

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MANISH SHARMA

Appeal 2008-6278
Application 10/384,410
Technology Center 2600

Decided: November 25, 2008

Before KENNETH W. HAIRSTON, JOHN A. JEFFERY,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

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STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-25 and 30-34. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

INVENTION

Appellant's claimed invention is directed "to a method and system for controlling the movement of a device" (Spec. 5:4-5). An image capturing device captures multiple images of a subject's eye (Spec. 10:9-10). A computer's I/O controller coupled to the image capturing device receives the images of the eye and an image analysis module analyses the images and determines the direction of the eye (Spec. 11:15-18). The I/O controller configured to control a cursor that is displayed on the computer's screen moves the cursor in the direction of the eye-movement (Spec. 11:13-15 and 18-19).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method for controlling the movement of a device comprising:
capturing a plurality of images of an ocular unit;
determining a direction of movement of the ocular unit based on the plurality of images; and
moving the device based on the direction of movement of the ocular unit.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Gerhardt

US 5,481,622

Jan. 02, 1996

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Kasahara	US 5,548,354	Aug. 20, 1996
Mizouchi	US 5,717,413	Feb. 10, 1998
Sorensen	US 5,861,936	Jan. 19, 1999
Morrison	US 6,634,749 B1	Oct. 21,2003 (filed Sep. 12, 2001)

The following rejections are before us for review:

1. The Examiner rejected claims 1-3, 8, 10-12, 16, 18-19, and 30-31 under 35 U.S.C. § 102(b) as being anticipated by Mizouchi.
2. The Examiner rejected claims 5, 7, 9, 13, 15, 17, 20, and 22-24 under 35 U.S.C. § 103(a) as being unpatentable over Mizouchi and Gerhardt.
3. The Examiner rejected claims 5-6, 13-14, 20-21, and 32-33 under 35 U.S.C. § 103(a) as being unpatentable over Mizouchi and Morrison.
4. The Examiner rejected claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Mizouchi and Kasahara.
5. The Examiner rejected claim 34 under 35 U.S.C. § 103(a) as being unpatentable over Mizouchi and Morrison and Kasahara.
6. The Examiner rejected claim 25 under 35 U.S.C. § 103(a) as being unpatentable over Mizouchi and Gerhardt and Sorensen.

Independent claims 1, 10, 18, and 20 and dependent claims 2-3, 8, 11-12, 16, 19, and 30-31 were argued as a group with claims 1, 10, 18, and 20 as representative claims (Br. 7-8).

ANTICIPATION
ISSUE

Appellant contends that Mizouchi detects the movement of the eye and controls the display state of a display device (Br. 8). Appellant asserts that the display state is different from moving a device based on the direction of movement of the ocular unit (i.e., eye) as recited in the independent claims (Br. 8).

The Examiner responds that Appellant's disclosure describes the controlled movement of a cursor on a display based on the movement of an eye (Spec. 10:3-6, 11:17-19 and 13:2-3) (Ans. 11). The Examiner asserts that the movement of the cursor on the display device can be characterized as a change in the display state of the display device, and Appellant's own disclosure defines the cursor as a device (Spec. 13:2-3) (Ans. 11-12). The Examiner determined that Mizouchi's "image or the display to be the claimed 'device' as the movement is a relative, virtual movement between the image and the smaller display" (Ans. 12). The Examiner concludes that changing the display in the manner disclosed by Mizouchi, so that the image and the smaller display are moved relative to one another, in response to eye movement, meets the claimed requirement for "moving the device based on the direction of movement of the ocular unit" (Ans. 12-13).

Has the Appellant shown that the Examiner erred by determining that movement of Mizouchi's image constitutes the movement of "the device" as claimed?

FINDINGS OF FACT

The relevant facts include the following:

1. It is undisputed that Mizouchi teaches capturing a plurality of images of an ocular unit (col. 4, ll. 45-52) and determining the direction of movement of the ocular unit based on the plurality of images (col. 6, ll. 33-39) (Br. 7).
2. Appellant defines the “device” as a cursor that moves based on the eye movement direction (Spec. 12:33-13:3).
3. Mizouchi teaches that the nine image areas A-I move with respect to the display 6 depending on the moving direction of the eye (col. 6, ll. 44-65 and Fig. 2 Finding of Fact 1).
4. Mizouchi teaches that when the display 6 shows area I, the direction of the eye movement controls how the image will move (i.e., image area A is displayed if the eye movement direction is towards upper left, image area H is displayed if the eye movement direction is straight upwards, image B is displayed if the eye movement direction is to the left) (col. 6, ll. 54-65).

PRINCIPLES OF LAW

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).

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The claim terms should be given their broadest reasonable meaning in their ordinary usage as such claim terms would be understood by one skilled in the art by way of definitions and the written description. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

The claims, of course, do not stand alone. Rather, they are part of a ‘fully integrated written instrument’ . . . consisting principally of a specification that concludes with the claims. For that reason, claims ‘must be read in view of the specification, of which they are a part.’ . . . [T]he specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’

Phillips v. AWH Corp., 415 F.3d 1303, 1315 (Fed. Cir. 2005).

ANALYSIS

Has the Appellant shown that the Examiner erred by determining that Mizouchi’s movement of the image constitutes the movement of “the device” as claimed?

Appellant defines the “device” as a cursor that moves based on the eye movement direction (Finding of Fact 2). Mizouchi teaches that the nine image areas A-I move with respect to the display 6 depending on the moving direction of the eye (Finding of Fact 3). Mizouchi teaches that when the display 6 shows area I, the direction of the eye movement controls how the image will move (i.e., image area A is displayed if the eye movement direction is towards upper left, image area H is displayed if the eye movement direction is straight upwards, image B is displayed if the eye movement direction is to the left) (Finding of Fact 4). As stated *supra*, the specification

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is the single best guide to the meaning of a disputed term. *Phillips v. AWH Corp.*, 415 F.3d at 1315. Thus, Mizouchi's movement of the image areas A-I, much like Appellant's disclosed movement of the image of a cursor, constitutes the movement of "the device" as claimed.

CONCLUSION OF LAW

Appellant has not shown that the Examiner erred by determining that Mizouchi's movement of the image constitutes the movement of "the device" as claimed. Thus, the anticipation rejection of independent claims 1, 10, and 18, and dependent claims 2, 3, 8, 11, 12, 16, 19, 30, and 31 is sustained.

OBVIOUSNESS

Appellant has presented no further arguments as to rejected claims 4-7, 9, 13-15, 17, 20-25, and 32-34, but instead rely on the arguments provided for independent claims 1, 10, 18, and 20 by virtue of their dependency (Br. 8-11).¹ Thus, for the reasons as articulated supra, we find that the Appellant has not shown that the Examiner erred by determining that Mizouchi's movement of the image constitutes the movement of "the device" as claimed. In summary, the obviousness rejections of claims 4-7, 9, 13-15, 17, 20-25, and 32-34 are sustained.

¹ Only arguments made by Appellant have been considered in this decision. Arguments which Appellant could have made but did not make in the Brief have not been considered and are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

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ORDER

The decision of the Examiner to reject claims 1-25 and 30-34 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).

AFFIRMED

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