

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRANDON BROCKWAY and STEVEN EDWARD ATKIN

Appeal 2008-0650
Application 10/302,497¹
Technology Center 2100

Decided: November 21, 2008

Before JOSEPH L. DIXON, HOWARD B. BLANKENSHIP, and
CAROLYN D. THOMAS, *Administrative Patent Judges*.

THOMAS, C., *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1, 3-10, 12-19, 21-28, and 30-36 mailed September 13, 2006,

¹ Application filed November 21, 2002. The real party in interest is International Business Machines (IBM) Corporation.

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which are all the claims remaining in the application, claims 2, 11, 20, and 29 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

Appellants invented a system, method, and computer readable medium for configuring a desktop based on text labels' directional properties. The desktop includes a plurality of icons each associated with a text label. The directional properties of the text labels are determined and the desktop is configured based on the determined directional property.
(Spec., Abstract.)

B. ILLUSTRATIVE CLAIM

The appeal contains claims 1, 3-10, 12-19, 21-28, and 30-36. Claims 2, 11, 20, and 29 are cancelled. Claims 1, 7, 10, 16, 19, 25, 28, and 34 are independent claims. Claim 1 is illustrative:

1. A method of configuring a desktop, the desktop including a plurality of icons, each icon being associated with a text label having a directional property, the method comprising the steps of:

determining the directional property of the text label by determining the language in which the text label is written; and

configuring the desktop based on the determined directional property of the text label.

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C. REFERENCES

The references relied upon by the Examiner in rejecting the claims on appeal are as follows:

Hassanin	US 2004/0225967 A1	Nov. 11, 2004 (Filed Jan. 5, 2001)
Porter	US 2005/0025304 A1	Feb. 3, 2005 (Effectively filed Mar. 23, 2001)
Feinberg	US 6,944,820 B2	Sep. 13, 2005 (Filed Mar. 27, 2001)

D. REJECTIONS

The Examiner entered the following rejections which are before us for review:

- (1)** Claims 1, 4, 5, 7-10, 13, 14, 16-19, 22, 23, 25-28, 31, 32, and 34-36 are rejected under 35 U.S.C. § 102(e) as being anticipated by Hassanin;
- (2)** Claims 3, 12, 21, and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Feinberg in view of Hassanin;
- (3)** Claims 6, 15, 24, and 33 rejected under 35 U.S.C. § 103(a) as being unpatentable over Porter in view of Hassanin; and
- (4)** Claims 1, 7-9, 16-18, 25-27, and 34-36 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5-7, 12-14, 19-21, and 26-28 of copending Application No. 10/302,522.

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II. PROSECUTION HISTORY

Appellants appealed from the Final Rejection and filed an Appeal Brief (App. Br.) on January 10, 2007. The Examiner mailed an Examiner's Answer (Ans.) on June 20, 2007. Appellants filed a Reply Brief (Reply Br.) on July 9, 2007.

III. FINDINGS OF FACT

The following findings of fact (FF) are supported by a preponderance of the evidence.

Hassanin

1. Hassanin discloses “providing directional properties to user interface objects” (¶[0002]).
2. Hassanin discloses that “to facilitate use of the common user interface in different countries/regions, the user interface should support multiple languages” (¶[0003]).
3. Hassanin discloses that “some languages, such as Arabic or Hebrew, follow a right to left (“RTL”) language reading direction” (¶[0005]).
4. Hassanin discloses that “[a] layout manager obtains the logical relationship and the specified directional property and correlates a set of physical coordinates for each display object according to the directional property” (Abstract).

5. Hassanin discloses that “display objects . . . may be specified with display layout properties such as ‘content align = top left’, ‘padding = 2,5,6,10’, ‘text string = FRED’ and/or ‘border=1,1,1,1’.” (¶[0040].)

IV. PRINCIPLES OF LAW

"Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the claims. . . . The second step in the analyses requires a comparison of the properly construed claim to the prior art." *Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. See *In re Kahn*, 441 F.3d 977, 985-86

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(Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

V. ANALYSIS

Grouping of Claims

Group I: Appellants argue claims 1, 7, 10, 16, 19, 25, 28, and 34 as a group (App. Br. 6-8). We will, therefore, treat claims 7, 10, 16, 19, 25, 28, and 34 as standing or falling with claim 1.

Group II: Appellants argue claims 4, 5, 13, 14, 22, 23, 31, and 32 as a group (App. Br. 8-9). We will, therefore, treat claims 5, 13, 14, 22, 23, 31, and 32 as standing or falling with claim 4.

Group III: Appellants argue claims 8, 17, 26, and 35 as a group (App. Br. 9). We will, therefore, treat claims 17, 26, and 35 as standing or falling with claim 8.

Group IV: Appellants argue claims 9, 18, 27, and 36 as a group (App. Br. 11). We will, therefore, treat claims 18, 27, and 36 as standing or falling with claim 9.

Group V: Appellants argue claims 6, 15, 24, and 33 as a group (App. Br. 12). We will, therefore, treat claims 15, 24, and 33 as standing or falling with claim 6.

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See 37 C.F.R. § 41.37(c)(1)(vii). *See also In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991).

The Anticipation Rejection

We first consider the Examiner’s rejection of the claims under 35 U.S.C. § 102(e) as anticipated by Hassanin.

Group I
Claims 1, 7, 10, 16, 19, 25, 28, and 34

Appellants contend that “Hassanin et al. specifically teach that each display element is either specifically assigned a directional property or inherits its directional property from a parent element” (App. Br. 8).

Appellants further contend that “the Examiner did not identify the paragraph(s) in the applied reference where it is stated that determining the directional property of the text label is performed by determining the language in which the text label is written” (Reply Br. 2).

The Examiner found that “[t]o determine the language reading direction *the language in which the text labels are written must be determined* – without determining the language, it is impossible to determine the language reading direction” (Ans. 10-11).

Issue: Have Appellants shown that the Examiner erred in associating Hassanin’s specified directional property with an intrinsic determination of the written language of the text label?

Although Hassanin’s user interface mirroring system does not specifically set forth how specified directional properties are obtained, Hassanin does expressly disclose that the user interface should support multiple languages and that some languages follow a right to left (“RTL”) language reading direction (FF 1-3). Thus, we find that Hassanin clearly considers “language” an important factor regarding the use of the user interface. As noted *supra*, the Examiner concluded that in order to determine the language reading direction, the language in which the text labels are written must be determined. We share this view.

Here, we find the Examiner has provided concrete technical reasoning that supports the conclusion that “determining the language of the text” is critically connected to having a specified directional property. Appellants, on the other hand, have produced no evidence tending to show that this is an improper interpretation of the teachings.

We find the Examiner has set forth a sufficient initial showing of anticipation. Thus, we do *not* find that Appellants have shown error in the Examiner’s rejection of illustrative claim 1.

Group II
Claims 4, 5, 13, 14, 22, 23, 31, and 32

Appellants contend that “Hassanin et al. do not teach that *if the directional property of the text label is left-to-right to use a first default configuration as claimed*” (App. Br. 9). Appellants further contend that “the

configuration that is being referred to is the configuration of a desktop that has a plurality of icons associated each with a text label. . .Hassanin et al. do not remotely teach a desktop with a plurality of icons wherein each icon is associated with a text label.” (*Id.*)

The Examiner found that “Hassanin explicitly illustrates two different configurations, one is for the languages having the reading directional property of left to right (figure 2A) and another is for the languages having the reading directional property of right to left (figure 2B). The first configuration can be [a] first default configuration.” (Ans. 11.) The Examiner further found that figure 2A shows desktop 104 “with plurality of icons B, FRED and more.” (Ans. 12.)

Issue: Have Appellants shown that the Examiner erred in associating Hassanin’s figure 2A and/or figure 2B with a default configuration and the labels “A” and “FRED” as text labels associated with icons?

Here, we find that Appellants merely argue that Hassanin does not teach the above-noted limitations without providing any meaningful analysis that explains why the Examiner erred. The Examiner specifically noted that the terms “FRED” and “A” could be seen as text strings associated with icons (Ans. 11). Also, the Examiner has pointed out that Hassanin’s Figs. 2A and 2B disclose block diagrams 104 and 108, respectively, which illustrate display objects having a left to right and right to left language reading direction, respectively. (Hassanin, Figs. 2A and 2B.) However,

Appellants have not presented any persuasive analysis to dispute these findings.

A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. *See* 37 C.F.R. § 41.37(c)(1)(vii). We note that arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived.

We find the Examiner has set forth a sufficient initial showing of anticipation. Thus, we do *not* find that Appellants have shown error in the Examiner's rejection of illustrative claim 4.

Group III
Claims 8, 17, 26, and 35

Appellants contend:

Hassanin et al. explain how a screen may be divided into a plurality of equal windows (see Figs. 3a and 3b) and unequal windows (see Fig. 3c) within which objects may be displayed. Thus, Hassanin et al. do not teach, show or suggest the claimed limitations of 'wherein the desktop is displayed with all icons making up the desktop placed at the same relative location in their respective windows' in neither the cited paragraphs nor the cited figures.

(App. Br. 11).

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The Examiner found that Hassanin's figure 2A discloses that "all display objects are in the same relative left justified locations in their respective windows" (Ans. 12).

Issue: Have Appellants shown that the Examiner erred in finding that Hassanin discloses that all icons making up the desktop are placed at the same relative location in their respective windows?

Hassanin discloses that a layout manager correlates a set of physical coordinates for each display object, e.g., icon, such as content alignment (FF 4-5). Hassanin further discloses in Figs. 2A and 2B a left to right and right to left configuration, respectively. Thus, we find that Hassanin discloses setting the physical coordinates, i.e., relative location, of each of the icons in their respective windows.

We find the Examiner has set forth a sufficient initial showing of anticipation. Thus, we do *not* find that Appellants have shown error in the Examiner's rejection of illustrative claim 8.

Group IV
Claims 9, 18, 27, and 36

Appellants contend that "the claimed invention includes the limitations of the text labels **describing** the associated icons. The Examiner does not state that the applied reference teaches or discloses text labels that describe icons as claimed" (App. Br. 11).

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The Examiner found that “[t]he text label B *describes* the icon B, the text label FRED *describes* the icon FRED and so on” (Ans. 13).

Issue: Have Appellants shown that the Examiner erred in finding that the text labels “B” and “FRED” describe icons?

A “label” is a descriptive word or phrase applied to something. *Merriam-Webster’s Collegiate Dictionary*, p.785 (10th Edition 1997). The Examiner found that Hassanin discloses applying labels to each object (icon). Appellants have failed to specifically address the Examiner’s characterizations of Hassanin’s text labels. Thus, we find that the claimed “wherein the text labels each describe the associated icons” reads on Hassanin’s labels “FRED” and “B” which are associated with respective objects.

We find the Examiner has set forth a sufficient initial showing of anticipation. Thus, we do *not* find that Appellants have shown error in the Examiner’s rejection of illustrative claim 9.

The Obviousness Rejection

We now consider the Examiner’s rejection of the claims under 35 U.S.C. § 103(a).

Group V
Claims 6, 15, 24, and 33
Porter and Hassanin

Appellants contend “that the Porter reference was filed on September 1, 2004. . . Hence, the Porter reference is not a prior art reference to the claims in the Application” (App. Br. 12).

The Examiner found that “Porter’s application is a division of application 09/816,563 filed on March 23, 2001” (Ans. 13).

Issue: Have Appellants shown that the Examiner erred in using Porter as prior art?

As noted by the Examiner, Porter has an effective filing date of March 23, 2001, which is prior to Appellants’ filing date of November 21, 2002. Thus, Appellants arguments that Porter is not prior art is unpersuasive.

As to the other recited elements of claim 6, Appellants provide no argument to dispute that the Examiner has correctly shown where all these claimed elements appear in the prior art. Thus, we deem those arguments waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

We find the Examiner has set forth a sufficient initial showing of obviousness. Thus, we do *not* find that Appellants have shown error in the Examiner’s rejection of illustrative claim 6.

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*Claims 3, 12, 21, and 30
Feinberg and Hassanin*

Appellants have not provided any arguments to dispute the Examiner's findings regarding claims 3, 12, 21, and 30. Thus, we summarily affirm the rejection of claims 3, 12, 21, and 30 under Feinberg and Hassanin.

Non-statutory Obviousness-type Double Patenting Rejection

Regarding the outstanding double patenting rejections of claims 1, 7-9, 16-18, 25-27, and 34-36, Appellants have indicated in the record that "Applicants intend to file a Terminal Disclaimer in the event both applications were to issue into patents such that the two patents expire concurrently" (App. Br. 2). However, this statement does not constitute an argument sufficient to rebut the obviousness type double patenting rejection, and thus the double patenting rejection is deemed conceded. Therefore, we summarily sustain the rejection of claims 1, 7-9, 16-18, 25-27, and 34-36 under the obviousness-type double patenting with respect to U.S.

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VI. CONCLUSIONS

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1, 3-10, 12-19, 21-28, and 30-36.

Thus, claims 1, 3-10, 12-19, 21-28, and 30-36 are not patentable.

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VII. DECISION

In view of the foregoing discussion, we affirm each of the Examiner's rejections of the claims under (1) 35 U.S.C. § 102(e); (2) 35 U.S.C. § 103(a); and (3) Non-statutory Obviousness-type Double Patenting.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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