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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LAWRENCE ROBERT MARTELL and
KRZYSZTOF GASIOROWSKI

Appeal 2010-007820
Application 10/866,670
Technology Center 2100

Before CARL W. WHITEHEAD, JR, ERIC S. FRAHM, and
ANDREW J. DILLON, *Administrative Patent Judges.*

DILLON, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-27, 29, 31, 33, 35, 37, and 39. Claims 28, 30, 32, 34, 36, and 38 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' invention is directed to a system and method for dynamically assembling a web page at a web server. *See* Spec. 17, Abstract.

Claim 1 is illustrative, with key disputed limitations emphasized:

1. A method of dynamically assembling a web page at a web server, comprising:

prestoring a plurality of content elements on the web server and associating each of the content elements with a unique file name, the file name corresponding to at least one custom content request;

receiving a web page request at the web server, the web page request comprising a uniform resource locator and at least one customization value;

creating a signature uniform resource locator based, at least in part, on the received uniform resource locator and the at least one customization value;

generating a custom content request from the signature uniform resource locator;

determining whether the custom content request corresponds to one of the plurality of prestored content elements by comparing the custom content request to the unique file names, and, upon finding a match, retrieving the corresponding content element from the web server using the file name associated therewith; and

dynamically assembling the web page using the retrieved content element.

The Examiner relies on the following as evidence of unpatentability:

| | | |
|------------|--------------------|---|
| Nazem '227 | US 5,983,227 | Nov. 9, 1999 |
| Nazem '796 | US 2007/0118796 A1 | May 24, 2007 (Effective filing date June 12, 1997) |

THE REJECTIONS

1. The Examiner rejected claims 1-27 under 35 U.S.C. §103(a) as unpatentable over Nazem '796. Ans. 3-9.¹
2. The Examiner rejected claims 29, 31, 33, 35, 37, and 39 under 35 U.S.C. §103(a) as unpatentable over Nazem '227. Ans. 9-10.

ISSUE

Based upon our review of the record, the arguments proffered by Appellants and the findings of the Examiner, we find the following issue to be dispositive of the claims on appeal:

Under § 103, has the Examiner erred in rejecting claims 1-27 as unpatentable over Nazem '796 by finding that Nazem '796 shows or suggests prestoring content elements using a unique file name that corresponds to at least one custom content request and then dynamically assembling a web page by retrieving those content elements from the web

¹ Throughout this opinion, we refer to the Appeal Brief filed September 8, 2009; the Examiner's Answer mailed December 11, 2009; and, the Reply Brief filed February 11, 2010.

server based on a signature uniform resource locator that matches the file name?

ANALYSIS

Appellants argue that claims 1-27 are patentable over Nazem '796, believing the Examiner has erroneously equated the claimed “prestored content elements” with the templates and live data used by Nazem '796. App. Br. 10. In particular, Appellants urge that each of the appealed independent claims recites “storing content elements using a unique file name that corresponds to a custom content request, and dynamically assembling a web page by retrieving these content elements from the web server based on a signature uniform resource locator that matches the file name.” *Id.*

Appellants argue that merging a static template with individual data retrieved from a web page in response to a user request cannot be suggestive of utilizing data which is “prestored” and associated with a “unique filename” as claimed, since that data in Appellants’ claims is “prestored” and can be “used to fulfill every request without individual query processing.” App. Br. at 11-12.

The Examiner finds that the “live data” Nazem '796 reads on content elements which correspond to “a custom content request.” Ans. 11.

We concur with the Examiner’s analysis and further note that all data is necessarily “prestored,” or it simply does not exist within any computer system.

The Examiner further finds that the merging of the “live data” of Nazem ’796 with a “template” constitutes the generating of requests and the mapping of data as claimed. Ans. 11-12.

We find the Examiner’s position persuasive in that we find that Appellants’ claims merely recite that stored data is associated with a unique file name, requests at the web server are received and data is located by that unique file name and the located data are assembled after retrieval.

Appellants argue that the Examiner has applied Nazem ’796 against portions of claim 1 which have been amended. Reply Br. 2.

We find the Examiner’s error to be harmless as the Examiner has also, successfully in our opinion, applied Nazem ’796 to the remainder of claim 1.

Appellants also argue that Nazem ’796 fails to disclose that individual pieces of “live data” are stored in separate files, such that a given piece of “live data” is associated with a “unique file name.” Reply Br. 3.

We find that argument is not commensurate with the scope of claim 1, since nothing within claim 1 requires “content elements” to refer to an individual piece of data.

Appellants argue that Nazem ’796 fails to show or suggest the creation of a “signature resource locator” which is utilized, along with a URL “to create an entirely new structure.” Reply Br. 4.

We find that the “cookie” described with Nazem ’796 is utilized, along with the URL, to create a response with “live data,” as noted by the Examiner (Ans. 3), at paragraph [0019] of Nazem ’796. We find that to be the creation of “an entirely new structure.”

Finally, Appellants argue that the Examiner ignored the recitation within claim 1 of “generating a custom content request.” Reply Br. 5.

“Any bases for asserting error, whether factual or legal, that are not raised in the principal brief are waived.” *Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative). *See also Optivus Tech., Inc. v. Ion Beam Appl’ns. S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) (“[A]n issue not raised by an appellant in its opening brief . . . is waived.”) (citations and quotation marks omitted).

Consequently, we find the Examiner did not err in rejecting claims 1-27 as unpatentable under § 103 over Nazem ’796.

Further, we find that the Examiner did not err in rejecting claims 29, 31, 33, 35, 37, and 39 which were not argued separately with particularity.

CONCLUSION

The Examiner did not err in rejecting claims 1-27, 29, 31, 33, 35, 37, and 39 under § 103.

ORDER

The Examiner’s decision rejecting claims 1-27, 29, 31, 33, 35, 37, and 39 is affirmed.

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

llw