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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/019,119	10/07/2022	8223117	5173.001REX0	2917
26111	7590	11/17/2023	EXAMINER	
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1101 K Street, NW				
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WASHINGTON, DC 20005				
			ART UNIT	PAPER NUMBER
			3992	
			MAIL DATE	DELIVERY MODE
			11/17/2023	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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***EX PARTE* REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. 90/019,119.

PATENT UNDER REEXAMINATION 8223117.

ART UNIT 3992.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Notice of Intent to Issue Ex Parte Reexamination Certificate	Control No. 90/019,119	Patent Under Reexamination 8223117	
	Examiner Colin LaRose	Art Unit 3992	AIA Status No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ Prosecution on the merits is (or remains) closed in this *ex parte* reexamination proceeding. This proceeding is subject to reopening at the initiative of the Office or upon petition. *Cf.* 37 CFR 1.313(a). A Certificate will be issued in view of
 - (a) ☒ Patent owner's communication(s) filed: 2 August 2023.
 - (b) ☐ Patent owner's failure to file an appropriate timely response to the Office action mailed: ____.
 - (c) ☐ Patent owner's failure to timely file an Appeal Brief (37 CFR 41.31).
 - (d) ☐ The decision on appeal by the ☐ Board of Patent Appeals and Interferences ☐ Court dated ____
 - (e) ☐ Other: ____.
 2. The Reexamination Certificate will indicate the following:
 - (a) Change in the Specification: ☐ Yes ☒ No
 - (b) Change in the Drawing(s): ☐ Yes ☒ No
 - (c) Status of the Claim(s):
 - (1) Patent claim(s) confirmed: 1-7,9 and 15-18.
 - (2) Patent claim(s) amended (including dependent on amended claim(s)): ____
 - (3) Patent claim(s) canceled: ____.
 - (4) Newly presented claim(s) patentable: ____.
 - (5) Newly presented canceled claims: ____.
 - (6) Patent claim(s) ☐ previously ☐ currently disclaimed: ____
 - (7) Patent claim(s) not subject to reexamination: 8,10-14 and 19-20.
 3. ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on ____.
 4. ☒ Note the attached statement of reasons for patentability and/or confirmation. Any comments considered necessary by patent owner regarding reasons for patentability and/or confirmation must be submitted promptly to avoid processing delays. Such submission(s) should be labeled: "Comments On Statement of Reasons for Patentability and/or Confirmation."
 5. ☐ Note attached NOTICE OF REFERENCES CITED (PTO-892).
 6. ☒ Note attached LIST OF REFERENCES CITED (PTO/SB/08 or PTO/SB/08 substitute).
 7. ☐ The drawing correction request filed on ____ is: ☐ approved ☐ disapproved.
 8. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the certified copies have
 - ☐ been received.
 - ☐ not been received.
 - ☐ been filed in Application No. ____.
 - ☐ been filed in reexamination Control No. ____.
 - ☐ been received by the International Bureau in PCT Application No. ____.
- * Certified copies not received: ____.
9. ☐ Note attached Examiner's Amendment.
 10. ☐ Note attached Interview Summary (PTO-474).
 11. ☐ Other: ____.

All correspondence relating to this reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of this Office action.

/COLIN M LAROSE/
Primary Examiner, Art Unit 3992

cc: Requester (if third party requester)

NOTICE OF INTENT TO ISSUE A REEXAMINATION CERTIFICATE (NIRC)
(EX PARTE REEXAMINATION OF U.S. 8,223,117)

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I. ACKNOWLEDGEMENTS

This Notice of Intent to Issue a Reexamination Certificate addresses *ex parte* reexamination proceeding no. 90/019,119 (“Instant Proceeding”). Based upon a review of the Instant Proceeding, the actual filing date is October 7, 2022 (“Actual Filing Date”).

The Instant Proceeding is an *ex parte* reexamination of U.S. Patent No. 8,223,117 (“Patent Under Reexamination” or “’117 Patent”) titled “METHOD AND APPARATUS TO CONTROL DISPLAY BRIGHTNESS WITH AMBIENT LIGHT CONDITIONS.” The Patent Under Reexamination was filed on December 17, 2008 (“Non-Provisional Filing Date”) and assigned by the Office non-provisional U.S. patent application control number 12/336,990 (“Non-Provisional Application”) and issued on July 17, 2012 with claims 1-20 (“Originally Patented Claims”).

On January 5, 2023, an order granting reexamination for claims 1-7, 9, and 15-18 was issued.

On January 20, 2023, Patent Owner waived the right to file an optional Patent Owner Statement under 37 C.F.R. § 1.530.

On June 2, 2023, a non-final Office action was issued (“Jun 2023 Non-Final Rejection”).

On August 2, 2023, Patent Owner submitted a response to the Jun 2023 Non-Final Rejection (“Aug 2023 Response”).

This Notice of Intent to Issue a Reexamination Certificate is issued in response to the Aug 2023 Response.

II. STATUS OF CLAIMS

Claims 1-20 are currently pending (“Pending Claims”).

Claims 1-7, 9, and 15-18 are currently examined (“Examined Claims”).

Claims 8, 10-14, 19 and 20 are not subject to reexamination.

Regarding the Examined Claims and as a result of this Office action:

Claims 1-7, 9, and 15-18 are confirmed patentable.

III. PRIOR ART CITED HEREIN

The following prior art patents and printed publications are cited herein:

U.S. Patent 4,386,345 (“Narveson”);

U.S. Patent 5,270,818 (“Ottenstein”);

U.S. Patent 7,110,062 (“Whitted”); and

JP-1999-316566 (“Pioneer”).

IV. RESPONSE TO ARGUMENTS

- (1) **Response to: II.A. The ‘117 Specification Teaches the “Dark Level Bias” As performing Mathematical Adjustment and the “Multiplier” As Not Requiring Any Specific Order of Operations** (see Aug 2023 Response at pp. 4-15)

Patent Owner asserts the plain and ordinary meaning of “bias” in the context of the ‘117 Patent is essentially a value:

One of ordinary skill in the art would understand the plain and ordinary meaning of “bias” in the context of the ‘117 patent to be a value, which can be, for instance, a voltage value of an electrical signal or a value of a software variable in a software implementation as the patent states that the invention can be implemented in hardware or software. ‘117 patent, 2:7-10, 5:37-38, 14:9-12; Stevenson Decl. ¶43. One of ordinary skill in the art would thus understand that “dark level bias” refers to the “bias” value when the ambient light level is low (i.e., at a dark level).

See Aug 2023 Response at p. 5.

Patent Owner also asserts the plain and ordinary meaning of “dark level bias” in the context of the ‘117 Patent is a “value” that performs an adjustment of the combined signal:

Rather, the “dark level bias” is a signal value that mathematically adjusts the value of the combined signal to create the “brightness control signal.”

See id. at p. 6.

Having considered and weighed all the evidence of record, including both Patent Owner’s arguments, the Stevenson declaration, PTAB proceedings involving the ‘117 Patent, and court claim constructions made of record, Examiner adopts Patent Owner’s interpretation of “dark level bias” as corresponding to a signal value, such as a voltage value or value of a

software variable, that mathematically adjusts the value of the combined signal when the ambient light level is low.

(2) **Response to: II.B. The Claims Confirm that the Dark Level Bias Can Adjust the Combined Signal Before, Concurrently With, or After Multiplication** (see Aug 2023 Response at pp. 15-19)

Patent Owner argues the dark level bias can adjust the combined signal “before, concurrently with, or after multiplication” because requiring the dark level bias to adjust the combined signal only after multiplication is contrary to the specification and the claims. Notably, Patent Owner identifies several dependent claims as corresponding to the alternate embodiments of FIGS. 1 and 2 of the ‘117 Patent.

For instance, claim 17 recites, “the dark level bias is *added to the sense signal before selective multiplication* such that the amount of adjustment to the combined signal is dependent on the input signal.” This claim appears to correspond to the embodiment of FIG. 1.

On the contrary, claim 18 recites, “the dark level bias is *added to the combined signal after selective multiplication* such that the amount of adjustment to the combined signal is independent of the input signal and the sense signal.” This claim appears to correspond to the embodiment of FIG. 2.

Notwithstanding the fact that different dependent claims appear to be directed to the different embodiments of FIGS. 1 and 2, Examiner maintains the finding that independent claims 1 and 15 are directed only to the embodiment of FIG. 2. This conclusion is supported by the text of claim 1, in which a multiplier is used to “generate a combined signal based on both the user signal and the sensing signal,” and the dark level bias is “configured to adjust the combined signal...” and the text of claim 15, in which a “selectively multiplying” step is executed to

generate a combined signal, and then an “adjusting” step is executed to adjust the generated combined signal with a dark level bias.

The language of claim 1 indicates that “*the* combined signal” (line 11) references “*a* combined signal” (lines 8-9) that is generated by the multiplier. Likewise, claim 15 indicates that “*the* combined signal” (line 8) references “*a* combined signal” (line 6) that has been generated in the selectively multiplying step.

The construction of the claims provides that the combined signal has already been generated at the time it is subjected to adjustment (i.e., modification) by the dark level bias, thereby implicating a discrete order of operations. The dark level bias adjustment is therefore only executed “after” the generation of the combined signal, and not “before” or “concurrently with” the generation as alleged by Patent Owner and Dr. Stevenson.

As recited in claim 1, the multiplier uses the user signal and the sensing signal to produce a combined signal. The dark level bias then adjusts the “combined signal,” for example via addition, as illustrated in FIG. 2 –

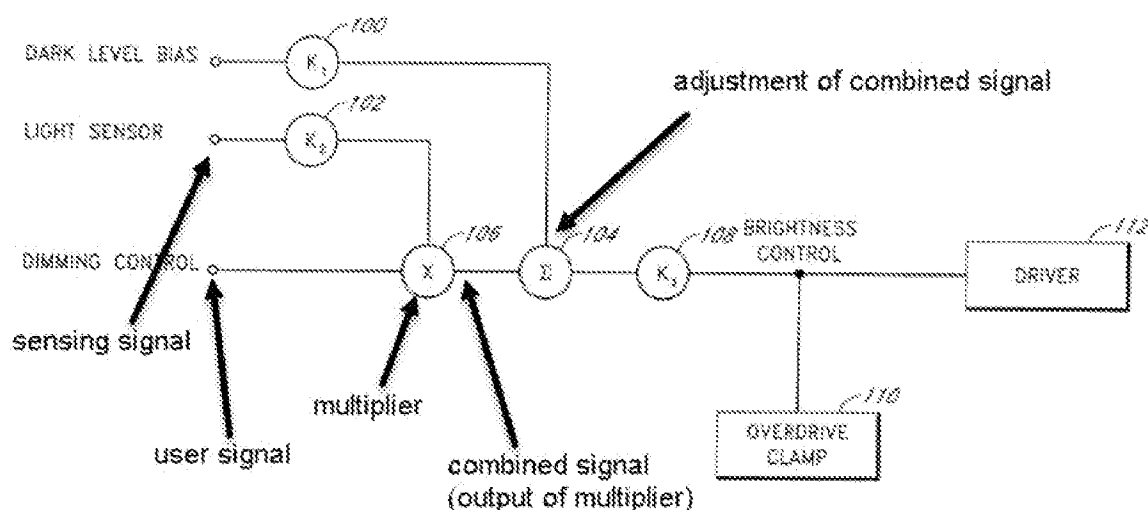


FIG. 2 of '117 Patent (annotated by Examiner)

FIG. 1, however, illustrates a different embodiment in which the dark level bias is used to adjust the *sensing signal*, rather than the combined signal. As shown in FIG. 1 (see annotated figure below), a scaled dark level bias is added to a scaled sensing signal at adder 104 to produce an adjusted sensing signal (i.e., a scaled sensing signal that has been adjusted by a scaled dark level bias). The adjusted sensing signal is then multiplied by the user signal at multiplier 106 to produce the combined signal, which is shown as the output of the multiplier.

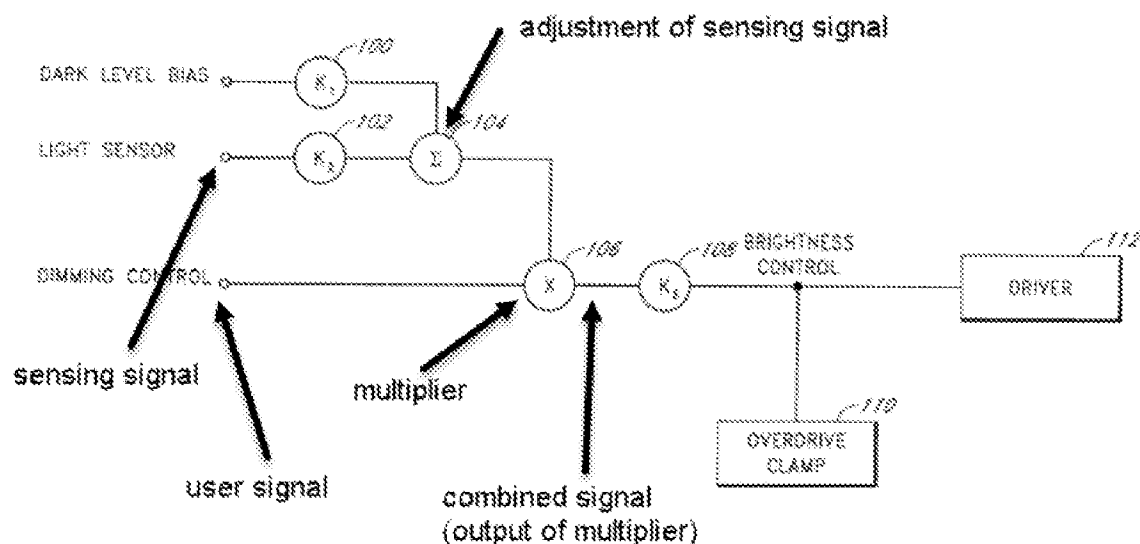


FIG. 1 of '117 Patent (annotated by Examiner)

Accordingly, FIG. 1 illustrates an embodiment where the combined signal is *not* adjusted by the dark level bias. In FIG. 1, a scaled dark level bias is added to the sensing signal and then the sum is applied as an input to the multiplier 106 for the *generation* of the combined signal, as opposed to the dark level bias being used for the *adjustment* of the combined signal after the combined signal has been generated by the multiplier.

In FIG. 1, the combined signal is generated as a linear combination of the dark level bias, the sensing signal, and the user signal; thereafter, it is not adjusted by the dark level bias. In

contrast, the embodiment of FIG. 2 illustrates the combined signal being generated as a linear combination of only the sensing signal and the user signal; after the combined signal has been generated, it is adjusted by the dark level bias at adder 104.

The plain language of claim 1 has therefore limited the scope of the claim to the embodiment of FIG. 2 in which the combined signal is generated and then adjusted by the dark level bias. Claim 1 is considered to require a sequential order of functional operations in relation to the configuration of the claimed circuit:

1. A first input receives a user signal, and a light sensor outputs a sensing signal.
2. A multiplier uses the user signal and sensing signal to generate a combined signal.
3. A dark level bias adjusts the generated combined signal to generate a brightness control signal.

The above remarks are equally applicable to claim 15, which claims a method that involves “selectively multiplying the input signal with a sense signal to generate a combined signal ... and adjusting the combined signal with a dark level bias to generate a brightness control signal ...” (emphasis added). Based on its language, claim 15 is also considered to involve sequential steps in relation to the operation of the claimed method:

1. Receiving a user input signal.
2. Selectively multiplying the user input signal and a sensing signal to generate a combined signal.
3. Adjusting the generated combined signal with a dark level bias to generate a brightness control signal.

The Stevenson declaration asserts:

“The Figure 1 embodiment shows that this adjustment to the combined signal is performed by addition to the sensing signal via a summing circuit 104 prior to multiplication ... In doing so, the output of the multiplier is modified to maintain it above a predetermined level wherein the amount of adjustment to the combined signal is partially determined by the user [input] signal.” Stevenson Declaration at ¶ 33.

Examiner respectfully disagrees with the above assertion inasmuch as the output of the multiplier (i.e., the combined signal) is, by all accounts, not “modified” by the dark level bias in FIG. 1. As explained and shown above, the dark level bias of FIG. 1 is used as one of three inputs for the purposes of generating the combined signal, rather than being used to adjust (“modify”) the combined signal after it has been generated.

It is unclear how a signal can be “adjusted” before it has been created in the first instance. The usage of the dark level bias shown in FIG. 1 constitutes an adjustment to a value (“sensing signal”) used as input for generating the combined signal. The dark level bias contributes to the creation of the combined signal rather than a post-processing adjustment of a generated combined signal. Before the multiplication operation 106 in FIG. 1 is executed, the combined signal does not exist (i.e., it has yet to be generated). Logically, one cannot adjust (“modify”) something that does not exist and has yet to be created.

The Stevenson declaration at ¶ 35 asserts a PHOSITA would not understand the claims to require an order of operations based on the embodiments disclosed in FIGS. 4, 8, and 9 of the ‘117 Patent allegedly performing the math concurrently rather than sequentially. However, the Examiner’s conclusion that the claims require a sequential order is based on the plain text and

syntactical construction of claims 1 and 15 rather than the disclosure of preferred embodiments in the specification.

Patent Owner references the *CUPP Computing AS* Federal Circuit case in which the court states, “a claim interpretation that excludes a preferred embodiment from the scope of the claim is rarely, if ever, correct” (see Aug 2023 Response at p. 18). This assertion appears to be misapprehended or taken out of context inasmuch as patentees are undoubtedly free to disclose multiple embodiments while limiting the claims to fewer than all preferred embodiments. See *Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1382 (Fed. Cir. 2022), in which the court recognized that in a situation where the written description disclosed multiple embodiments, “[t]he patentees were free to claim only the latter embodiment.” See also *TIP Sys., LLC v. Phillips & Brooks/Gladwin, Inc.*, 529 F.3d 1364, 1373 (Fed. Cir. 2008) (“[T]he mere fact that there is an alternative embodiment disclosed in [a] patent that is not encompassed by [a] claim construction does not outweigh the language of the claim, especially when the court's construction is supported by the intrinsic evidence.”). Contrary to the above quote in *CUPP Computing AS*, there is no law, rule, or other patent-related axiom requiring a patentee’s claims to cover all preferred embodiments.¹ [Furthermore, to the extent multiple embodiments of an invention are separate and distinct, it is common practice in the course of patent examination patent for the Office to restrict the claims to a single distinct embodiment. See generally, MPEP Chapter 800.]

¹ Whether any dependent claims in the ‘117 Patent contradict the scope of their respective base claims in violation 35 U.S.C. § 112, second paragraph, is not an issue that is proper for *ex parte* reexamination. See 37 C.F.R. § 1.552.

(3) **Response to: II.C. The Office Action’s Exclusion of Preferred Embodiments From the Scope of the Claims Based on the Ability to Manually Turn Off the Display System is Improper and Has No Basis in the Claim Language** (see Aug 2023 Response at pp. 19-23).

Patent Owner’s arguments have been considered and are found persuasive. In particular, Examiner withdraws the previous finding that the claims are limited to the embodiment of FIG. 2 because the “dark level bias” does not maintain the brightness control signal above a predetermined level in *all* instances, such as when the user-selected brightness value is zero. However, Examiner maintains the claims are limited to the embodiment of FIG. 2 for the reasons given above in Section IV.2.

In addition, Examiner finds that the claims appear to support the embodiment shown in FIG. 8, however, the Stevenson declaration seemingly contradicts this finding. Patent Owner identifies the “dark level bias” term used for adjusting the “combined signal” in the brightness control signal equation that characterizes the circuit of FIG. 8:

$$BCS3 = \left[\overset{\text{Dark Level Bias}}{VCC \times \frac{R3}{(R1 + R3)}} \right] + \left[\overset{\text{Sensing Signal}}{ISRC} \times \overset{\text{User [Input] Signal}}{\frac{(R1 \times R3)}{(R1 + R3)}} \right]$$

Equation at column 10 of the ‘117 Patent
(annotated by Patent Owner on p. 23 of the Aug 2023 Response)

As shown above, the value produced by a dark level bias circuit is used to adjust (i.e., is added to) a combined signal comprised of a mathematical term in which the sensing signal is multiplied by the user input signal. This equation substantially corresponds to the embodiment of

FIG. 2, in which a (scaled) dark level bias value is added to a combined signal produced at the output of multiplier 106 to generate a brightness control signal.

To the extent that the combined signal, i.e., $ISRC \times (R1 \times R3) / (R1 + R3)$, is generated and then adjusted by the dark level bias, i.e., $VCC \times R3 / (R1 + R3)$, then the brightness control signal BCS3 associated with FIG. 8 is considered to correspond to the embodiment recited in claims 1 and 15. However, Dr. Stevenson asserts that the embodiment of FIG. 8 “performs the math concurrently rather than sequentially” (see Stevenson Declaration at ¶ 35). If such is the case, then claims 1 and 15 exclude the embodiment of FIG. 8 because both claims require the sequential operations of a combined signal being generated and then modified by a dark level bias. Claims 1 and 15 are considered to exclude embodiments in which the “adjusting” of the combined signal occurs before or concurrently with the generation of the combined signal.

The other two equations shown on p. 23 of the Aug 2023 Response, viz., BCS1 and BCS5, corresponding to FIGS. 4 and 9, respectively, are considered to correspond to the embodiment of FIG. 1, in which the dark level bias adjusts (i.e., is added to) a scaled sensing signal before being multiplied by the user input signal to generate the brightness control signal. Therefore, the claims are not considered to encompass the embodiments of FIGS. 4 and 9.

- (4) **Response to: VII. The Office action improperly construes the “first input” and “second input” terms as invoking 35 U.S.C. § 112, ¶6** (see Aug 2023 Response at pp. 63-70)

Having considered and weighed all the evidence of record, including both Patent Owner’s arguments, the Stevenson declaration, PTAB proceedings involving the ‘117 Patent, and court claim constructions made of record, Examiner withdraws the § 112, sixth paragraph, interpretation of “first input” (claim 1) and “second input” (claim 9) since such inputs, in the

context of the claimed invention, are considered to connote sufficient structure for executing the claimed functions, viz., “to receive a user signal indicative of a user selectable brightness setting” (claim 1) and “to receive a selection signal to selectively operate the brightness control circuit in an auto mode or a manual mode, wherein the selection enables the light sensor in the auto mode and disables the light sensor in the manual mode” (claim 9). Examiner construes “first input” and “second input” according to their broadest reasonable interpretations to denote an input device for receiving a user-selectable brightness setting (“first input”) or an input device for receiving a user-selectable auto/manual signal (“second input”).

- (5) **Response to: VIII. “A Dark Level Bias” is not a means-plus-function term and the proposed construction adds additional limitations that are not recited in the claim** (see Aug 2023 Response at pp. 71-89)

In light of Examiner’s adoption of Patent Owner’s interpretation of “dark level bias” (see Section IV.1 above), the previous interpretation of the term under § 112, sixth paragraph, presented in the Jun 2023 Non-Final Rejection is withdrawn.

- (6) **Response to: III. Pioneer does not render obvious claims 1, 4-7, 15, 16, or 18 of the ‘117 Patent** (see Aug 2023 Response at pp. 24-45)

Patent Owner’s remarks have been considered and are persuasive. In particular, Patent Owner notes that Pioneer’s Equation 1 is not used to directly control the brightness of a display. Rather, it is identified as a “tentative characteristics line” that is subjected to a quadratic operation and then used for controlling the brightness of a display. See Aug 2023 Response at pp. 24-28.

In the Jun 2023 Non-Final Rejection, the “+ yS1” term of Pioneer’s Equation 1 was identified as corresponding to the claimed “dark level bias” inasmuch as it is used to adjust the combined signal “ $\{(yS2 - yS1) / (xS2 - xS1)\} \times (x_n - xS1)$.” While the yS1 term does appear to provide a “bias” of the dark level for Equation 1, it is not clear that the yS1 term ultimately functions as “a dark level bias” that is used to maintain the brightness level of the display above a predetermined level when the ambient light level decreases to approximately zero, as claimed.

As disclosed in Pioneer, a quadratic version of Equation 1 is used as a brightness control signal (see ¶ 122 of Pioneer), however, since Pioneer does not expressly disclose the formula for the quadratic function that is utilized – or otherwise provide a clear teaching of how the yS1 bias term is represented in the quadratic version of the tentative characteristic curve – a PHOSITA cannot determine whether the yS1 term operates as a “dark level bias” in the quadratic version that is ultimately utilized to control the brightness of a display device.

For this reason, Patent Owner’s remarks at the “second” argument on pp. 36-37 of the Aug 2023 Response are persuasive, and the previous § 103 rejections based on Pioneer are withdrawn.

(7) **Response to: IV. The combination of Pioneer and Ottenstein does not render obvious claim 9 of the ‘117 Patent** (see Aug 2023 Response at pp. 45-46)

The rejection of claim 9 is withdrawn on account of the rejection of base claim 1 being withdrawn.

(8) **Response to: V. The combination of Narveson and Whitted does not render obvious claim 15 or 16 of the ‘117 Patent** (see Aug 2023 Response at pp. 47-55)

Patent Owner presents three primary arguments for why claims 15 and 16 are not obvious over the combination of Narveson and Whitted: (A) there is no reasonable rationale for combining the teachings of the references; (B) Narveson does not teach a combined signal at low ambient light levels; and (C) Whitted does not teach a dark level bias. These arguments are further supported by the Stevenson declaration at ¶¶ 65 and 69-74.

These arguments are found persuasive, and therefore, the previous rejection of claims 15 and 16 over the combination of Narveson and Whitted is withdrawn.

In particular, for Argument (A), Examiner agrees with Patent Owner's contention that there is no apparent motivation or other reasonable rationale to combine the teachings of Narveson and Whitted to achieve the claimed invention by providing Narveson's system with a dark level bias because Narveson always maintains sufficient display brightness at low ambient light levels and thus there is no need to introduce a minimum power level or threshold, as taught by Whitted.

For Argument (B), Examiner agrees with Patent Owner's contention that Narveson's combined signal (CR-1)(RA) is not utilized at low ambient light levels, and therefore is not subjected to dark level biasing. As shown at box 55 in FIG. 4 of Narveson, a maximum of the combined signal (CR-1)(RA) and user-designated signal $K_1 V^2$ is selected and used for generating the brightness control signal. In low ambient lighting, however, the combined signal (CR-1)(RA) will not be selected because the ambient light value "A" causes the result of the combined signal to be zero or approximately zero. Accordingly, in low light, it will be the user-designated signal $K_1 V^2$ that is utilized to control the brightness of the display rather than the combined signal (CR-1)(RA).

For Argument (C), Examiner agrees with Patent Owner's contention that Whitted's establishment of a minimum power level does not correspond to the claimed "dark level bias" because the pre-programmed minimum power level overrides or replaces the brightness control signal at low light levels rather than adjusts the brightness control signal, as claimed.

(9) **Response to: VI. The combination of Whitted and Ottenstein does not render obvious claim 15 or 16 of the '117 Patent** (see Aug 2023 Response at pp. 55-63)

Patent Owner presents three primary arguments for why claims 15 and 16 are not obvious over the combination of Whitted and Ottenstein: (A) there is no reasonable rationale for combining the teachings of the references; (B) the PTAB found there is no rationale to combine Ottenstein's multiplication with a minimum brightness level; and (C) Whitted does not teach a dark level bias. These arguments are further supported by the Stevenson declaration at ¶¶ 69 and 75-80.

These arguments are found persuasive, and therefore, the previous rejection of claims 15 and 16 over the combination of Whitted and Ottenstein is withdrawn.

In particular, for Arguments (A) and (B), Examiner agrees with Patent Owner's contention that there is no apparent motivation or other reasonable rationale to combine the teachings of Whitted and Ottenstein to achieve the claimed invention by modifying Whitted's automatic brightness control system to include Ottenstein's selective multiplication because such a feature is not utilized in Ottenstein's system at low ambient light levels. Rather, Ottenstein teaches the utilization of a "night mode" when the ambient light drops below 10% of maximum since Ottenstein employs an expression for contrast F/A (where "F" is output brightness, and

“A” is ambient brightness) that grows without limit as A approaches zero. See Ottenstein at columns 3:54 – 4:4.

For Argument (C), Examiner agrees with Patent Owner’s contention that Whitted’s establishment of a minimum power level does not correspond to the claimed “dark level bias” because the pre-programmed minimum power level overrides or replaces the brightness control signal at low light levels rather than adjusting the brightness control signal, as claimed.

V. REASONS FOR CONFIRMATION

The following is an examiner’s statement of reasons for confirmation:

Independent claims 1 and 15 are confirmed patentable for the reasons given above in relation to the withdrawal of the previous §103 rejections. Notably, claim 1 is considered patentable over Pioneer, and claim 15 is considered patentable over Pioneer, the combination of Narveson and Whitted, and the combination of Whitted and Ottenstein.

The dependent claims under reexamination are confirmed patentable based on the confirmation of patentability for their respective base claims 1 or 15.

VI. CONCLUSION

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Colin LaRose whose telephone number is 571-272-7423.

Art Unit: 3992

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew J. Fischer can be reached at 571-272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

General inquiries may also be directed to the Central Reexamination Unit customer service line at (571) 272-7705.

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