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BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051			HICKS, CHARLES N	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAN KIKINIS

Appeal 2010-006839
Application 10/171,230
Technology Center 2400

Before JOSEPH F. RUGGIERO, CAROLYN D. THOMAS, and STANLEY
M. WEINBERG, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Final Rejection of claims 1-21 which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Final Office Action (mailed Jan. 22, 2009), the Appeal Brief (filed Sep. 21, 2009), the Examiner's Answer (mailed Dec. 7, 2009), and the Reply Brief (filed Feb. 8, 2010). We have considered in this decision only those arguments Appellant actually raised in the Briefs. Any other arguments which Appellant could have made, but chose not to make, in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellant's Invention

Appellant's invention relates to displaying channel listings in an electronic program guide. Subscription data is received and a list of available channels is displayed with currently unsubscribed channels being visually distinguished from currently subscribed channels. *See generally* Spec. ¶ [0018].

Claim 1 is illustrative of the invention and reads as follows:

1. A method for providing an electronic program guide, the method comprising:
 - receiving subscription data indicating channels for which a subscription exists; and
 - displaying a list of available channels wherein currently unsubscribed channels and currently subscribed channels are visually distinguished from each other in the displayed list of available channels.

The Examiner's Rejections

The Examiner's Answer cites the following prior art references:

Lett	US 5,592,551	Jan. 7, 1997
Houghton	US 7,240,092 B2	Jul. 3, 2007 (eff. filed Feb. 1, 2000)

Claims 1-21, all of the appealed claims, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Houghton in view of Lett.

ANALYSIS

Appellant's arguments with respect to the obviousness rejection of independent claims 1, 8, and 15 contend that Lett does not overcome the deficiency of Houghton in disclosing the claimed feature of visually distinguishing between a displayed list of unsubscribed channels and subscribed channels. According to Appellant, while users in Lett can purchase a program on a pay-per-view channel, there is no teaching or suggestion that the pay-per-view channel as a whole is unsubscribed (App. Br. 4; Reply Br. 2). Appellant further contends that although the Examiner suggests that a user highlighting a displayed play-per-view selection creates a visual distinction between a selection which requires a purchase and other channels which are subscribed, such visual distinction is only between a single currently focused and targeted channel and other non-focused and non-targeted channels (*id.*).

Appellant's arguments are not persuasive. Initially, we find no error in the Examiner's determination that a user's channel selection by highlighting in Lett creates a visual distinction between categories of channels. As explained by the Examiner, the visual distinction will occur at the time of channel selection which is not precluded by the claim language since there is no limitation as to when the visual distinction is displayed (Final Office action, page 2).

We further agree with the Examiner's determination (Ans. 4) that a pay-per-view channel, selected by user highlighting in Lett, that requires a user to purchase, i.e., subscribe to, a program to enable viewing is an unsubscribed channel which is displayed with a visual distinction from the subscribed channels (Fig. 6). It is noteworthy that Appellant's disclosure imparts no special definition for the terms "subscribed" and "unsubscribed," nor includes any indication that these terms must be interpreted in a specific manner. In contrast, the Examiner proffers a dictionary definition, not challenged by Appellant, of "subscribe" as "to promise to pay or contribute money to authorize someone to receive or access electronic texts or services."¹ Ans. 9.

Lastly, we find unpersuasive Appellant's contention that the channel selection highlighting in Lett applies only to a *single* channel or program in contrast to the claimed plural *channels* (App. Br. 4; Reply Br. 2). As pointed out by the Examiner (Ans. 10), Lett provides for the purchasing of, i.e., subscribing to, a plurality of pay-per-view channels to enable viewing of selected programs on those channels (Fig. 20).

For the above reasons, the Examiner's 35 U.S.C. § 103(a) rejection of independent claims 1, 8, and 15, as well as dependent claims 2-7, 9-14, and 16-21 not separately argued by Appellant is sustained.

¹ Although the Examiner does not make reference to a particular dictionary, this definition comports with the definition of "subscribe" as "to pay money regularly in order to receive a service, **subscribe to:** *I subscribe to a couple of film channels.*" in Macmillan Dictionary, available at <http://www.macmillandictionary.com/dictionary/american/subscribe>.

CONCLUSION OF LAW

Based on the analysis above, we conclude that the Examiner did not err in rejecting claims 1-21 for obviousness under 35 U.S.C. § 103(a).

DECISION²

We affirm the Examiner's decision rejecting claims 1-21 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED

gvw

² We have decided the appeal before us. However, should there be further prosecution with respect to claims 15-21, the Examiner's attention is directed to *In re Nuijten*, 500 F.3d 1346 (Fed. Cir. 2007), and *Subject Matter Eligibility of Computer Readable Media*, 1351 Off. Gaz. Pat. Office 212 (Feb. 23, 2010), available at <http://www.uspto.gov/web/offices/com/sol/og/2010/week08/TOC.htm#ref20>; see also, *Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101*, U.S. Patent & Trademark Office at 2 (Aug. 2009), available at http://www.uspto.gov/web/offices/pac/dapp/opla/2009-08-25_interim_101_instructions.pdf.