

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(2) is not binding precedent of the Board.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. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte GAVIN S. P. MILLER  
and ERIC M. HOFFERT

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Appeal No. 1997-1008  
Application No. 08/328,394

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ON BRIEF

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Before HAIRSTON, KRASS and BLANKENSHIP, Administrative Patent  
Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of  
claims 1 through 42, all of the claims remaining in the  
application.

The invention is directed to the selection of objects from a moving image sequence of images. Auxiliary data is stored in a buffer, along with a video track, so as to precisely identify objects which can be selected from within each frame of the video track.

Representative independent claim 1 is reproduced as follows:

1. A method for labeling and subsequently identifying selected areas within images from a sequence of temporally related images represented by a plurality of tracks of image data which are operative to be displayed by a display of a computer, the computer having a memory for storing the plurality of tracks, wherein one of the plurality of tracks is operative to be displayed by the computer at the same time as a second track of the plurality of tracks, the method comprising the steps of:
  - (a) identifying an area to be labeled within an image from said sequence of images;
  - (b) labeling every pixel within said identified area with an area identifier which is unique to said area;
  - (c) storing each labeled pixel in a labeled portion of memory linked to said image;
  - (d) repeating steps (a) through (c) for each identified area within each image from said sequence of images;

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(e) interrogating said memory in response to a  
user's selection of a pixel location within a  
selected area from a selected image of said  
images displayed on said display to locate a  
labeled portion of memory corresponding to said  
selected image, said selected area being one  
of said areas identified in step (a);

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(f) evaluating said labeled portion corresponding to said selected image to locate an area identifier corresponding to said pixel location; and

(g) identifying said area identifier to said computer as an indication of said selected area.

The examiner relies on the following references:

Aisaka et al. (Aisaka)	5,021,770	Jun.	4,
1991 Preston et al. (Preston)	5,174,759	Dec.	
29, 1992			

Tonomura, Y. et al. (Tonomura), "Content Oriented Visual Interface Using Video Icons for Visual Database Systems," IEEE 68-72 (1989).

Claims 1 through 42 stand rejected under 35 U.S.C.

§ 103 as unpatentable over Aisaka in view of Preston and Tonomura.

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

#### OPINION

In accordance with appellants' grouping of the claims, at page 6 of the principal brief, claims 1 through 39 stand or fall together and each of claims 40, 41 and 42 stands alone.

We consider first the rejection of claims 1 through 39,

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which includes all of the independent claims. These claims,  
in one form or another, all include, inter alia, the  
limitations of

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a video, or sequence of "temporally related images," a plurality of tracks displayed at the same time and the identification of selected areas within images.

The examiner applies Aisaka against the claims for its teaching of selecting locations within a single, static image on a screen but notes that Aisaka lacks the claimed "sequence of temporally related images." The examiner applies Preston for a teaching of selection of locations on a displayed image wherein the selection is made from live-motion, animated "tracks." The examiner contends that it would have been obvious to apply the teachings of Aisaka to live-motion images so as to give a user a more useful live-motion interface in which objects in the display bear codes which can be retrieved. Tonomura was then applied to show plural, pointer selectable video icons which are concurrently presented on a single display, with the additional reasoning that it would have been obvious to give a user access to plural live-motion images. Thus, the examiner applied Aisaka for its teaching of identification of selected areas within images, Preston for its teaching of a "sequence of temporally related images," and Tonomura for its teaching of a plurality of tracks displayed

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at the same time. Preston's teachings are combined with Aisaka's in order to provide the advantages of Aisaka's identification of selected areas within still images to moving images and this combination is combined with the teachings of Tonomura in order to expand the applicability to a plurality of moving images.

The examiner's rationale does not appear, to us, to be unreasonable. It appears that a prima facie case of obviousness has been made out by the examiner since the various teachings of the prior art appear to have suggested the claimed subject matter, as explained by the examiner. Thus, the burden has shifted to appellants to overcome the prima facie case via arguments or some objective evidence tending to show nonobviousness of the claimed subject matter.

Appellants argue that the video icons of Tonomura are simply a moving video version of conventional computer icons and that there is no discussion or suggestion in Tonomura of having selection of different locations of a frame of a video icon result in different actions occurring. This is true, but Aisaka is relied upon for the teaching of a selection of different locations of an image resulting in different actions

occurring.

Appellants then argue that Aisaka teaches obtaining more information about a particular region in an image by selecting a location on that image but that Aisaka provides no suggestion that this location selection can be applied to multiple video images concurrently moving on the screen. Moreover, contend appellants, it would be "nonsensical" to provide multiple moving images in Aisaka because the user's ability to select a particular location would be hindered by such movement. However, the rejection employs Preston for the teaching of multiple moving images and merely contends that Aisaka's method of obtaining more information from a still image would be applied to images that move, such image movement being shown by Preston. It is more a matter of applying Aisaka's teaching to a moving image environment than to bodily incorporating moving images into the Aisaka system, as appellants appear to be suggesting in their argument. Thus, while appellants may be correct in their assessment that there is no suggestion to provide multiple moving video images in Aisaka, they fail to recognize the obviousness of expanding Aisaka's method of identifying areas in still images to use in

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moving images. Thus, the rejection does not attempt to apply multiple moving video images to Aisaka. Rather, it is Aisaka's method of identification of areas within an image that is being applied to a different type of image, viz., multiple moving video images.

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Appellants further contend that changing the track being displayed based on user input as taught by Preston does not teach or suggest combining the location selection of Aisaka with the video icons of Tonomura. However, as the examiner points out, at pages 4-5 of the answer, it is not the changing of the track in Preston that is important to the instant rejection but, rather, Preston is used to teach pointer selection of pixels within a moving image, a teaching which, when combined with Aisaka's teaching of picking still image positions with a pointer and Tonomura's teaching of displaying multiple selectable live-motion image regions, results in the claimed subject matter.

It appears that appellants' arguments are nothing more than arguments against each reference individually as to the deficiency of that reference. However, one cannot show nonobviousness by attacking the references individually where the rejection is based on a combination of references. In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

We do not contend that there is no argument that could be made to overcome the examiner's prima facie case of obviousness of the subject matter of claims 1 through 39.

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But, if there is such an argument, we merely hold that  
appellants have not made

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it. Accordingly, since, in our view, the prima facie case of obviousness has not been successfully rebutted, we will sustain the rejection of claims 1 through 39 under 35 U.S.C. § 103.

We reach an opposite result with regard to the rejection of claims 40 through 42 under 35 U.S.C. § 103 because, with regard to these claims, the examiner has not established a prima facie case of obviousness.

With regard to claim 40, which requires decompressing a region of the item buffer surrounding the pixel location wherein the region of the item buffer "is smaller than said item buffer," the examiner contends that the decompression may be construed, broadly, to cover the entire item buffer which certainly includes the region of said item buffer surrounding said pixel location. The examiner's reasoning is misplaced because claim 40 explicitly calls for the region to be "smaller than said item buffer." Accordingly, it is unreasonable for the examiner to construe the decompression to cover the entire item buffer.

With regard to claim 41, this claim recites identifying a second area within the image selectable by a user and storing

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a labeled pixel in a second labeled track in memory, that second labeled track corresponding to the temporal track of the set of related temporal tracks which contain the image. Thus, as explained by appellants at page 13 of the principal brief, multiple hit test tracks may correspond to a single video track and a single video track is coordinated with two separate user actions. The examiner explains [answer-pages 5-6] that the language of claim 41 is so broad as to permit the image of a temporal track containing a labeled pixel to refer to a larger image context including a second area within the image having a second labeled track. We, frankly, do not understand the examiner's reasoning in this regard and will not sustain the rejection of claim 41. The examiner has simply not shown where, in the applied references, it is taught or suggested to identify a second area within the image which could be selected by the user, label each pixel within the second area with a second identifier unique to the second area and then store each labeled pixel in the second labeled track in the memory wherein the second labeled track corresponds to the temporal track of the set of related temporal tracks which contains the image.

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Finally, with regard to claim 42, this claim requires the first labeled track to contain a labeled pixel corresponding to both an image of the first temporal track and an image of a third temporal track of the set of related temporal tracks, permitting, as explained by appellants at page 15 of the principal brief, different temporal tracks of data with similar objects or areas to share the same hit test track as for use in scenes which include the same objects such as a scene in the daytime and the same scene at nighttime. The examiner again contends that the claim language is so broad, because of the term "corresponding," as to permit an interpretation in which the "labeled track," applied to one of Tonomura's video icons, with selectable regions as per Aisaka and Preston, "corresponds" to the remainder of the coded "image" having hit test track regions. We do not understand how a video icon of Tonomura "corresponds" to "both an image of said temporal track and an image of a third temporal track," as required by claim 42. We find nothing within the applied references that suggests different temporal tracks of data with similar objects may share the same test track as in claim 42.

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We have sustained the rejection of claims 1 through 39 under 35 U.S.C. § 103 but we have not sustained the rejection of claims 40 through 42 under 35 U.S.C. § 103. Accordingly, the examiner's decision is affirmed-in-part.

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

AFFIRMED-IN-PART

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KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
ERROL A. KRASS	)	)
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
HOWARD B. BLANKENSHIP	)	
Administrative Patent Judge	)	

EAK:hh

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