

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC J. HORVITZ

Appeal 2007-2014
Application 09/595,401
Technology Center 2600

Decided: February 12, 2008

Before JOSEPH F. RUGGIERO, MAHSHID D. SAADAT, and ROBERT E. NAPPI, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Final Rejection of claims 1-67, which are all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

Appellant's claimed invention relates to a user interface and the appearance of notification information received by a user (Spec. 1). The information is faded into a predetermined area of the display where additional changes may alter displaying of the information based on whether it has an importance greater than a predetermined threshold (Spec. 2-3).

Claims 1 and 31 are illustrative of the invention and read as follows:

1. A machine-readable medium having instructions stored thereon to cause a processor of a computer to perform a method comprising:

fading notification-related information having an importance greater than a threshold into a predetermined area of display over data located within the predetermined area via increasing an opacity of the notification-related information upon receipt of the notification-related information;

delaying for a length of time based on the importance of the information; and

fading the information out of the predetermined area of display via decreasing the opacity of the notification-related information.

31. A machine-readable medium having instructions stored thereon to cause a processor of a computer to perform a method comprising:

for each of a plurality of unrequested information having an importance, determining at least a display time based on the importance of the information subsequent to receipt of each of the plurality of unrequested information;

over a recurring time period, displaying a summary of each of the plurality of unrequested information within a predetermined area of a display for a length of time equal to the display time of the information; and,

continually updating the plurality of unrequested information, such that the display time of each of the plurality of unrequested information is also updated.

The Examiner relies on the following prior art reference:

Grossman US 5,852,440 Dec. 22, 1998

Claims 1-67 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Grossman.¹

Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Briefs and Answer for the respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but did not make in the Briefs have not been considered and are deemed waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

We affirm.

ISSUE

Under 35 U.S.C. § 102(b), does Grossman have a disclosure which anticipates the invention set forth in claims 1-67?

FINDINGS OF FACT

The following findings of fact (FF) are relevant to the issues involved in the appeal and are believed to be supported by substantial evidence.

1. Grossman relates to cleaning up a computer display wherein the icons which are least likely to be used are faded, eliminated, or shrunk to a

¹ The rejection of claim 1-67 under 35 U.S.C. § 102(b), first paragraph, as failing to comply with the enablement requirement is withdrawn by the Examiner (Ans. 3).

smaller size. Additionally, icons that are not used very often may disappear into a master icon and further, icons which have a conceptual relationship between them may be linked by a visual graphical representation.

(Abstract).

2. Grossman determines the plurality of icons that are likely to be used next and automatically moves those icons toward a cursor located on the computer display. (Col. 1, ll. 57-61).

3. Grossman also determines one or more icons that are not likely to be used within a predetermined amount of time and consolidates them into a master icon, whereby the consolidated icons are hidden from view. The master icon comprises one or more graphical symbols indicating the consolidated icons. (Col. 2, ll. 34-42).

4. The icons next likely to be used may be determined in a number of ways. For instance, likeliness criteria for each icon can be stored on disk or within a memory. In particular, a user profile is set up, which includes the icons on the display and the likeliness criteria such as an overall probability of use or past usage, which can be periodically updated. (Col. 5, ll. 23-31).

5. The likely icons are moved to the cursor location by, for example, redrawing them at the new location using standard techniques. Alternatively, an animated effect can be achieved by redrawing the icons several times, each time closer to their final position which would give an appearance of gradual movement. (Col. 5, l. 66 – col. 6, l. 4).

6. The time set for each icon before it is considered unlikely to be used and ready to disappear and consolidate into the master icon is set by the rules specified in a profile. An icon that is not used for a predetermined

period is consolidated into a master icon by disappearing and the master icon graphically changes as needed. In particular, in one example, the color intensity of the icons to disappear is dimmed such that the icons are not visible and the master or repository icon gives an indication of the number of icons it represents by displaying a number, color, or other graphical symbol such as a tab. (Col. 8, l. 67 - col. 9, l. 17).

7. Grossman further discloses a technique for cleaning up a display wherein desk top elements, such as icons, which have not been used for some time or have a low expected probability of use, undergo a gradual change in their appearance. As examples, they may grow hazy or fade into the background, their actual dimensions may be changed so that they shrink until they disappear or they shrink along one dimension appearing to be squashed, they move or drift to the edge of the display or they have an intensity border which grows along the perimeters of the icons the longer the icons have been inactive. (Col. 9, ll. 50-60).

PRINCIPLES OF LAW

1. Scope of claims

Absent an express intent to impart a novel meaning to a claim term, the words take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Brookhill-Wilk I, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003). The claim construction analysis begins with the words of the claim. See *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Claims will be given their broadest reasonable interpretation consistent with the

specification, and limitations appearing in the specification are not to be read into the claims. *In re Etter*, 756 F.2d 852, 858 (Fed. Cir. 1985).

2. *Anticipation*

A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference. See *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994). Anticipation of a claim requires a finding that the claim at issue reads on a prior art reference. *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (quoting *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

ANALYSIS

Claims 1, 5, 16, 59, and 66

The Examiner relies on Figures 1 and 2 of Grossman and characterizes moving icons to the edge of the display or shrinking the icons to a smaller size and fading them as the claimed fading notification-related information into a predetermined area of display (Ans. 3-4). The Examiner appears to have taken the entire display as the claimed predetermined area and different information such as color and intensity of the display as data over which fading takes place (Ans. 13).

Appellant contends (Br. 8-9; Reply Br. 3) that, in contrast to the requirements of independent claim 1, Grossman does not disclose “*fading notification-related information having an importance greater than a threshold into a predetermined area of display over data located within the predetermined area*” (emphasis in original). Appellant argues that the icons in Grossman are faded into the background and consolidated into a master icon where they are hidden from view (*id.*).

After reviewing the disclosure of Grossman in light of the arguments presented, we generally agree with the Examiner's position as stated in the Answer to the extent that the icons fade into a predetermined area of the display. However, although the Examiner's interpretation of the claimed terms "over data," "above data," or "on top of data" and whether the entire display is data over which fading is performed to be based on a limited reading of the reference, we find that the disclosure of Grossman does teach each of the disputed features in support of a *prima facie* case of anticipation.

Grossman, for example, cleans up a computer display by removing unused icons (FF 1). However, the icons that are likely to be used are moved towards the cursor (FF 2) based on the probability of their use (FF 4). This is done by redrawing them in the new location (FF 5), which appears as fading and reappearing in the new location near the cursor. The icons that are not likely to be used are further consolidated into a master icon and are hidden from view (FF 3). As the icons are dimmed and moved into the master icon, the appearance of the master or repository icon changes to indicate the presence of the hidden icons it represents (FF 6). Alternatively, the icons that have not been used for a certain time change their appearance or move to the edge of the display (FF 7).

Therefore, the icons having a high likelihood of usage are faded to a predetermined area over data as they are moved or faded to an area close to the cursor. In that regard, the area close to the cursor is the same as the claimed predetermined area of display, which by virtue of the position of the cursor over the displayed data, is over, above, or on top of data located within the predetermined area. The icons that are not used after a certain

time, are moved to the edge of the display, fade into the background, or are consolidated into a master icon.

With respect to claims 59 and 66, Appellant further argues that Grossman does not perform the claimed “decision-theoretic analysis” to determine whether or not to interrupt a user (Br. 10, Reply Br. 4). The Examiner responds by asserting that determining the probability of icon usage in Grossman is the same as the claimed decision-theoretic analysis and determines whether or not to move the icon (Ans. 14).

We again find ourselves unconvinced by Appellant’s arguments since, as discussed above and pointed out by the Examiner, the determination of whether the icon is likely to be used is the analysis that determines disruption by moving the icon to an area near the cursor (FF 2 & 5). The icon near the cursor is above or on top of data, which by fading and redrawing has the appearance of increased opacity, as recited in claims 59 and 66.

In view of the above discussion, since Grossman discloses all of the claimed limitations, we find no error in the Examiner’s rejection of independent claims 1, 5, 16, 59, and 66, as well as their dependent claims not separately argued by Appellant (Br. 8-9). Accordingly, we sustain the 35 U.S.C. § 102(b) rejection of claims 1-30 and 59-67 over Grossman.

Claims 31, 35, 46, and 54

Appellant contends that the user profile for updating the likeliness criteria of each icon in Grossman is not the same as “*display a summary* of each of the plurality of unrequested information within a predetermined area of a display *for a length of time* equal to the display time of the

information,” as recited in claim 31 (Br. 9; Reply Br. 3) (emphasis in original). The Examiner argues that Grossman provides for determining the probability of use for each icon which, in turn, determines the length of time before each icon fades away (Answer 13-14).

We agree with the Examiner’s position that the profile described in Grossman for specifying the rules by which the icons are consolidated is the same as the recited determination of a display time based on the importance of the information (FF 6). Taking the broadest reasonable interpretation of the claim, we find that the master icon itself, where the unused icons are placed, represents a summary of the unused icons or the unrequested information within a predetermined area of a display (FF 3-6).

Appellant does not present any separate arguments in support of the patentability of claims 35, 46, and 54 and allows these claims to fall with claim 31 (Br. 9). Therefore, in view of the analysis above and to the extent claimed, we find that Grossman *prima facie* anticipates claims 31, 35, 46, and 54, as well as claims 32-34, 36-45, 47-53, and 55-58, dependent thereon.

ORDER

The decision of the Examiner rejecting claims 1-67 under 35 U.S.C. § 102 based on Grossman is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (2006).

Appeal 2007-2014
Application 09/595,401

AFFIRMED

eld

AMIN, TUROCY & CALVIN, LLP
24TH FLOOR, NATIONAL CITY CENTER
1900 EAST NINTH STREET
CLEVELAND OH 44114