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Paper 26
Date: November 28, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC., LG ELECTRONICS, INC.,
LG ELECTRONICS U.S.A., INC., AND GOOGLE LLC,
Petitioner,

v.

GESTURE TECHNOLOGY PARTNERS, LLC,
Patent Owner.

IPR2021-00922[1]
Patent 8,553,079 B2

Before KEVIN F. TURNER, JONI Y. CHANG, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

DOUGAL, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining Some Challenged Claims Unpatentable
35 U.S.C. § 318(a)

[1] IPR2022-00090 (LG Electronics, Inc. and LG Electronics U.S.A., Inc.) and IPR2022-00360 (Google LLC) have been joined with this proceeding.

I. INTRODUCTION

A. *Background*

Applying the standard set forth in 35 U.S.C. § 314(a), we instituted an *inter partes* review challenging the patentability of claims 1–30 (the "challenged claims") of U.S. Patent No. 8,553,079 B2 (Ex. 1001, "the '079 patent"). Paper 10 ("Dec."). Apple, Inc.[2] filed the request for an *inter partes* review (Paper 1, "Petition" or "Pet."), which Patent Owner, Gesture Technology Partners, LLC, opposed (Paper 8).

After institution, Patent Owner filed a Response (Paper 13, "PO Resp."), Petitioner filed a Reply (Paper 17, "Reply"), and Patent Owner filed a Sur-reply (Paper 18, "Sur-reply"). An oral hearing was held on September 13, 2022, and a copy of the transcript was entered into the record. Paper 25 ("Tr.").

We have jurisdiction under 35 U.S.C. § 6. This Decision is a Final Written Decision under 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73 as to the patentability of the claims on which we instituted trial. Having reviewed the arguments of the parties and the supporting evidence, we determine that Petitioner has shown by a preponderance of the evidence, that claims 1–6, 8–16, 18–26, and 28–30 are unpatentable. We also determine that Petitioner has not shown that claims 7, 17, and 27 are unpatentable.

B. *Related Matters*

The parties identify these related matters: *Gesture Technology Partners, LLC v. Huawei Device Co., Ltd.*, No. 2:21-cv-00040 (E.D. Tex.); *Gesture Technology Partners, LLC v. Samsung Electronics Co.*, No. 2:21-

[2] Apple, Inc., LG Electronics, Inc., LG Electronics U.S.A., Inc., and Google LLC are collectively referred to herein as "Petitioner."

cv-00041 (E.D. Tex.); *Gesture Technology Partners, LLC v. Apple Inc.*, No. 6:21-cv-00121 (W.D. Tex.); *Gesture Technology Partners, LLC v. Lenovo Group Ltd.*, No. 6:21-cv-00122 (W.D. Tex.); *Gesture Technology Partners, LLC v. LG Electronics, Inc.*, No. 6:21-cv-00123 (W.D. Tex.); *Gesture Technology Partners, LLC v. Motorola Mobility LLC*, No. 1:22-cv03535 (ND Ill.); and *Gesture Technology Partners, LLC v. Katherine K. Vidal*, No. 1:22-cv-622 (E.D. VA). Pet. 77; Paper 20, 2–3. Patent Owner also identifies the following related *Ex Parte* Reexaminations: No. 90/014,900; No. 90/014,901; No. 90/014,902; and No. 90/014,903. Paper 20, 3–4.

C. The '079 Patent

The '079 patent relates to "[a] method for determining a gesture," such as a hand or finger gesture, using a camera and a light source, where the gesture serves as an input for a computer. Ex. 1001, Abstract, 1:54–57, 1:64–2:2. Figure 2, reproduced below, depicts an embodiment in which a computer device (e.g., laptop) includes this method.

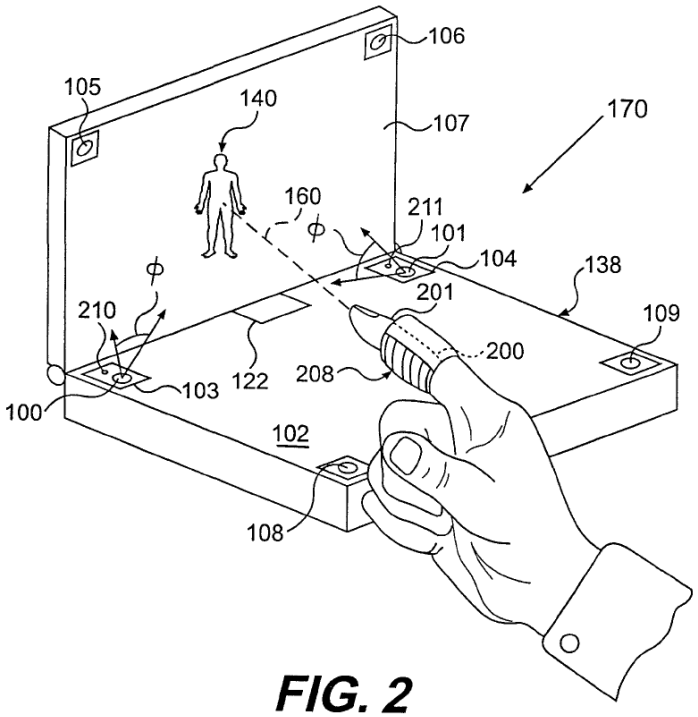

FIG. 2

As illustrated in Figure 2, a laptop (138) may include camera locations (100, 101, 105, 106, 108, 109), a keyboard surface (102), a screen housing (107), a light (122), light emitting diodes (LEDs) (210, 211), and a work volume area (170) within which a user's movements are detected. *Id.* at 2:39–53. The system can detect a user's finger alone or the user may employ external objects such as a ring (208) to help detect and recognize gestures performed in the work volume area (170). *Id.* at 2:54–3:8. The '079 patent describes detecting point, pinch, and grip gestures using this configuration. *Id.* at 2:54–61, 3:48–51.

D. Illustrative Claim

Petitioner challenges claims 1–30 of the '079 patent. Claims 1, 11, and 21 are independent. Claim 1 is illustrative:

> 1. A computer implemented method comprising:
>
> providing a light source adapted to direct illumination through a work volume above the light source;
>
> providing a camera oriented to observe a gesture performed in the work volume, the camera being fixed relative to the light source; and
>
> determining, using the camera, the gesture performed in the work volume and illuminated by the light source.

Ex. 1001, 13:2–9.

II. ANALYSIS

A. Summary of Issues

In the below analysis, we first address the grounds of unpatentability. We then address Patent Owner's jurisdiction argument.

B. Instituted Grounds

Petitioner asserts the following grounds of unpatentability (Pet. 5), supported by the declaration of Dr. Benjamin B. Bederson (Ex. 1010):

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1, 2, 4–14, 17, 19, 21, 22, 24–28, 30	103(a)[3]	Numazaki,[4] Knowledge of a PHOSITA[5]
3, 15, 23	103(a)	Numazaki, Numazaki '863[6]
16, 29	103(a)	Numazaki, DeLuca[7]
18	103(a)	Numazaki, DeLeeuw[8]
20	103(a)	Numazaki, Maruno[9]

1. Legal Standards for Unpatentability

Petitioner bears the burden to demonstrate unpatentability. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

A claim is unpatentable as obvious under 35 U.S.C. § 103 if "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) (quoting 35 U.S.C. § 103(a)). We resolve the question of

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[3] The Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112-29, 125 Stat. 284, 285–88 (2011), revised 35 U.S.C. § 103 effective March 16, 2013. Because the challenged patent was filed before March 16, 2013, we refer to the pre-AIA versions.
[4] U.S. Patent 6,144,366, issued Nov. 7, 2000 ("Numazaki") (Ex. 1004).
[5] A person of ordinary skill in the art ("PHOSITA").
[6] U.S. Patent 5,900,863, issued May 4, 1999 ("Numazaki '863") (Ex. 1005).
[7] U.S. Patent 6,064,354, issued May 16, 2000 ("DeLuca") (Ex. 1006).
[8] U.S. Patent 6,088,018, issued July 11, 2000 ("DeLeeuw") (Ex. 1007).
[9] U.S. Patent 6,191,773 B1, issued Feb. 20, 2001 ("Maruno") (Ex. 1008).

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