

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

505 GAMES, INC., ACTIVISION BLIZZARD, INC., BLIZZARD ENTERTAINMENT, INC., CAPCOM U.S.A. INC., THE WALT DISNEY CO., DISNEY INTERACTIVE STUDIOS, INC., LUCASARTS, ELECTRONIC ARTS INC., BANDAI NAMCO GAMES AMERICA, INC., BANDAI NAMCO HOLDINGS USA INC., RIOT GAMES, INC., SONY COMPUTER ENTERTAINMENT AMERICA LLC, SQUARE ENIX, INC., SQUARE ENIX OF AMERICA HOLDINGS, INC., TAKE-TWO INTERACTIVE SOFTWARE, INC., ROCKSTAR GAMES, INC., 2KSPORTS, INC., 2K GAMES, INC., and UBISOFT, INC.,
Petitioner,

v.

BABBAGE HOLDINGS, INC.,
Patent Owner.

Case IPR2014-00954
Patent 5,561,811

Before MEREDITH C. PETRAVICK, KALYAN K. DESHPANDE, and
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

505 Games, Inc., Activision Blizzard, Inc., Blizzard Entertainment, Inc., Capcom U.S.A. Inc., The Walt Disney Co., Disney Interactive Studios, Inc., LucasArts, Electronic Arts Inc., BANDAI NAMCO Games America, Inc., BANDAI NAMCO Holdings USA Inc., Riot Games, Inc., Sony Computer Entertainment America LLC, Square Enix, Inc., Square Enix of America Holdings, Inc., Take-Two Interactive Software, Inc., Rockstar Games, Inc., 2KSports, Inc., 2K Games, Inc., and Ubisoft, Inc. (collectively, “Petitioner”) filed a Petition to institute an *inter partes* review of claim 7 of U.S. Patent No. 5,561,811 (Ex. 1001, “the ’811 patent”) pursuant to 35 U.S.C. § 311–319. Paper 1 (“Pet.”). Babbage Holdings, Inc. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 23 (“Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 314, which provides that a *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Petitioner contends that claim 7 of the ’811 patent is unpatentable under 35 U.S.C. § 103. We conclude that Petitioner has demonstrated that there is a reasonable likelihood that it would prevail with respect to the challenged claim. For the reasons described below, we institute an *inter partes* review of claim 7.

B. Related Proceedings

Both parties state that the ’811 patent is involved in numerous district court cases in the Eastern District of Texas. *See* Pet. 50–51; Paper 14, 2–3.

C. The '811 patent

The '811 patent is titled “Method and Apparatus for Per-User Customization of Applications Shared By a Plurality of Users On A Single Display.” Ex. 1001, 1. The '811 patent describes that a disadvantage with prior groupware applications is that they “generally require that each of a number of participants have his or her own computer” but that “[t]here are many occasions, however, in which two or more people wish to collaborate in a single-computer situation.” *Id.* at col. 1, ll. 21–25. As a solution to this problem, the '811 patent discloses “a method and apparatus for sharing customizable software applications on a single display that overcomes [this] disadvantage[] of the prior systems and that permits two or more persons to share the same instance of an application, [employing] a common screen.” *Id.* at col. 2, ll. 20–25.

Figure 25 of the '811 patent is reproduced below.

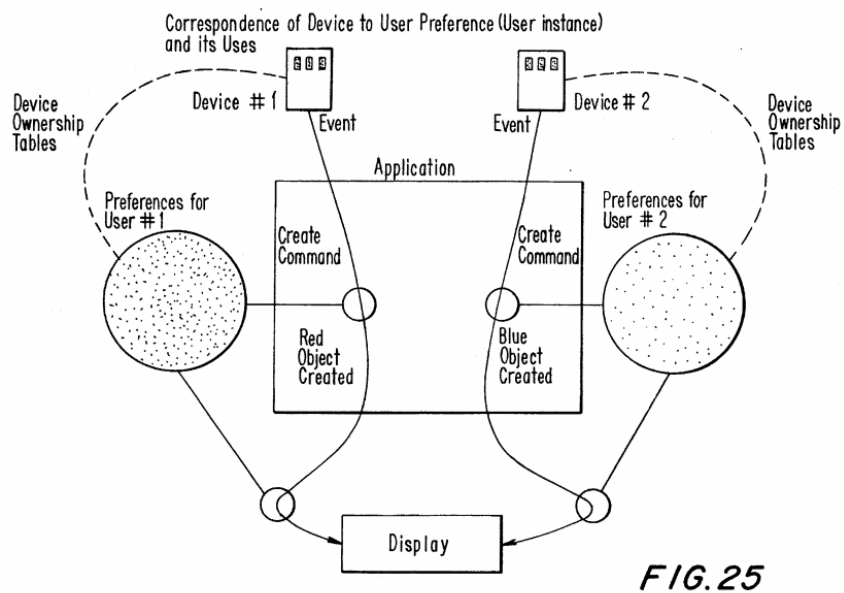


Figure 25 is a diagram that illustrates how user preferences are involved in processing input events from two different users.

Figure 25 depicts Device # 1 and Device # 2 that are registered with user preferences for User #1 and User #2, respectively, using device ownership tables (i.e., Device to User Instance table). *Id.* at col. 9, l. 10 – col. 10, l. 17. Commands are created from users' input events according to the user preferences, and, then, the commands are sent to a display for execution. *Id.* at col. 11, l. 20–45. For example, if multiple users are creating rectangles, simultaneously, in a rectangle editor, one user's rectangles may be colored blue and another's red according to their preferences. *Id.* at col. 5, l. 53 – col. 6, l. 21.

Claim 7, reproduced below, is the sole challenged claim.

7. A method for entering simultaneous and sequential input events for at least one application program under the control of multiple users of a computer system and for displaying a visual response of said application program to said input events on a shared display, each of said users having a unique identity; said method comprising the steps of

entering simultaneous and sequential input events through user control of a plurality of input devices connected to a single computer, each of said input devices having a unique identity that is linked with any input events that are entered thereby;

revokably registering different ones of said users with different ones of said input devices, whereby the identity of each input device that has a user registered therewith is linked with the identity of its registered user;

linking any input events from input devices that have users registered therewith with prespecified, individualized preferences of the respective registered users of such input devices, and

translating input events from input devices that have registered users into commands that said application program executes in accordance with the preferences of the registered users of the input devices.

D. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability for claim 7:

Ground	Prior Art
§ 103	Yoshino ¹ and Greanias ²
§ 103	Lu ³ and Greanias
§ 103	Dodge Ball ⁴

II. ANALYSIS

A. Claim Construction

The '811 patent expired October 1, 2013. For claims of an expired patent our claim interpretation analysis is similar to that of a district court. *See In re Rambus, Inc.* 694 F.3d 42, 46 (Fed. Cir. 2012). Claim terms are given their ordinary and customary meaning, as would be understood by a person of ordinary skill in the art, at the time of the invention, in light of the language of the claims, the specification, and the prosecution history of record. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313–1317 (Fed. Cir. 2005) (en banc).

i. “plurality of input devices connected to a single computer”

Petitioner proposes that claim 7’s limitation “plurality of input devices connected to a single computer” requires that the input devices are connected to the same computer. Pet. 10. Patent Owner argues that

¹ Yoshino et al., US Patent No. 5,548,304 (issued Aug. 20, 1996)(Ex. 1002).

² Greanias et al., US Patent No. 5,157,384 (issued Oct. 20, 1992) (Ex. 1003).

³ Iva M. Lu and Marily M. Mantei, IDEA MANAGEMENT IN A SHARED DRAWING TOOL, Proceeding of the second european conference on computer-supported cooperative work (L. Bannon, et al. eds., 1991) (Ex. 1004).

⁴ SUPER FAMICON, BATTLE DOGE BALL MANUAL (Ex. 1005).

Petitioner's proposed interpretation is too narrow and the limitation should be given a broader interpretation that allows for the input devices to be connected to one or more computers, as well as, connected to the same computer. Prelim. Resp. 9–17. Specifically, Patent Owner argues that the plain meaning of the limitation is that the input devices can be connected to one or more computers because the article “a” means “one or more.” *Id.* at 9.

Based on the record before us, we agree with Petitioner's interpretation that the limitation requires that the input devices are connected to the same computer. This interpretation is consistent with the plain language of the claim, which recites a *single* (i.e., one only (*see* THE POCKET WEBSTER SCHOOL & OFFICE DICTIONARY 670 (1990)(Ex. 3001)) computer. Patent Owner's proposed interpretation renders the claim term “single” meaningless because it allows for the input devices to be connected to more than one computer. We see no reason to read this term out of the claim. Further, Petitioner's interpretation is consistent with the '811 patent, which describes a “single-computer situation” where multiple users are using the same computer. Ex. 1001, col. 1, l. 24–26: *see also id.* at Fig. 1 (depicting two input devices connected to the same computer); col. 1, l. 22–col. 2, l. 25 (describing how the system of the '811 patent overcomes the disadvantage of the prior art, which require each participant to have his or her own computer, because it permits participants to collaborate in a “single-computer situation” by sharing the same instance of an application.) Based on the record before us and for the purposes of this decision, the plain and ordinary meaning of a “plurality of input devices connected to a single computer” is that the plurality of input devices are connected to the same computer.

ii. user preference limitations

Petitioner argues that the “user preference” limitations require that the preferences are associated with the identity of the user of the devices. Pet. 13–15. Patent Owner does not dispute Petitioner’s interpretation. *See* Prelim. Resp. 17–18. The “user preference” limitations are:

revokably registering different ones of said user with different ones of said input devices, whereby the identity of each input device that has a user registered therewith is linked with the identity of its registered user;

linking any input events from input devices that have users registered therewith with prespecified, individualized preferences of the respective registered users of such input devices, and

translating input events from input devices that have registered users into commands that said application program executes in accordance with the preferences of the registered users of the input devices.

Ex. 1001, col. 18, l. 16–38 (emphases added). The plain language of the limitations emphasized above requires: that users be registered; that the identity of a registered user be linked with the identity of an input device; and that any input events from the linked input device be linked with the preferences of the registered user and translated in accordance with the preference of the registered user. Based on the record before us and for the purposes of this decision, we agree with the Petitioner that the “user preference” limitations require that the preferences are associated with the identity of the user of the device.

ii. “Linking” and “Translating” steps

Patent Owner argues that the plain and ordinary meaning of the “linking” and “translating” steps, when analyzed within the context of

the claim as a whole, require “a method (1) that allows for the possibility of multiple registered users, and (2) that, when such users are both entering input events (the ‘simultaneous’ feature), they can do so according to different (‘prespecified, individualized’) preferences.” *Id.* at 22, 27.

Claim 7 recites “revokably registering different ones of said users with different ones of said input devices.” The “linking” step refers to “input devices that have users registered therewith” and the “translating” step refers to “input devices that have registered users.” It is sufficiently clear from the use of the plural “users” in these limitations that they do not exclude the possibility of multiple registered users. Additionally, Patent Owner has not provided persuasive argument and evidence that the preamble’s recitation of “simultaneous” means when such users are both entering input events, or that “simultaneous” should be read into the “linking” and “translating” steps.

On this record, we determine that no express of the “linking” and “translating” steps of claim 7 is necessary.

B. Prior Art Grounds

Section 103(a) forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations,

including: (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966); *see KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”).

i. Obviousness over Yoshino and Greanias

Petitioner contends that claim 7 is unpatentable under 35 U.S.C. § 103(a) over the combination of Yoshino and Greanias. Pet. 16–33. Specifically, Petitioner argues that Yoshino discloses most of the elements of claim 7, including multiple registered users that are simultaneously and sequentially inputting events into a single computer. *Id.* at 16–17, 20–29. Petitioner argues that Yoshino does not disclose the claimed user preferences that are stored in individual user profiles (*id.* at 18–19), but contends that Greanias’s teaching of a system that maps input actions from an input device to output commands based on a user profile cures this deficiency (*id.* at 18 (citing Ex. 1003, col. 10, l. 5–9)). According to Petitioner, adding Greanias’s user profile parameters to Yoshino’s system results in a more robust multi-user system that easily maps input actions to the most often used commands. *Id.* at 18–19 (citing Ex. 1006 ¶¶ 35–37).

Yoshino is titled “Method and Apparatus for Screen Displaying” and issued on August 20, 1996, from an application filed August 16, 1990. Ex. 1002, 1 Yoshino discloses a system that allows cursors, associated with multiple cursor control units (i.e. input devices) and operated by multiple users, to be displayed on the same screen. *Id.* at col. 4, ll. 27– 45, Figs. 1, 19(a). Yoshino discloses that the multiple users have simultaneous access to

the cursors. *Id.* at Abstract, col. 1, ll. 32–38, 50–51. Yoshino’s system has a cursor data storage unit that stores tables, including supervising table 21 that relates the cursor control units to the users; supervising table 22 that relates the cursor control units to the cursors; and a plurality of tables that relate different attributes, such as color, to the cursors. *Id.* at col. 4, ll. 46–65; Figs. 3–8(e). Although Yoshino’s preferred embodiment discloses data tables relating attributes to cursors, Yoshino discloses that, alternatively, “the attributes may be for each cursor or for each cursor control unit 2, or for each particular user, although cursors are specifically illustrated.” *Id.* at col. 8, ll. 7–9. *See also* col. 4, ll. 61–65 (stating that users may assign attributes to specific cursors); col. 8, ll. 30–40 (stating that attributes can be assigned to the cursors for the purpose of identifying the user). Greanias is titled “Advanced User Interface” and issued on October 20, 1992. Ex. 1003, 1. Greanias discloses a system in which a user can customize the input signals from a user input device. *Id.* at col. 3, ll. 66 – col. 4, l. 6. Greanias discloses that for each application, a user profile contains a list of input messages, which are mapped to corresponding commands. *Id.* at col. 10, ll. 5–26. *See also id.* at Fig. 5 (depicting a table mapping input messages to output commands).

Given the above and on this record, we are persuaded by Petitioner that one of ordinary skill in the art would have been led to add Greanias’s user profile to Yoshino’s system to result in a more robust multi-user system that easily maps input actions to the most often used commands (*Id.* at 18–19).

Patent Owner argues that Petitioner has not shown that Greanias, alone, teaches the linking and translating limitations—as construed by Patent Owner—because, in Greanias, only a single user

participates at any given time. Prelim. Resp. 27–31. We are not persuaded by Patent Owner’s argument. We declined to adopt Patent Owner’s proposed construction of the “linking” and “translating” steps for the reasons discussed above. Moreover, Patent Owner’s argument ignores Petitioner’s reliance upon Yoshino to teach multiple registered users simultaneously entering input events and ignores Petitioner’s proposed combination of Yoshino and Greanias. Despite averring otherwise (Prelim. Resp. 30–31), Patent Owner is attacking the references individually when the proposed ground is based upon a combination. Nonobviousness cannot be established by attacking references individually where, as here, the ground of unpatentability is based upon the teachings of a combination of references. *In re Keller*, 642 F.2d 413,426 (CCPA 1981). Rather, the test for obviousness is whether the combination of references, taken as a whole, would have suggested the patentee’s invention to a person having ordinary skill in the art. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

On the record before us and taking into account Patent Owner’s arguments, we are persuaded by Petitioner that there is a reasonable likelihood that claim 7 is obvious over Yoshino and Greanias.

ii. Obviousness over Lu and Greanias, and Anticipation by Dodge Ball

We do not institute *inter partes* review of claim 7 of the ‘811 patent as unpatentable under 35 U.S.C. § 103(a) over Lu and Greanias or as anticipated under 35 U.S.C. § 102 by Dodge Ball. We have discretion to institute *inter partes* review as to some asserted grounds and not others. 37 C.F.R. § 42.108(a); *see also* 35 U.S.C. § 314(a) (authorizing institution of *inter partes* review under particular circumstances, but not requiring

institution under any circumstances). This discretion is consistent with the requirement that the regulations for *inter partes* review proceedings take into account “the efficient administration of the Office” and “the ability of the Office to timely complete [instituted] proceedings,” 35 U.S.C. § 316(b), as well as with the requirement that the rules for *inter partes* review proceedings be “construed to secure the just, speedy, and inexpensive resolution of every proceeding.” 37 C.F.R. § 42.1(b). Accordingly, for reasons of administrative necessity, and to ensure timely completion of the instituted proceeding, we exercise our discretion and do not institute a review based on Petitioner’s other asserted grounds.

III. CONCLUSION

On this record, we determine that Petitioner has demonstrated a reasonable likelihood that it would prevail in establishing that claim 7 is obvious over Yoshino and Greanias. The Board has not yet made a final determination as to the patentability of any claim.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that pursuant to 35 U.S.C. § 314(a), *inter partes* review of the ’811 patent is hereby instituted commencing on the entry date of this Order; and

FURTHER ORDERED that the trial is limited to the ground of claim 7 under 35 U.S.C. § 103 as obvious over Yoshino and Greanias.

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