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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS ALGIE ABRAMS JR. and MARK F. BEAUCHAMP

Appeal 2010-001505
Application 10/115,681¹
Technology Center 2400

Before ST. JOHN COURTENAY III, CAROLYN D. THOMAS, and
JAMES R. HUGHES, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The real party in interest is Microsoft Corporation.

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's final decision rejecting claims 1, 5-8, 12, 17-19, 22-24, 27, and 28, which are all the claims pending in the application. Claims 2-4, 9-11, 13-16, 20, 21, 25, 26, and 29-52 are canceled. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

The present invention relates generally to methods, devices, systems and/or storage media for video and/or audio processing. *See Spec.*, 1, ll. 10-11.

Claim 1 is illustrative:

1. A method for processing video data comprising:

receiving video data via an interface of a video appliance wherein the interface supports data rates of at least approximately 270 Mbps;

serving code from a controller unit to an encoder unit of the video appliance via an intranet of the video appliance using an intranet address for the encoder unit, the code for execution on a runtime engine of the encoder unit wherein the code includes instructions for compressing digital video data at one or more average compression ratios, wherein the runtime engine comprises a software layer that acts as an interface between the code and an operating system of a processor of the encoder unit and wherein execution of the code by the runtime engine generates operating system instructions for the processor;

receiving the code at the encoder unit via the intranet of the video appliance; and

in response to execution of the code by the encoder unit, compressing digital video data to produce compressed digital video data.

Appellants appeal the following rejections:

R1. Claims 1, 6, 8, and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Northcutt (US 6,185,737 B1, Feb. 6, 2001) in view of Kalluri (US 5,937,331, Aug. 10, 1999);

R2. Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Northcutt in view of Kalluri, and further in view of Bonneau (US 5,870,502, Feb. 9, 1999);

R3. Claims 1, 5, and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kurosawa (US 6,654,060 B1, Nov. 25, 2003) in view in view of Kalluri, and clarification.

R4. Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kurosawa in view of Kalluri, and further in view of Bonneau.

R5. Claims 8, 12, 17-19, 22-24, 27-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Noro (US 6,646,677 B2, Nov. 11, 2003) in view in view of Enomoto (US 6,278,739 B2, Aug. 21, 2001).

Claim Groupings

Based on Appellants' arguments in the Appeal Brief, we will decide the appeal on the basis of claims as set forth below. *See* 37 C.F.R. 41.37(c)(1)(vii).

ANALYSIS

Rejection under Northcutt and Kalluri Claims 1, 6, 8, and 12

Issue 1: Did the Examiner err in finding that the combination of Northcutt and Kalluri renders the claims unpatentable?

Appellants contend “modification of the appliance 30 of the Northcutt reference, to meet the subject matter of claim 1, would change the principle of operation of the appliance 30 of the Northcutt reference” (App. Br. 11).

The Examiner found that the disclosure of Northcutt “teaches the same as code-based control of units of a video appliance where a unit receives code via an intranet of the video appliance and executes the code on its own runtime engine” (Ans. 14).

Notwithstanding Appellants’ assertion that the Examiner’s combination would improperly change the principle of operation of Northcutt (App. Br. 11), we find that Appellants have not provided evidence or sufficient reasoning as to why. The Supreme Court has provided clear guidance that “when a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.” *KSR Intl’ Co. v. Teleflex, Inc.*, 550 U.S. 398, 417 (2007)(quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)). This reasoning is applicable here. Given the breadth of Appellants’ representative claim 1, we are not persuaded that combining the respective familiar elements of the cited references in the manner proffered by the Examiner would have been “uniquely challenging or difficult for one of ordinary skill in the art” (*see*

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Leapfrog Enters., Inc. v. Fisher-Price, Inc., 485 F.3d 1157, 1162 (Fed. Cir. 2007)(citing *KSR*, 550 U.S. at 418)).

Therefore, we find Appellants' arguments unpersuasive that the proposed modification would have changed the principle operation of Northcutt so as to render Northcutt unsatisfactory for its intended purpose. On this record, we find the Examiner's proffered combination of Northcutt and Kalluri references is supported by articulated reasoning with sufficient rational underpinning that reasonably justifies the Examiner's ultimate legal conclusion of obviousness. (*See* Ans. 3-6 and 13-14.)

*Rejection under Northcutt, Kalluri, and Bonneau
Claim 7*

Appellants present no arguments pertaining to this Examiner's obviousness rejection of claim 7 (Ans. 5-6). Accordingly, we summarily sustain this rejection. *See* Manual of Patent Examining Procedure (MPEP) § 1205.02, 8th ed., Rev. 8, July 2010 ("If a ground of rejection stated by the examiner is not addressed in the appellant's brief, that ground of rejection will be summarily sustained by the Board.").

*Rejection under Kurosawa and Kalluri
Claims 1, 5, and 6*

Issue 2: Did the Examiner err in finding that the combination of Kurosawa and Kalluri renders the claims unpatentable?

Appellants contend "that modification of the system of the controller 1001 and external device 1002 of the Kurosawa reference, to meet the

subject matter of claim 1, would change the principle of operation of the system of the Kurosawa reference” (App. Br. 11-12).

Notwithstanding Appellants’ assertion that the Examiner’s combination would improperly change the principle of operation of Kurosawa (App. Br. 11), we again find that Appellants have not provided evidence or sufficient reasoning as to why. Given the breadth of Appellants’ representative claim 1, we are still not persuaded that combining the respective familiar elements of the cited references in the manner proffered by the Examiner would have been “uniquely challenging or difficult for one of ordinary skill in the art” (*see Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d at 1162 (citing *KSR*, 550 U.S. at 418)). For example, merely because a device may “no longer be external” as proffered by Appellants (*see* App. Br. 12) does not necessarily make it unsatisfactorily for its intended use absent a showing of the same. Mere attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984); 37 C.F.R. § 1.111(b).

Therefore, we find Appellants’ arguments unpersuasive that the proposed modification would have changed the principle operation of Kurosawa so as to render Kurosawa unsatisfactory for its intended purpose. On this record, we find the Examiner’s proffered combination of Kurosawa and Kalluri references is supported by articulated reasoning with sufficient rational underpinning that reasonably justifies the Examiner’s ultimate legal conclusion of obviousness. (*See* Ans. 6-8 and 12-15.)

*Rejection under Kurosawa, Kalluri, and Bonneau
Claim 7*

Appellants present no arguments pertaining to this Examiner's obviousness rejection of claim 7 (Ans. 8). Accordingly, we summarily sustain this rejection. *See* Manual of Patent Examining Procedure (MPEP) § 1205.02, 8th ed., Rev. 8, July 2010 ("If a ground of rejection stated by the examiner is not addressed in the appellant's brief, that ground of rejection will be summarily sustained by the Board.").

*Rejection under Noro and Enomoto
Claims 8, 12, 17-19, 22-24, 27, and 28*

Issue 3: Did the Examiner err in finding that Noro teaches and/or suggests a runtime engine, as claimed?

Appellants contend that there is "no evidence of a runtime engine or evidence to suggest a runtime engine" (App. Br. 12) and "that evidence of simple commands does not support a finding that code in an executable file is taught or suggested" (*id.* at 13).

The Examiner found that "[s]ince the control commands are executed by the camera controller (1206 of fig. 14), the control commands are in a form of executable code" (Ans. 13). We agree with the Examiner.

For example, Noro discloses "a control command receiver which receives a camera control command sent from the viewer end system **1300**. . . . a camera controller which interprets the control command . . . and controls the operation of the camera device **1201** in accordance with the control command" (col. 14, ll. 15-21). Noro further discloses that "a camera control

user interface unit, which interprets user's camera operation, and converts it into an internal camera control command" (col. 14, ll. 32-34).

In other words, Noro discloses sending control commands (control directives) to a camera's processor which acts upon the commands to control the camera functions. We find that such functionality is strikingly similar to a file containing instructions for a software interpreter, i.e., an executable file, and is at least suggestive of a "runtime engine" as a conversion into control commands is performed. Therefore, the Examiner's reliance on this functionality is therefore persuasive.

Reply Brief

Here, Appellants' Reply Brief includes new arguments (Reply Br. 3-9) that are not shown to be prompted by any new Examiner's response. The Appellants could have made the argument in the Appeal Brief. See *Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) ("informative") (absent a showing of good cause, the Board is not required to address arguments in the Reply Brief that could have been presented in the principal Brief). Therefore, we will not consider the new argument.

In view of the above discussions, since Appellants have not demonstrated that the Examiner erred in finding the argued limitations in the disclosure of the cited art, all of the Examiner's 35 U.S.C. § 103(a) rejections are sustained.

DECISION

We affirm each of the Examiner's § 103(a) rejections.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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