

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN ELLENBY, THOMAS ELLENBY
and PETER ELLENBY

Appeal No. 1998-0678
Application 08/411,299

ON BRIEF

Before KRASS, FLEMING and HECKER, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

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Application No. 08/411,299

This is a decision on appeal from the final rejection of claims 1-8, all of the claims pending in the application.

The invention is directed to providing an image of a scene wherein the image is a composite image comprised of information relating to the scene realized from a plurality of perspectives.

Independent claim 1 is representative and is reproduced as follows:

1. An apparatus operable for providing an image of a scene, the image being a composite image comprised of information relating to the scene realized from a plurality of perspectives, the apparatus comprising:

- a) a first vision system; and
- b) a second vision system in electro-magnetic communication with the first vision system,

said first vision system having a first perspective of the scene and said second vision system having a second perspective of the scene, the second perspective being a different perspective than the first perspective.

The examiner relies on the following references:

Diner et al. (Diner)	5,182,641	Jan. 26, 1993
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Burgess et al. (Burgess) "Synthetic Vision - A View in the Fog," IEEE Aerospace and Electronic Systems Magazine," Vol 8 pp. 6-13 (1993)

Claims 1-8 stand rejected under 35 U.S.C. 103 as unpatentable over Burgess in view of Diner.

Reference is made to the brief and answer for the respective positions of appellants and the examiner.

OPINION

With regard to independent claims 1 and 2, the examiner contends that since Burgess discloses a pilot viewing a runway through a Head Mounted Display (HMD) and a second vision system, including radar or infrared sensors, is disclosed by Burgess as generating a second visual output to the HMD for additional information, it would have been obvious to "communicate a first visual image having a first visual perspective and a first view angle to a second image having a second visual perspective and second view angle in order to provide additional visual information to the user not available from either view separately" [answer-pages 4-5]. Although the examiner reasons that Diner is not even needed for the

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rejection, Diner is applied anyway as disclosing the generation of a virtual image from several inputs by combining output images to create the virtual image from any perspective in the workplace.

The examiner has set forth a rationale which, if all allegations are true, sets forth a prima facie of obviousness which must be overcome by appellants either by persuasive argument or some objective evidence of unobviousness.

Appellants' first argument, at page 3 of the brief, contends that the examiner did not consider how the teachings of Diner may contribute to the teachings of Burgess. However, one of the examiner's contentions is that Diner is not even needed to support Burgess under one interpretation of the Burgess reference so appellants' allegation that the examiner somehow did not properly explain the combination is not persuasive of unobviousness.

Appellants next argue that Burgess does not show two vision systems but, rather, discloses only a single vision system, albeit there are several alternatives. The alternative embodiments are not suggested by Burgess as being employed simultaneously. Moreover, appellants explain that Burgess forms an image at the camera and presents this image to a Heads

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Up Display (HUD) but it is a *single* image being displayed.

We would agree with appellants with their assessment of Burgess and we disagree with the examiner that page 2 of the instant specification admits that HUD and HMD devices are devices that combine images. The cited portion of the specification only states that HUD and HMD devices "rely on optical combiners to join image information generated by a computer to augment a scene being viewed." It does not say, necessarily, that the HUD and HMD devices are, themselves, the combiners.

However, appellants set forth a more convincing line of reasoning for obviousness, at page 5 of the brief, than does the examiner. That is, appellants concede, and we agree, that the pilot's eye, in Burgess, provides the second "vision system" having the second perspective view of the scene which forms an image. Even though, as appellants state, "the spirit of Burgess is quite different than the spirit of Applicants' invention" [brief-page 5], the pilot's eye being a second vision system, the broad language of independent claims 1 and 2 is met by Burgess, alone.

Accordingly, we will sustain the rejection of claims 1 and

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2 under 35 U.S.C. 103.

Claim 3 falls with independent claim 1 as it is not separately argued. Similarly, claims 4-6 and 8 will fall with independent claim 1 because, while appellants attempt to make a showing of arguing these claims separately, at page 7 of the brief, closer analysis of these "arguments" reveals that appellants' position is merely a general statement that there are "differences" between Diner and the instant invention and between Burgess and the instant invention. However, no specifics regarding the alleged differences are set forth by appellants. Accordingly, since no specific arguments are made directed to the

merits of claims 3-6 and 8, we will not sustain the rejection of these claims under 35 U.S.C. 103.

Finally, we turn to claim 7. This claim depends from independent claim 1 through claim 3 and recites specifics of the image information being graphical and "determined by measurements of position and attitude of either vision system." Appellants clearly argue, at page 8 of the brief, that whereas the instant invention uses position and attitude to properly

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perform the translation of perspective routines, such is not taught or suggested by either Burgess or Diner. While Diner is concerned with position and attitude, it is only for the display of this information [column 10, lines 31-33], unlike the instant invention which uses the information to combine the images of different perspective, as clearly recited by instant claim 7 via instant claim 3. Therefore, we will reverse the rejection of claim 7 under 35 U.S.C. 103.

We have sustained the rejection of claims 1-6 and 8 under 35 U.S.C. 103 but we have reversed the rejection of claim 7 under 35 U.S.C. 103. Accordingly, the examiner's decision is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)

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AFFIRMED-IN-PART

ERROL A. KRASS)
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)
) BOARD OF PATENT
MICHAEL R. FLEMING)
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