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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YUSUKE MIYAZAWA, IKUO YAMANO, and FUMINORI HOMMA[1]

Appeal 2015-006551
Application 13/028,595
Technology Center 2600

Before LINZY T. McCARTNEY, JAMES W. DEJMEK, and KAMRAN JIVANI, *Administrative Patent Judges*.

DEJMEK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–17. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellants identify Sony Corporation as the real party in interest. App. Br. 3.

STATEMENT OF THE CASE

Introduction

Appellants' claimed invention is directed to an information processing device "capable of reducing a user manipulation load by actively using a change of an input state due to operation of a manipulating body." Spec. ¶ 5. In a disclosed embodiment, a judgment is made as to whether the manipulating body is in an input state or a standby state. Spec. ¶ 7. For example, according to the Specification, if a user's finger is in contact with (or located within a proximity detection area) of a touch screen, the device is in an input state; if a user's finger is not in contact with the surface of a touch screen, the device is in a standby state. Spec. ¶ 27; Fig. 1.

Claim 1 is representative of the subject matter on appeal and is reproduced below with the disputed limitation emphasized in *italics*:

> 1. An information processing device comprising text input processing circuitry configured to:
>
> detect a state of a user's manipulating body in a manipulation area, wherein the manipulation area comprises at least one of a touch input area on a text input screen or a proximity input area over the text input screen;
>
> determine whether the user's manipulating body is in a text input state or a text standby state based on at least one of position or presence in the manipulation area, wherein:
>
> the text input state allows for execution of at least one user text input process based on at least one of position, movement, or presence of the user's manipulating body in the manipulation area, and
>
> the text standby state represents a disengagement of active input of the user's manipulating body in the manipulation area; and

> determine *a process to be executed from a plurality of text input processes based on the user's manipulating body transitioning from the text input state to the text standby state*.

The Examiner's Rejections

1. Claims 1, 2, 6–9, and 12–17[2] stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jung (US 2009/0251423 A1; Oct. 8, 2009) and Kushler et al. (US 7, 098,896 B2; Aug. 29, 2006) ("Kushler"). Final Act. 2–7.

2. Claims 3–5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jung, Kushler, and Seo et al. (US 8,482,532 B2; July 9, 2013) ("Seo"). Final Act. 8–9.

3. Claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jung, Kushler, and Nagasaka et al. (US 7,292,228 B2; Nov. 6, 2007) ("Nagasaka"). Final Act. 9–10.

Issue on Appeal

Did the Examiner err in finding the combination of Jung and Kushler teaches or suggests "a process to be executed from a plurality of text input

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[2] We note that in the Final Office Action, the heading for the rejection related to these claims identifies claims 1, 2, 6–9, 12, and 13. Final Act. 2. However, the Examiner has included (albeit with what appears to be typographical errors referencing claims 15 and 16) rejections for claims 1, 2, 6–9, and 12–17. *See* Final Act. 2–7. Additionally, we note Appellants do not appear to have been prejudiced by these typographical errors and have identified correctly that claims 1, 2, 6–9, and 12–17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jung and Kushler. App. Br. 5. Thus, we determine such typographical errors to be harmless.

processes based on the user's manipulating body transitioning from the text input state to the text standby state," as recited in claim 1?

ANALYSIS[3]

Claims 1, 2, 6–9, and 12–17

Appellants contend that Kushler, as relied upon by the Examiner, fails to teach or suggest "a process to be executed from a plurality of text input processes based on the user's manipulating body transitioning from the text input state to the text standby state," as recited in claim 1. App. Br. 12; Reply Br. 4–5. In particular, Appellants assert Kushler fails to disclose a text standby state and, accordingly, there is no transition between a text input state and a text standby state. App. Br. 12–13. Additionally, Appellants contend the Examiner unreasonably interprets the claimed text standby state as being taught by the state when contact with the touch screen in Kushler has ended (i.e., Kushler's "breaking contact"). App. Br. 13–15.

Kushler is directed to word-based text input using continuous contact with a touch sensitive screen. Kushler, Abstract. Kushler teaches that a user may input a word using one continuous motion in contacting the screen. Kushler, col. 6, ll. 40–42. Kushler further teaches the user is presented with a list of matching words or may "request the system to display further potentially matching words if the desired word does not appear in the list." Kushler, col. 6, ll. 51–53. Additionally, as identified by the Examiner (*see*

[3] Throughout this Decision, we have considered the Appeal Brief, filed November 20, 2014 ("App. Br."); the Reply Brief, filed June 18, 2015 ("Reply Br."); the Examiner's Answer, mailed on April 21, 2015 ("Ans."); and the Final Office Action ("Final Act."), mailed on May 21, 2014, from which this Appeal is taken.

Final Act. 3), Kushler states: "The user enters a word by contacting the screen and tracing out a continuous pattern that passes through or near each letter of the word in sequence, and breaking contact with the screen when the last letter of the word is reached." Kushler, col. 7, ll. 35–38.

The Examiner finds, and we agree, the tracing of a continuous pattern, as taught in Kushler corresponds to the claimed text input state. Final Act. 3; Adv. Act. 1 (mailed July 28, 2014); Ans. 11. Additionally, the Examiner finds, and we agree, the state when the user has broken contact with the surface of the touch screen, as taught by Kushler, corresponds to the claimed text standby state.

"[T]he PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F. 3d 1359, 1364 *quoting In re Bass*, 314 F.3d 575, 577 (Fed. Cir. 2002).

Contrary to Appellants' contentions, we do not find the Examiner's determination that the claimed text standby state encompasses the state when a user breaks contact with the touch screen surface, as described in Kushler is erroneous. As stated in Appellants' Specification, the state judgment unit "may judge that the manipulating body is in the standby state when the manipulating body is separated from the manipulation surface." Spec. ¶ 16. In other words, Appellants' state judgment unit would judge (determine) that the manipulating body is in the standby state (i.e., text standby state) when the manipulating body breaks contact from the touch screen surface. Thus, we find the Examiner's interpretation of the claimed text standby state is reasonable and consistent with the Specification.

Additionally, Appellants belatedly argue for the first time in the Reply Brief that "Kushler still does not teach or fairly suggest to 'determine a process to be executed from a plurality of text input processes **based on** the user's manipulating body **transitioning from the text input state** to the text standby state.'" Reply Br. 4. Rather, Appellants assert that after the user breaks contact with the touch screen, Kushler stops the generation of any input signals and the only process executed by Kushler occurs when an input signal is being generated (i.e., the user is in contact with the surface). Reply Br. 4–5

This argument was not made in the Appeal Brief, but could have been, and is not responsive to any new evidence set forth by the Examiner in the Answer. In the absence of a showing of good cause by Appellants, this argument is untimely and deemed waived. "Any argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner's answer, including any designated new ground of rejection, will not be considered by the Board for purposes of the present appeal, unless good cause is shown." 37 CFR 41.41(b)(2) (2012); *see also Ex parte Nakashima*, 93 USPQ2d 1834, 1837 (BPAI 2010) (informative) (explaining that arguments and evidence not presented timely in the principal brief, will not be considered when filed in a Reply Brief, absent a showing of good cause explaining why the argument could not have been presented in the principal brief); *see also Ex parte Borden,* 93 USPQ2d 1473, 1474 (BPAI 2010) (informative) ("[T]he reply brief [is not] an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner's rejections, but were not.").

Nonetheless, Appellants' argument is unpersuasive because the Examiner finds, and we agree, Kushler teaches the ability to input multiple words. Final Act. 3; Ans. 11. After inputting a word (and transitioning to a text standby state), Kushler teaches the user may select the desired words from a list of possible selections "or request the system to display further potentially matching words if the desired word does not appear in the list." Kushler, col. 6, ll. 51–53; *see also* Ans. 11. Thus, we agree with the Examiner that Kushler (in combination with Jung) teaches "determin[ing] a process to be executed from a plurality of text input processes based on the user's manipulating body transitioning from the text input state to the text standby state," as recited in claim 1. *See* Final Act. 3.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner's rejection of independent claim 1 and claims 2, 6–9 and 14–17, which depend therefrom and were not argued separately. *See* App. Br. 11–15. For similar reasons, we also sustain the Examiner's rejection of independent claims 12 and 13, which recite similar limitations and were not argued separately.[4] *See* App. Br. 11–15.

Claims 3–5

Regarding the rejection of dependent claims 3–5, Appellants assert the additional reference, Seo, fails to remedy the alleged deficiencies of Kushler, as argued with respect to claim 1. App. Br. 16. We are not persuaded by

[4] In the event of further prosecution, we note that claim 13 is directed to a "computer-readable recording medium." Appellants' Specification does not limit the medium to non-transitory media, but rather recites "[t]he recording medium may be a magnetic disk, an optical disk and the like, for example." Spec. ¶ 20. We invite the Examiner to determine whether claim 13 comports with the requirements of 35 U.S.C. § 101.

Appellants' contention that Seo fails to resolve the deficiencies of Kushler because, as discussed *supra*, we agree with the Examiner's findings of Kushler and there are no deficiencies that would need to be resolved by Seo.

Accordingly, we sustain the Examiner's rejection of claims 3–5.

Claims 10 and 11

Regarding the rejection of dependent claims 10 and 11, Appellants assert the additional reference, Nagasaka, fails to remedy the alleged deficiencies of Kushler, as argued with respect to claim 1. App. Br. 16. We are not persuaded by Appellants' contention that Nagasaka fails to resolve the deficiencies of Kushler because, as discussed *supra*, we agree with the Examiner's findings of Kushler and there are no deficiencies that would need to be resolved by Nagasaka.

Accordingly, we sustain the Examiner's rejection of claims 10 and 11.

DECISION

We affirm the Examiner's decision to reject claims 1–17.

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. § 41.50(f).

AFFIRMED