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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JUSTIN CHARLES EVERETT-CHURCH

Appeal 2010-007100
Application 10/753,106
Technology Center 2100

Before SCOTT R. BOALICK, JOHN A. JEFFERY, and
BARBARA A. BENOIT, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 4-7, 9-11, 13-18, and 23-26. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

STATEMENT OF THE CASE

Appellant's invention enables webpages running in different browser windows to communicate via associated plugin files. *See generally* Abstract; Fig. 1A. Claim 1 is illustrative:

1. A method of communicating among webpages running in different browser windows, comprising:

a first webpage running in a first browser window that runs in conjunction with a first browser program calling a function in a first plugin file running on a first plugin that runs in conjunction with the first browser program;

in response to the first webpage calling the function, the first plugin file sending a first communication to a second plugin file running on a second plugin that runs in conjunction with a second browser program that is different from the first browser program, wherein the second plugin file is associated with a second browser window; and

in response to the second plugin file receiving the first communication from the first plugin file, the second plugin file sending a second communication to a second webpage running in the second browser window that runs in conjunction with the second browser program;

wherein the first and second plugin files function as a communication medium between the first and second webpages.

THE REJECTION

The Examiner rejected claims 1, 4-7, 9-11, 13-18, and 23-26 under 35 U.S.C. § 103(a) as unpatentable over Zhang (US 6,865,599 B2; Mar. 8, 2005; filed Sept. 3, 2002) and Cramer (US 2002/0104096 A1; Aug. 1, 2002). Ans. 4-11.¹

CONTENTIONS

Regarding representative claim 1, the Examiner finds that Zhang discloses a first webpage running in a first browser window running in conjunction with a first browser program calling a function in “first plugin file,” which is said to correspond to Flash movies that generate events upon

¹ Throughout this opinion, we refer to (1) the Appeal Brief filed August 7, 2009 (“App. Br.”); (2) the Examiner’s Answer mailed November 25, 2009 (“Ans.”); and (3) the Reply Brief filed January 22, 2010 (“Reply Br.”).

user input, where this plugin file runs on a first plugin, namely a Macromedia Flash Player ActiveX control. Ans. 4, 14-17. The Examiner further finds that responsive to this function call, the first plugin file sends a first communication to a “second plugin file” running on a second plugin running in conjunction with a different browser program and associated with a second browser window, where the second plugin file is said to correspond to commands issued to a corresponding embedded Flash movie object. *Id.* According to the Examiner, Zhang discloses every recited feature except for the second plugin file sending a second communication to a second webpage running in the second browser window responsive to the second plugin file’s receiving the first communication from the first plugin file, but cites Cramer as teaching this feature in concluding that the claim would have been obvious. Ans. 4-6, 14-18.

Appellant argues that the cited prior art fails to teach the second plugin file sending a second communication to a second webpage in a second browser window responsive to receiving the recited first communication, let alone different browser programs. App. Br. 6-11; Reply Br. 6-15. According to Appellant, the Examiner’s reliance on Cramer is misplaced since not only does communication halt at the flash file and not continue to the webpage running that file, but communication is between two webpages in the same browser. *Id.* Appellant adds that the cited prior art does not teach two plugin files functioning as a communication medium between both recited webpages. App. Br. 11-12; Reply Br. 15-16. Appellant further contends that there is no motivation to modify Zhang with Cramer as the Examiner proposes to solve a problem already solved by Zhang and, in any event, doing so merely results in a duplicating a media

player in a second browser window. App. Br. 13-16; Reply Br. 18-21.
Appellant also argues limitations of claim 23 summarized below.

ISSUES

I. Under § 103, has the Examiner erred by finding that Zhang and Cramer collectively would have taught or suggested:

(1) a second plugin file sending a second communication to a second webpage running in a second browser window running in conjunction with a first browser program responsive to the file's receiving a first communication from a first plugin file running on a first plugin running in conjunction with a first browser program, where the plugin files function as a communication medium between the webpages as recited in claim 1?

(2) responsive to the second webpage receiving a communication from a first webpage, communicating between a second webpage running on a second browser window on a first computing device and a third webpage running in a third browser window on a second computing device via an instant messenger service as recited in claim 23?

II. Is the Examiner's combining the teachings of these references supported by articulated reasoning with some rational underpinning to justify the Examiner's obviousness conclusion?

ANALYSIS

Claims 1, 4-7, 9-11, and 13-18

We sustain the Examiner's obviousness rejection of representative claim 1. Zhang's peer-to-peer system enables two browsers to communicate with each other via associated message "brokers" which may be browser

plugins. Zhang, col. 4, l. 33 – col. 5, l. 12; Fig. 2. In Zhang’s Figure 4, embedded objects can participate in browser-to-browser communication which, in this particular example, involves a Macromedia Flash Player Active X control for playing Flash movies, functionality that is said to correspond to the recited “first plugin” and “first plugin file,” respectively. Ans. 4, 14-17; Zhang, col. 13, l. 42 – col. 14, l. 19; Fig. 4. This mapping reasonably comports with Appellant’s definition of these terms.²

The Flash movies generate events when a user clicks a mouse button or hits a key — events that are intercepted and reposted as browser events. A broker encodes these events and sends them as event messages to a broker at the other peer which decodes the messages as Flash movie events that are then interpreted as Flash movie commands. Zhang, col. 13, l. 49 – col. 14, l. 8; Fig. 4. These commands are issued to the corresponding Flash movie object to replicate the action in the originating browser. Zhang, col. 14, ll. 9-13.

Based on this functionality, we see no error in the Examiner’s finding (Ans. 4, 16) that the two “plugin files,” namely Zhang’s Flash movie files and associated objects, communicate with each other to replicate associated events. Although Appellant contends that this communication is not between the plugin *files*, but rather broker *plugins* (Reply Br. 14, 17), nothing in the claim precludes the communication between the Flash movie files and their associated objects (“plugin files”) to replicate associated events, despite intervening brokers facilitating this communication. That the

² See Spec. 6:20-22 (defining “plugin” as “any program designed to run in conjunction with a browser program” (e.g., an Active X control, Flash player, etc.)); see also Spec. 6:22–7:1 (“A plugin file is a file that can run on a plugin. For example, a Flash player runs a Flash movie.”).

preamble of claim 1 uses the open-ended term “comprising” only bolsters this conclusion.³

The question, then, is whether the Examiner erred by finding that it would have been obvious for the second plugin file, namely the Flash movie and associated object at the second peer, to send a second communication to a second webpage running in a second browser window in conjunction with a second browser program as claimed. The Examiner finds that Cramer embeds Flash movies in web pages, and rendering these embedded movies for display requires some sort of communication between the movie and the associated browser components, namely the browser, browser plugin, and webpage. Ans. 15-16, 18. We see no error in this reasoning, for skilled artisans would recognize that that Zhang’s Flash movie at the second peer would be *rendered for display* in the second user’s browser—rendering which would require some sort of communication between the movie and its object and the associated webpage to display the movie as the Examiner indicates. In that sense, the embedded plugin files effectively function as a communication medium between the associated webpages. Despite Appellant’s arguments to the contrary (App. Br. 13-16; Reply Br. 18-21), we see no error in the Examiner’s reliance on Cramer for this fundamental teaching. Accordingly, we find the Examiner’s combining the teachings of Zhang and Cramer supported by articulated reasoning with some rational underpinning to justify the Examiner’s obviousness conclusion.

³ “‘Comprising’ is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.” *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501 (Fed. Cir. 1997) (citation omitted).

To the extent that Appellant argues that it would not have been obvious for the peers' browser programs to be different (*see* App. Br. 8-11; Reply Br. 9-15), we find such an argument unavailing, for Zhang lists a number of different browsers in connection with the disclosed system, including Internet Explorer, Netscape, or Mozilla. Zhang, col. 4, ll. 40-46. We therefore see no reason why Zhang's peers could not use different browser programs (e.g., one peer uses Internet Explorer and the other uses Netscape) to render webpages, associated plugins, and files.

Although Cramer discloses an example where a Matrix Player communicates with a Flash movie that runs in a different window on the same screen (Cramer ¶¶ 0130-34), we agree with the Examiner (Ans. 15) that communication does not halt at the Flash file as Appellant asserts (App. Br. 6-7; Reply Br. 6-8), but rather requires some sort of communication with the browser components to render the file for display as noted above.

We are therefore not persuaded that the Examiner erred in rejecting representative claim 1, and claims 4-7, 9-11, and 13-18 not separately argued with particularity.

Claims 23-26

We will not, however, sustain the Examiner's rejection of independent claim 23 reciting, in pertinent part, responsive to the second webpage receiving a communication from a first webpage, communicating between a second webpage running on a second browser window on a first computing device and a third webpage running in a third browser window on a second computing device via an instant messenger service. The Examiner maps Zhang's first and second peers to the recited computing devices,

respectively, and the peers' browsers to the second and third browser programs. Ans. 19. But we agree with Appellant (App. Br. 12-13; Reply Br. 16-18) that the Examiner has not adequately shown how the cited prior art teaches or suggests the recited causal chain of events, namely that the first webpage communicates with a second webpage *before* the second webpage communicates with a third webpage, let alone that this subsequent communication is via an instant messaging service. Nor will we speculate in that regard here in the first instance on appeal.

We are therefore persuaded that the Examiner erred in rejecting (1) independent claim 23; (2) independent claim 25 which recites commensurate limitations; and (3) dependent claims 24 and 26 for similar reasons.

CONCLUSION

Under § 103, the Examiner did not err in rejecting claims 1, 4-7, 9-11, and 13-18, but erred in rejecting claims 23-26.

ORDER

The Examiner's decision rejecting claims 1, 4-7, 9-11, 13-18, and 23-26 is affirmed-in-part.

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).

AFFIRMED-IN-PART

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