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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRADY R. DOW

Appeal 2010-009215
Application 10/091,651
Technology Center 3600

Before: MURRIEL E. CRAWFORD, HUBERT C. LORIN, and BIBHU R.
MOHANTY, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant seeks our review under 35 U.S.C. § 134 from the Examiner's non-final rejection of twice-rejected claims 2-4 and 6-25. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We reverse.

BACKGROUND

Appellant's invention is directed to systems and methods for interacting with a recipient (Spec., para. [10]).

Claim 12 is illustrative:

12. A method for controlling a network of conversation control systems, the method comprising:
initiating contact with a human recipient via an initiator;
selecting a conversation control system, wherein the conversation control system is accessible to a human operator;
routing information received from the human recipient to the conversation control system;
outputting the information received from the human recipient in the form of an audio communication via an output device of the conversation control system to the human operator;
receiving an indication from the human operator of a preformed script item to respond to the information received from the human recipient; and
presenting the script item to the human recipient.

Appellant appeals the following rejections:

Claims 6-23 and 25 are rejected under 35 U.S.C. § 101 as claiming ineligible subject matter.

Claims 12, 24, and 25 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

Claims 2-4, 6-8, 12-17, 20-23, 24, and 25 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hirni (US 6,731,609 B1, iss. May 4, 2004) and Hayashi (US 6,722,989 B1, iss. Apr. 20, 2004).

Claims 9-11¹ are rejected under 35 U.S.C. § 103(a) as unpatentable over Hirni, Hayashi, and Atsmon (US 6,607,136 B1, iss. Aug. 19, 2003).

Claims 18 and 19 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hirni, Hayashi², and Borman (US 6,748,055 B1, iss. Jun. 8, 2004).

FACTUAL FINDINGS

We find the following facts by a preponderance of the evidence.

1. The Specification describes that a conversation control system 110 includes computer 120, medium 130, input/output devices 190, connection control device 140, audio interface 150, and telephone interface 160. (Spec., para. [45]).
2. Hirni discloses a “method for conducting multimedia telephonic conferences over a packet-based network.” (Col. 1, ll. 66-67).

¹ We take as inadvertent error the statement that only claims 9 and 10 are rejected under 35 U.S.C. § 103(a) over Hirni and Atsmon, because claim 11 is included in the analysis at Answer pages 10-11. We also take as inadvertent error the omission of Hayashi, upon which the rejection of claim 25, from which claims 9-11 depend, was based. Ans. 10.

² We take as inadvertent error the omission of Hayashi, upon which the rejection of claim 14, from which claims 18 and 19 depend, was based. Ans. 11.

3. Hayashi discloses “an interactive portable electronic device with combined fixed and programmable conversation and related download capabilities.” (Col. 1, ll. 14-17).

ANALYSIS

Patentable subject matter

We are persuaded of error by Appellant’s argument that claims 6-23 and 25 recite patentable subject matter, because they are tied to a particular machine by way of the required conversation control system. Rep. Br. 18-19. We agree, because we find the conversation control system is described throughout the Specification as being a specially-programmed computer with special telecommunications connections for use with a telephone network. *See*, for example, paragraph [45] of the Specification (FF 1). Because the claims require that the conversation control system is a computerized system, the claims are tied to a particular machine and thus describe patentable subject matter. For this reason, we reverse the rejection under 35 U.S.C. § 101 of claims 6-23 and 25.

Indefiniteness rejection

We agree with Appellant’s argument that none of the questions presented by the Examiner identify errors in the claims, for the reasons set forth by the Appellant. App. Br. 9-10, Rep. Br. 19-23. For these reasons, we reverse the rejection under 35 U.S.C. § 112, second paragraph, of claims 12, 24, and 25.

Obviousness rejection

We are persuaded of error by Appellant’s argument that the combination of Hirni and Hayashi is improper in the rejection of claims 12, 24, and 25. App. Br. 15-16, Rep. Br. 28-29. The Examiner’s rationale for

combining the packet-network-based telephone conference of Hirni (FF 2) with the portable electronic device of Hayashi (FF 3) is “in order to allow the user to choose a response such that the conversation can be directed in a particular way, along a particular route to come to a certain conclusion and using the script programs which are used to generate the sentences.” Ans. 6, 7, and 8. This does not explain why one or ordinary skill would have a reason to make the combination because this does not explain the why the user of the Hirni system would direct a conversation, come to a certain conclusion, or use script programs. Therefore the Examiner has not set forth a prima facie case of obviousness for these three independent claims. As a result, we reverse the rejections under 35 U.S.C. § 103(a) of claims 12, 24, and 25, and dependent claims 2-4, 6-8, 12-17, and 20-23.

DECISION

We reverse the rejections of claims 2-4 and 6-25.

REVERSED

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