Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YIMING ZHOU, MARK JOHN MCGRATH
and VINCENT CARL HARRADINE

Appeal No. 2002-1960
Application No. 08/821,321[1]

HEARD: APRIL 15, 2003

Before KRASS, RUGGIERO, and SAADAT, Administrative Patent Judges.
SAADAT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1-10, which are all of the claims pending in this application.

We reverse.

BACKGROUND

Appellants' invention relates to an editing system for associating text with a video sequence by taking into

[1] Application for patent filed March 20, 1997, which claims the foreign filing priority benefit under 35 U.S.C. § 119 of British Application No. 9606443.1, filed March 27, 1996.

consideration the duration of the video section and the rate of reading (specification, page 1). The amount of entered text to be displayed simultaneously with the display of the video may exceed the amount that can be fitted into a section of text. According to Appellants, for each section of the script, an active text sub-section and an overflow or inactive text sub-section are displayed according to time codes indicating the start of each section of text and a user-variable reading rate (specification, page 5).

Representative independent claim 1 is reproduced below:

1. An editing system for associating text with a video sequence the frames of which have time codes associated therewith, the system comprising:

means for simultaneously displaying a sequence of video frames and a sequence of text associated with the sequence of video frames,

a video store for storing the sequence of frames to be displayed and the associated time codes (VC),

a text store for storing the sequence of associated text,

means for defining time codes (TC) in the text, the time codes in the text corresponding to time codes in the video sequence and indicating sections of the text, which are associated with corresponding sections of the video sequence,

means for defining a user-variable rate (n) of reading the words of text, and

means for indicating on the display the extent of the text which matches the associated section of the video sequence, the text that matches being non-overflow text, and wherein any

overflow text for that section being displayed in a differentiating manner relative to the displayed non-overflow text for the associated section, and with the extent of the matching text and overflow text being dependent upon the time code TCx indicating the start of that section of text, the time code TCx+1 indicating the start of the succeeding section of text, and the rate (n) of reading, wherein the amount of displayed overflow text relative to the displayed non-overflow text for the associated section of the video sequence is variable by means of the user varying the reading rate (n).

The Examiner relies on the following references in rejecting the claims:

Chippendale	4,858,033	Aug. 15, 1989
Klingler et al. (Klingler)	5,404,316	Apr. 4, 1995
Parks	5,781,687	Jul. 14, 1998
		(Filed May 27, 1993)

Claims 1-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Parks and Klingler in view of Chippendale.

Claims 1, 2, 4-6 and 10 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 and 8 of copending Application No. 08/821,320.

Rather than reiterate the viewpoints of the Examiner and Appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 22, mailed December 4, 2001) for the Examiner's reasoning, and to the appeal brief (Paper No. 21, filed August 30, 2001) and the reply brief (Paper No. 24, filed January 29, 2002) for Appellants' arguments thereagainst.

OPINION

With respect to the provisional obviousness-type double patenting rejection of claim 1, 2, 4-6 and 10, Appellants assert that the rejection should be withdrawn if it is the only rejection remaining (brief, page 12). We note that such determination is made by the Examiner who, upon our decision on this appeal, takes the appropriate action according to MPEP § 804.02 (III) & (V) (8th edition, revision 1, Feb. 2003). Accordingly, the rejection of claim 1, 2, 4-6 and 10 under the judicially created doctrine of obviousness-type double patenting is sustained pro forma.

Turning now to the rejection of the claims under 35 U.S.C. § 103(a), we note that the Examiner relies on Parks for teaching the means for defining time codes and a variable rate and on Chippendale for disclosing marking of overflow or unnecessary text, which are pointed out by the Examiner as missing in Klingler (answer, page 9). The Examiner further reasons that since the references relate to manipulation of video and text while Parks mentions the benefits of "subtitling" (col. 7, lines 13-15), one of ordinary skill in the art would have combined the references (answer, pages 8 & 9).

Appellants argue that Chippendale, instead of marking overflow text, inserts a sequence of dots in a script to indicate that a narration pause is required (brief, page 7). Appellants further points out that Chippendale's vertical lines that are manually drawn on the written text, mark a transcript of an audio recording and are unrelated to associating text with a video sequence in an editing system (id.). Additionally, Appellants argue that the changes disclosed by Parks are not changes in the reading speeds as the reading speeds in Parks are fixed (brief, page 8). Appellants further question the reason or motivation that the Examiner applied in combining Klingler, Parks and Chippendale by asserting that the user in Parks is not involved in the subtitle superimposition process while Chippendale relates only to manual marking of a script (brief, pages 9 & 10).

In response to Appellants' arguments, the Examiner asserts that in the method provided by Chippendale "a user would have been able to manually mark the unnecessary/overflow words" to edit mistakes made in narration of a videotaped or filmed portion (answer, page 13). The Examiner further reasons that since Klingler teaches a computerized system for editing of video and text, the advantages of using a computer would have motivated one of ordinary skill in the art to combine marking of overflow

subtitle of Parks with Chippendale's pen marking of a script (answer, page 14).

The initial burden of establishing reasons for unpatentability rests on the Examiner. In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). The Examiner is expected to make the factual determination supported by teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration, consistent with the holding in set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). Additionally, establishing that all elements of a combination are known does not per se establish obviousness. Smith Industries Medical Systems, Inc. v. Vital Signs, Inc., 183 F.3d 1347, 1356, 51 USPQ2d 1415, 1420-21 (Fed. Cir. 1999) (the relevant inquiry is whether there is a reason, suggestion, or motivation in the prior art that would lead one of ordinary skill in the art to combine the teachings of the references). However, "the Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." In re Lee, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

Klingler relates to digital video image processing on a desktop computer, which is integrated with a conventional word processing program for linking scripts to their corresponding video image clips (Fig. 7 and col. 9, lines 39-68). Parks, on the other hand, discloses a method for editing video signals in real time by interpreting a script that is stored in a computer and combining subtitles with video images (col. 2, lines 48-56 and col. 3, lines 8-21). Parks further teaches that the script may be adjusted according to predicted audience reading speeds in order to make the subtitle easier to read (col. 7, lines 9-15). The subtitle timing depends on a constant rate of reading speed, sixteen character per second, added to a lag time taken to realize that the text has changed (col. 7, lines 16-24). A flag marks the subtitle text for review if the available time is less than the estimated reading time plus the lag time (col. 7, lines 24-32). Therefore, Parks provides for editing the subtitle text based on a fixed reading rate instead of the claimed variable reading rate set by a user.

Chippendale discloses a device for controlling audiovisual work for graphically interrelating the audio and visual elements to time. Chippendale also provides for automated voice or narration track editing (col. 4, lines 65-67) in which editing

points are determined and decisions are made as to which take to use or what changes to make (col. 5, lines 3-12). While the recorded data is played back, as depicted in Figures 5-7, a script is manually marked to indicate various takes and the editing points (col. 5, lines 15-19). These markings also add suspension dots to the script at points where a narration pause is needed, with the number of dots representing the length of the pause (col. 14, lines 19-23). Chippendale further teaches that vertical lines are also drawn alongside the script wherein a stopped line indicates the point the narrator made a mistake and a line to the right indicates a retake (col. 14, lines 23-32). Therefore, we agree with Appellants (brief, page 7) that Chippendale's inserting dots to indicate a narration pause, merely facilitates subsequent narration and has nothing to do with indicating the overflow text for associating text with a video sequence.

Assuming, arguendo, that it would have been obvious to utilize the subtitle editor of Parks and audiovisual control of Chippendale in Klingler's video processing, as held by the Examiner, the combination of references would still not disclose anything related to indicating the overflow text and the extent of displaying it relative to the non-overflow text based on a

variable reading rate. In that regard, contrary to the Examiner's assertion, Parks determines changes to the script based on reading speed associated with a certain audience and Chippendale merely marks the script to indicate the number and nature of recorded takes.

We note that, similar to claim 1, independent claim 10 also recites means for indicating the overflow text and the extent of displaying it relative to the non-overflow text based on a variable reading rate. Based on our analysis above, we find that the Examiner has failed to set forth a prima facie case of obviousness and accordingly, the 35 U.S.C. § 103 rejection of independent claims 1-10 over Klingler, Parks and Chippendale cannot be sustained.

CONCLUSION

In view of the foregoing, the decision of the Examiner rejecting claims 1-10 under 35 U.S.C. § 103 is reversed.

REVERSED

ERROL A. KRASS Administrative Patent Judge	)
JOSEPH F. RUGGIERO Administrative Patent Judge	) BOARD OF PATENT APPEALS AND INTERFERENCES
MAHSHID D. SAADAT Administrative Patent Judge	)

MDS/ki

Appeal No. 2002-1960
Application No. 08/821,321

Frommer, Lawrence & Haug
745 Fifth Avenue - 10th Floor
New York, NY 10151