

Claim Objections

1. Claims 1-16 are objected to because of the following informalities: "personalised" and "analysed" appear to be incorrect spellings of --personalized-- and either --analyzed-- or --analyses--, respectively. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. Claims 1-16 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "steps of visually scanning, and particular target and sensing and capturing" is confusing. Are there missing terms?

The phrase "phrases within and data base" is confusing. Are there missing terms?

The phrases "said captured signals" and "the signals" either lack antecedent basis, are inconsistent with prior claim language or are indefinite for not clearly claiming the metes and bounds of the invention.

Double Patenting

3. The following non-statutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension to the right to exclude granted by a patent. *In re Sarett*, 327 F.2d 1005, 140 USPQ 474 (CCPA 1964); *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968); *In re White*, 405 F.2d 904, 160 USPQ 644 (CCPA 1969); *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornam*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting

ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78 (d). Effective January 1, 1994, a registered attorney or agent of record may sign a Terminal Disclaimer. A Terminal Disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-11 are rejected under the judicially created doctrine of double patenting.

The subject matter recited in claims 1-11 of the instant patent application - comprises features or steps which are fully disclosed in the patent, No. 5,486,001. The allowance of stated claims would extend the rights to exclude already granted in either set of claims 1-5, 6-9, or 10-15 of the patent - that right to exclude covering the device. The transitional phrase "comprising" does not exclude the presence of elements other than those cited in claims of the patent. Because of the phrase "comprising" the patent claim not only provides protection to the claimed features but also extends patent coverage to the disclosed combination. Likewise, if allowed, the claim of the instant application, because of the phrase "comprising", not only would provide patent protection to the claimed combination but would also extend patent coverage to the combination - already disclosed and covered by the claim in the patent.

Thus, the controlling fact is that the patent protection for the device, fully disclosed in and covered by the claims of the patent, would be extended by the allowance of the claims in the application.

Furthermore, there is no apparent reason why applicant was prevented from presenting the claims in the application for examination during the prosecution of the issued patent.

Examiner notes claims 12-15 and 16 parallel claims 1-11 of instant application; therefore, the judicially created double patenting rejection cited above for claims 1-11 are incorporated herein for claims 12-15 and 16.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 1, 3-4 and 12 are rejected under 35 U.S.C. § 102(e) as being clearly anticipated by Mann ('295). Mann discloses a method for providing an instructional aid for assisting a person emulate a preferred movement (Figs. 1-19J, esp. 1-4). The method includes steps of visually scanning a particular target, sensing and capturing visual and informational data signals representative of the particular target, comparing the particular target's representative visual and informational data signals with pre-stored selected target signals of a preferred movement, generating further visual and informational data signals comprising signals of the particular target analyzed against the

pre-stored selected target signals of the preferred movement and converting the further generated visual and informational data signals into a personalized A/V aid for viewing by the particular target. Data base (36) stores visual and informational data signals of selected targets in a computer (20) where a selected target is accessed from said data base for comparison with the particular target (Figs. 1-19J). The visual and informational data signals are clearly captured and stored at a first location (Fig. 1).

The examiner notes (for indicating breadth of claims) that McCollough (US 3408750) also clearly shows features of claims 1 and 12.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, 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. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

8. Claim 2 is rejected under 35 U.S.C. § 103 as being unpatentable over Mann in combination with Cromarty. Mann shows the features of the instant claim (supra) except non-imaging sensing devices. Use of non-imaging sensing devices in a training system is well known in the educational and training art. Cromarty teaches use of a non-imaging sensing device (13) in a training system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine "non-imaging sensing devices" as is well known in the educational and demonstration art and as taught by Cromarty with Mann's system and method in order to provide supplemental bio-mechanical data in a teaching aid.

9. Claims 5-11, 13 and 15-16 are rejected under 35 U.S.C. § 103 as being unpatentable over Mann ('295) in combination with Gautraud et al. Mann shows the features of the instant claims (supra) except remote communication means. Gautraud discloses a video recording system which includes a communication network (16). Alternatively, it is well known in the educational and demonstration art and gaming art that communication between remote systems may be accomplished across or through communication network mediums such as telephone lines, television cables or off satellites. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine remote communication means as is well known in the educational and demonstration art and gaming art to include such

mediums such as telephone lines, television cables or off satellites or alternatively as disclosed by Gautraud with Mann's system and method in order to permit communication between remote systems as is well known.

10. Claim 14 is rejected under 35 U.S.C. § 103 as being unpatentable over Mann ('295) in combination with Gautraud et al as applied to claim 12 above, and further in view of Cromarty. Mann in combination with Gautraud disclose the features of instant claim (supra) except non-imaging sensing devices. Use of non-imaging sensing devices in a training system is well known in the educational and training art. Cromarty teaches use of a non-imaging sensing device (13) in a training system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine "non-imaging sensing devices" as is well known in the educational and demonstration art and as taught by Cromarty with Mann's system and method in combination with Gautraud in order to provide supplemental bio-mechanical data in a teaching aid.

Conclusion

11. This is a continuation-in-part of applicant's earlier application S.N. 08/146,016, now patented 5,486,001. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS**

MADE FINAL even though it is a first action in this case. See M.P.E.P. § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. A. Sager whose telephone number is (703) 308-0785. The examiner can normally be reached on M-TH from 0700 to 1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Jessica Harrison, can be reached on (703) 308-2217. The fax phone number for Group 3300 is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.



MAS
Sept 5, 1996



JESSICA HARRISON
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