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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER PASSARETTI and CHINGFA WU

Appeal 2010-008436
Application 10/930,156¹
Technology Center 2600

Before ELENI MANTIS MERCADER, JEFFREY S. SMITH, and
JOHN A. EVANS, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) involving claims to methods and apparatus for controlling recognition results for speech recognition applications. The Examiner has rejected the claims as directed to non-statutory subject matter and obvious. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ The real party in interest is Avaya Inc. (Reply Br. 2).

Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed Jan. 4, 2010), the Answer (mailed Mar. 9, 2010), and the Reply Brief (filed May, 7, 2010). We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments which Appellants 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).

STATEMENT OF THE CASE

The claims relate to methods and apparatus for controlling recognition results for speech recognition applications. Claims 1-29 are on appeal. Claims 1, 9, 17, and 25 are independent. The claims have not been argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). An understanding of the invention can be derived from a reading of exemplary claims 1 and 17, which are reproduced below with some paragraphing added:

1. A method of altering a speech recognition result in an application that uses speech recognition and using the altered result in the application, the method comprising:
 - receiving a spoken input;
 - determining a recognition result wherein the recognition result includes a plurality of attributes;
 - altering an attribute; and
 - running the application with the altered attribute.

17. A computer-implemented speech recognition diagnostic tool to alter a speech recognition result in an application that uses speech recognition and uses the altered result in the

application comprising:

input means for receiving a spoken input;
determination means in communication with the input
means for determining a recognition result wherein the
recognition result includes a plurality of attributes;
diagnostic means in communication with the
determination means for altering at least one of the plurality of
the attributes; and
compiling means for running the application with the
altered attribute.

The claims are rejected as follows:

1. Claims 17-29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Ans. 3-4.
2. Claims 1-29 stand rejected under 35 U.S.C. § 103(a) as obvious over Wang (US 7,409,349 B2, issued Aug. 5, 2008, filed Sept. 20, 2001) and Thrasher (US 2002/0052742 A1, issued May 2, 2002, filed Mar. 12, 2001). Ans. 4-7.

NON-STATUTORY SUBJECT MATTER

CONTENTIONS AND ISSUE

The Examiner has rejected claims 17-29 under 35 U.S.C. § 101 as directed to non-statutory subject matter. Ans. 3-4. Appellants contend that the preamble recitation “computer-implemented” removes the claims from being directed merely to software and to computer hardware. (App. Br. 10).

Appellants quote MPEP § 2106(A) and allege that their “claims are directed to transformation of "an article or a physical object to a different state or thing", i.e., having an input means for receiving a spoken input, then determining a recognition result having a plurality of attributes, altering at least one of the plurality of attributes, and then having a compiling means run the application with the altered attribute, as recited in claim 17.” (App. Br. 11).

The Examiner finds the claims, as a whole, are nothing more than claiming a computer program/software per se. The Examiner finds that the claimed, or argued limitations, “tool,” “means,” and/or “modules” are broad enough to be interpreted as or referred to **computer programs/software per se**. (Ans. 8 (citing Spec. 1:5-6; 5:11-17; Fig. A)). Appellants’ Reply merely re-alleges prior arguments.

The issue before us is whether the claims relate only to software.

ANALYSIS

Appellants’ Specification recites the “present invention relates generally to speech recognition software and more particularly to a diagnostic tool.” (Spec. 1:5-6). The diagnostic software tool “includes a module for receiving spoken input and a module, in communication with the input module, for determining a recognition result.” (Spec. 5: 12-13). In view of the specification disclosure, Appellants’ arguments are not

persuasive that the Examiner has erred in finding that Appellants' claims are directed to software. In particular, Appellants have not argued persuasively which, if any, claim limitations are directed exclusively to physical embodiments.

THE OBVIOUSNESS REJECTIONS

CONTENTIONS AND ISSUE

The Examiner has rejected claims 1-29 under 35 U.S.C. § 103(a) as obvious over Wang and Thrasher. Ans. 4-7. Appellants argue independent claims 1, 9, 17, and 25 as a group. Appellants contend that Wang teaches a "recognition result," but not a recognition result including a plurality of "attributes." (App. Br. 14). The Examiner interprets "attributes" broadly to include "Wang's 'semantic value', 'actual words spoken', 'confidence scores (levels or measures)', 'N-best recognition result' and other related 'Attributes' (Ans. 9)." Appellants contend that the Examiner's rejections rely upon contradictory statements:

Further, Examiner's statements appear to contradict each other. Specifically, on page 4 of the Final Office Action, the Examiner appears to state

'... Wang does have capability of running an application with the altered attribute as claimed. In order words, the combined teachings of Wang himself satisfy the claimed limitation for the prior art rejection, based on the broadest interpretation of the claim(s) in light specification.'

(App. Br. 15).

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Yet, on page 6 of the Final Office Action, the Examiner states “Wang does not expressly disclose ‘altering an attribute’ and using it in the application.” (App. Br. 15).

The issue is whether Wang teaches a recognition result including a plurality of “attributes.”

ANALYSIS

Wang teaches a “recognition result” associated with a “confidence” level (*see* Fig. 13), recognized speech, handwriting, and gesture (*see* col. 10, ll. 65-67). Other attributes associated with a recognition result are taught at column 12, lines 5-25. These recognition results, taught by Wang, are consistent with the recognition results disclosed in Appellants’ Specification at least at pages 1-3. For example, Appellants disclose that “[s]peech recognizers report a degree of confidence level” (Spec. 2:17) which appears to be similar to the “recognition result” associated with a “confidence” level (*see* Fig. 13) as taught by Wang. We, therefore, are not persuaded that the Examiner has erred in finding that Wang teaches a confidence result associated with attributes.

SUMMARY

We affirm the rejection of claims 17-29 under 35 U.S.C. § 101.

We affirm the rejection of claims 1-29 under 35 U.S.C. § 103(a).

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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)(1)(iv).

AFFIRMED

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