

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID M. WEIGHTMAN

Appeal 2008-1336
Application 09/259,621
Technology Center 2100

Decided: September 10, 2008

Before JAMES D. THOMAS, LANCE LEONARD BARRY,
And STEPHEN C. SIU, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1 through 12, 20, and 22. We have jurisdiction under 35 U.S.C. § 6(b).

As best representative of the disclosed and claimed invention, Independent claim 1 is reproduced below:

1. A method to coordinate the control of two or more programs, comprising:
 - obtaining a command sequence having a plurality of commands;
 - selecting a first command from the command sequence, the first command having an associated first time value and an associated first target program to control a first device;
 - executing instructions on a processor-based system to issue the first command to the first target program at a time corresponding to the first time value;
 - selecting a second command from the command sequence, the second command having an associated second time value and an associated second target program to control a second device separate from the first device following issuance of the first command,
 - executing the instructions on the processor-based system to issue the second command to the second target program at a time corresponding to the second time value;
 - executing the first target program on the processor-based system; and
 - executing the second target program on the processor-based system.

The following references are relied on by the Examiner:

Evans	US 5,412,377	May 2, 1995
Berry	US 5,774,063	Jun. 30, 1998
Srivastava	US 6,067,478	May 23, 2000

All claims on appeal stand rejected under 35 U.S.C. § 103. As evidence of obviousness as to claims 1 through 3, 8, and 20, the Examiner relies upon Srivastava in view of Berry, with the addition of Evans in a second stated rejection as to claims 4 through 7, 9 through 12, and 22.

Rather than repeat verbatim the positions of the Appellants and the Examiner, reference is made to the Brief and Reply Brief for Appellants' positions, and to the Answer for the Examiner's positions.

OPINION

For the reasons set forth by the Examiner in the Answer, as expanded upon here, we sustain the two rejections encompassing all claims on appeal under 35 U.S.C. § 103. In both the Brief and Reply Brief, Appellants presents arguments only as to independent claim 1 in the first stated rejection. Patentability of those claims encompassed in the second stated rejection at pages 12 and 13 of the principal Brief and in the Reply Brief rely for patentability upon the position set forth with respect their parent independent claim 1 in the first stated rejection. There is no argument that the references are not properly combinable within 35 U.S.C. § 103.

The theme of Appellants' positions with respect to both Srivastava and Berry as set forth in the Brief and Reply Brief appears to be the same, that is, that alone or in combination these two references do not disclose commands having an "associated" time value and that such commands are not "issued" at a time corresponding to those time values, as set forth initially at the bottom of page 7 of the principal Brief on Appeal. We strongly disagree with these views.

The subject matter argued of independent claim 1 on appeal permits execution to “issue” a command having an “associated” set time at the “associated” or same time set time for the execution of it with respect to the target program for a device. The respectively claimed first and second commands have only broadly “associated” respective first and second time values. Thus, the best statement of the Examiner’s views at page 7 of the Answer, which are recognized at page 2 of the Reply Brief, is consistent with this view and we believe the artisan’s understanding of the combined teachings of the references. These views are consistent with disclosed figure 2 and the specification as filed at page 4, lines 7-12. Likewise, the scope of claim 1 appears to be encompassed by the admitted prior art teachings in the paragraph bridging specification pages 1 and 2.

The so-called programmable macro instruction in Srivastava controls in turn the execution of software representations associated with respective home entertainment devices in figure 1 of this reference in the discussion associated with this figure beginning at the middle of column 2. These software representations appear to correlate to the claimed target programs.

In the corresponding manner, Berry’s abstract and summary both indicate that respective consumer devices may have their own respective application programs. The teaching value of Berry is consistent with the teaching value of the macro instruction in Srivastava by indicating that the computer in figure 1 may be used to program in a similar macro sense the operation of different consumer electronic equipments such as TV 10 and VCR 14 in figure 1 of Berry.

Figure 2 of Srivastava and the discussion of it beginning at the bottom of column 3 indicates the manner in which the creation of such a macro instruction occurs such that in step 214 the user finalizes this creation so as to be able to perform the steps automatically in the designated order or in another order that the user may specify afterward according to the teachings at column 4, lines 7 through 11. The discussion of the performance or the playing of the macros at column 3, lines 51 through 64, indicates that they may be set for a specified time or date. Thus, the artisan may interpret these time-based instructions to permit functional commands to be “issued” to the software representations or target programs of the respective devices at the time the devices are to begin there functioning or at a different time.

In a corresponding manner as well, the programmability of Berry’s computer 20 in figure 1 to control various consumer electronic equipments begins at the bottom of column 3 through the end of column 5. The record reveals that Berry is clear as to being able to establish the start time and duration according to the discussion at column 4 for each specific program or target program associated with a given unique device. The COMMAND PTR is identified at the bottom of column 4 to be a pointer to a table of on/off times for the selective command sequences associated with the software of a given device. Moreover, the discussion in the first three lines at column 5 indicates that a counter is used to determine when an original timer software in the home computer itself must be called upon to avoid loss of real time programming functions for the respective devices. Therefore, the artisan would understand or associate this feature with the “issuing” time of the instructions to control a specific device.

We, therefore, do not agree with Appellants' assertion at page 3 of the Reply Brief that Berry may not be interpreted by the artisan as disclosing the execution of instructions in a home computer to "issue" a command to a VCR program at an "associated" start time. Berry's directions may be interpreted to start it at any time. Within claim 1 and within Berry, the respective start times can be the same time or different times as are "associated" for their respective devices.

In view of the foregoing, the decision of the Examiner rejection claims 1 through 12, 20, and 22 under 35 U.S.C. § 103 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). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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FLETCHER YODER (MICRON TECHNOLOGY, INC.)
P.O. BOX 692289
HOUSTON TX 77269-2289