

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HENRY DACOSTA, CHRISTOPHE RAMSTEIN,
and DANNY GRANT

Appeal 2009-015440
Application 10/723,778
Technology Center 2600

Before ERIC S. FRAHM, KALYAN K. DESHPANDE, and JASON V.
MORGAN, *Administrative Patent Judges*.

DESHPANDE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE¹

The Appellants seek review under 35 U.S.C. § 134(a) of a final rejection of claims 1-5, 7-13, 16-20, 21-23, and 26-32, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We REVERSE.

The Appellants invented the adaptive interpretation of input received from a touch-sensitive input device. Specification ¶ 0002.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added]:

1. A method comprising:

- [1] receiving a pressure signal indicating a pressure from an input device;
- [2] determining a change in pressure based at least in part on the pressure signal;
- [3] determining a velocity associated with the pressure signal; and
- [4] outputting a press signal if the velocity is less than a velocity threshold, the change in pressure is greater than a change in pressure threshold, and a first interval has elapsed.

REFERENCES

The Examiner relies on the following prior art:

Gillespie	US 5,880,411	Mar. 9, 1999
Fujita	US 6,118,435	Sep. 12, 2000

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed Apr. 23, 2009) and Reply Brief ("Reply Br.," filed Aug. 24, 2009), and the Examiner's Answer ("Ans.," mailed June 24, 2009), and Final Rejection ("Final Rej.," mailed Sep. 24, 2008).

Astala
Geaghan

US 6,590,568 B1 Jul. 8, 2003
US 2003/0063073 A1 Apr. 3, 2003

REJECTIONS²

Claims 1-5, 7-13, 16-19, 21-23, and 26-32 stand rejected under 35 U.S.C §112 first paragraph as failing to comply with the written description requirement.

Claims 1-3, 5, 7-13, 16, 17, 19, 21-23, 26, 27, and 29-32 stand rejected under 35 U.S.C §103(a) as being unpatentable over Gillespie and Astala.

Claim 4 stands rejected under 35 U.S.C §103(a) as being unpatentable over Gillespie, Astala, and Geaghan.

Claims 18 and 28 stand rejected under 35 U.S.C §103(a) as being unpatentable over Gillespie, Astala, and Fujita.

ISSUES

The issue of whether the Examiner erred in rejecting claims 1-5, 7-13, 16-20, 21-23, and 26-32 turns on whether the Appellants conveyed to a person with ordinary skill in the art that the Appellants were in possession of the claimed invention and whether the cited prior art describes limitation [4] of claim 1 and as recited in claim 19.

² We have decided the appeal before us. However, should there be further prosecution of these claims, the Examiner's attention is directed to recently issued guidance from the Director and our reviewing court, as follows below.

Specifically, should there be further prosecution with respect to claims 19-28, 30, and 32, the Examiner's attention is directed to *In re Nuijten*, 500 F.3d 1346 (Fed. Cir. 2007), and *Subject Matter Eligibility of Computer Readable Media*, 1351 Off. Gaz. Pat. Office 212 (Feb. 23, 2010).

ANALYSIS

Claims 1-5, 7-13, 16-19, 21-23, and 26-32 rejected under 35 U.S.C §112 first paragraph as failing to comply with the written description requirement

The Examiner found that the Specification describes that a threshold value is a constant and therefore fails to support the feature “a change in pressure threshold” that is recited in independent claims 1 and 19. Ans. 4. The Appellants contend that the Examiner has misconstrued independent claims 1 and 19 in that these claims require that the change in pressure threshold is a constant value that the change in pressure is compared to. App. Br. 5 and Reply Br. 2.

We agree with the Appellants. The claims recite “the change in pressure is greater than a change in pressure threshold” and it is clear from this language that the change in pressure is measured against a constant threshold value. Although the claims recite a “change in pressure” threshold value, the label “change in pressure” does not change the fact that the threshold value is constant. Moreover, the Specification discloses that “the change in pseudo pressure is compared to a [change in pressure] threshold value 322.” Specification ¶ 0046 and Fig.3. As such, we find that the Appellants have conveyed to those skilled in the art that the Appellants were in possession of the claimed invention.

Claims 1-3, 5, 7-13, 16, 17, 19, 21-23, 26, 27, and 29-32 rejected under 35 U.S.C §103(a) as being unpatentable over Gillespie and Astala

The Appellants contend that the combination of Gillespie and Astala fails to teach or suggest “outputting a press signal if the velocity is less than

a velocity threshold, the change in pressure is greater than a change in pressure threshold, and a first interval has elapsed,” as required by limitation [4] of claim 1 and as recited in claim 19. App. Br. 6-8 and Reply Br. 3-4. The Appellants specifically argue that Gillespie teaches or suggests comparing a pressure value against a pressure threshold, but fails to teach or suggest comparing a change in pressure (ΔP) to a change in pressure threshold (ΔP threshold). Reply Br. 3.

We agree with the Appellants. As discussed *supra*, limitation [4] of claim 1 requires a “change in pressure” value to be evaluated against a “change in pressure threshold” value. That is, the claims are not concerned with the actual pressure value, but require the *change in pressure* value to be compared to a threshold.

Gillespie teaches that as a finger pressure increases past a threshold, a virtual button is pressed. Gillespie 49:12-13. The Examiner found that this “increase” in pressure is the same as a change in pressure. Ans. 9. However, this description merely teaches comparing a pressure value against a threshold value. As argued by the Appellants, this is not the same as evaluating a change in pressure against a change in pressure threshold. While in some instances the pressure value and the change in pressure value may be the same (e.g. an increase in pressure from 0 to 5 results is a change in pressure of 5), these values are not synonymous and they do not always represent the same value (e.g., an increase in pressure from 1 to 5 results in a change in pressure of 4). As such, we agree with the Appellants that the Examiner has failed to establish a *prima facie* case of obviousness.

*Claim 4 rejected under 35 U.S.C §103(a) as being unpatentable over
Gillespie, Astala, and Geaghan*

The Appellants contend that the cited prior art fails to teach or suggest claim 4 for the same reasons asserted in support of claim 1. App. Br. 8-9. We agree with the Appellants. The Appellants contentions in support of claim 1 are found to be persuasive *supra* and are persuasive here for the same reasons.

*Claims 18 and 28 rejected under 35 U.S.C §103(a) as being
unpatentable over Gillespie, Astala, and Fujita*

The Appellants contend that the cited prior art fails to teach or suggest claim 4 for the same reasons asserted in support of claims 1 and 19. App. Br. 9-10. We agree with the Appellants. The Appellants contentions in support of claims 1 and 19 are found to be persuasive *supra* and are persuasive here for the same reasons.

CONCLUSIONS OF LAW

The Examiner erred in rejecting claims 1-5, 7-13, 16-19, 21-23, and 26-32 under 35 U.S.C §112 first paragraph as failing to comply with the written description requirement.

The Examiner erred in rejecting claims 1-3, 5, 7-13, 16, 17, 19, 21-23, 26, 27, and 29-32 under 35 U.S.C. § 103(a) as unpatentable over Gillespie and Astala.

The Examiner erred in rejecting claim 4 under 35 U.S.C. § 103(a) as unpatentable over Gillespie, Astala, and Geaghan.

The Examiner erred in rejecting claims 18 and 28 under 35 U.S.C. § 103(a) as unpatentable over Gillespie, Astala, and Fujita.

DECISION

To summarize, our decision is as follows.

- The rejection of claims 1-5, 7-13, 16-19, 21-23, and 26-32 under 35 U.S.C §112 first paragraph as failing to comply with the written description requirement is not sustained.
- The rejection of claims 1-3, 5, 7-13, 16, 17, 19, 21-23, 26, 27, and 29-32 under 35 U.S.C. § 103(a) as unpatentable over Gillespie and Astala is not sustained.
- The rejection of claims 4 under 35 U.S.C. § 103(a) as unpatentable over Gillespie, Astala, and Geaghan is not sustained.
- The rejection of claims 18 and 28 under 35 U.S.C. § 103(a) as unpatentable over Gillespie, Astala, and Fujita is not sustained.

REVERSED

ELD