background area to a particular button, while a “DOWN-AUDIO RIDGE” sound is produced when the finger moves from the button to the background area (col. 9, ll. 46-58). Hence, Vanderheiden discloses that some type of sound (background, UP-AUDIO RIDGE, or DOWN-AUDIO RIDGE) is produced in the second mode of operation when the finger touches the touch panel.² In contrast, these sounds are disabled in the first (non-audio) mode of operation and therefore no sound is produced when the finger touches the touch panel (col. 6, ll. 18-26).

During operation, Vanderheiden explains that the second mode of operation can be activated by pressing against the upper right hand corner (56) on the display and drawing leftward at least half way across the top of

² Vanderheiden explains that no sound is generated in the second mode of operation when the finger is not touching the touch panel (col. 9, l. 64 to col. 10, l. 2). Vanderheiden describes this as the “NO TOUCH” state (col. 8, ll. 46-47).

the display area (58) (col. 6, ll. 29-34 and figure 2). In the second mode of operation, audible feedback is enabled and the background, UP-AUDIO RIDGE, or DOWN-AUDIO RIDGE sounds are produced when the user touches the touch panel. Subsequently, a user can convert back to the first mode of operation by applying an opposing gesture—by pressing against the upper left hand side of the display (60) and drawing rightward across the top of the display (62) (col. 6, ll. 36-39). Once the first mode of operation is selected, the audible feedback function is disabled and no sounds are produced when the user touches the panel (col. 6, ll. 18-26).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial

burden is met does the burden of coming forward with evidence or argument shift to the Appellants. *Id.*, 977 F.2d at 1445, 24 USPQ2d at 1444. *See also Id.*, 745 F.2d at 1472, 223 USPQ at 788. Thus, the Examiner must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the Examiner's conclusion.

ANALYSIS

The Examiner properly found that Vanderheiden teaches Appellant's claim limitation of audibly informing the user that the audible feedback function is being disabled when the first mode of operation is selected. We note that the Examiner's finding is reasonable in light of Vanderheiden's teaching of disabling the background, UP-AUDIO RIDGE, and DOWN-AUDIO RIDGE sounds when a user, in the second mode, touches the panel to transition to the first mode of operation. One of ordinary skill in the art would have readily recognized that when the user, in the second mode of operation, (1) presses against the upper left hand side of the display, (2) draws rightward across the top of the display to convert back to the first mode of operation, (3) touches the touch panel and (4) subsequently hears no

sound, the user is audibly informed that the audible feedback function is being disabled and the first mode of operation is selected. The ordinarily skilled artisan would have thus appreciated that the absence of the background sound resulting from the user's actions as the user transitions from one mode of operation to another is indicative of the user being audibly informed of the transition. After considering the entire record before us, we find that the Examiner did not err in rejecting claim 4 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Vanderheiden and Furuhata. We also find that the Examiner did not err in rejecting dependent claim 5 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Vanderheiden and Furuhata.³

³ Appellants have not presented any substantive arguments directed separately to the patentability of the dependent claim. In the absence of a separate argument with respect to the dependent claim, this claim stands or falls 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).

CONCLUSION OF LAW

On the record before us, one of ordinary skill in the art, at the time of the present invention, would have found that the Vanderheiden-Furuhata combination renders the claimed invention unpatentable under 35 U.S.C. § 103(a) when Vanderheiden teaches disabling the background sound as the user transitions from a second mode to a first mode of operation.

DECISION

We have affirmed the Examiner's decision to reject claims 4 and 5 under 35 U.S.C. § 103(a).

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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BASCH & NICKERSON, L.L.P.
1777 PENFIELD ROAD
PENFIELD, NY 14526