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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEYHAN KARAOGUZ and NAMBI SESHADRI

Appeal 2010-009413
Application 11/099,457
Technology Center 2600

Before JOSEPH L. DIXON, THU A. DANG, and
JAMES R. HUGHES, *Administrative Patent Judges.*

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1-63. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The claims are directed to accessing a wireless hotspot. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A process of billing for access to and use of a wireless hotspot by a portable device, said process comprising:

supplying account information to an access providing entity;

awaiting a billing authorization from the access providing entity; and

communicating data with the wireless hotspot by the portable device when the billing authorization is received from the access providing entity,

wherein the account information is used to keep track of charges accrued through the access to and use of the wireless hotspot by the portable device, and

wherein access to the wireless hotspot is maintained until one or both of a specific period of inactivity is detected and a disconnect request is made by either the wireless hotspot or the portable device.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Hollenbeck	US 2005/0102354 A1	May 12, 2005 (cont. of 09/556,830, filed Apr. 21, 2000)
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Uhlik

US 2007/0112948 A1

May 17, 2007
(cont. of 10/334,994,
which claims priority
from prov. app.
60/344,899, filed Dec.
31, 2001)

REJECTIONS¹

Claims 1-63 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement.

Claims 1-63 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Uhlik and Hollenbeck.

ANALYSIS

Claims 1-3, 7-12, 16-24, 28-33, 37-45, 49-54, and 58-63

Appellants contend that the combination of Uhlik and Hollenbeck fails to disclose “wherein access to the wireless hotspot is maintained until

¹ In the Office Action mailed October 15, 2008, the Examiner rejected claims 1-63 for lack of enablement under 35 U.S.C. § 112, first paragraph. Although the Examiner did not reiterate this rejection in the subsequent Final Office Action mailed May 27, 2009, the Examiner stated the following, “In response to applicant[s]’ arguments against, 35 U.S.C. [§]112, first paragraph, applicant[s]’ argument [is] that examiner misinterpreted claim. . . . Examiner respectfully disagrees with this argument” (Final Rej. 13). We find that the Examiner’s response to Appellants’ arguments provided sufficient notice to Appellants that the rejection was maintained and had not been expressly withdrawn. *See* MPEP § 706.07, page 700-81, Rev. 9 (August 2012) (“[W]here a single previous Office action contains a complete statement of a ground of rejection, the final rejection may refer to such a statement and also should include a rebuttal of any arguments raised in the applicant’s reply.”). Appellants’ Appeal Brief does not address the rejection under § 112, first paragraph, and it is therefore summarily affirmed..

one or both of a specific period of inactivity is detected and a disconnect request is made by either the wireless hotspot or the portable device,” as recited in claim 1 (App. Br. 13-17). Specifically, Appellants argue that “Hollenbeck does not contain the term ‘wireless,’ the term ‘hotspot,’ or any terms synonymous with ‘a wireless hotspot’” (App. Br. 15-16).

However, the Examiner relies on the collective teachings of Uhlik and Hollenbeck for disclosing the disputed limitations. Uhlik discloses a connection between a User Terminal (UT), i.e., “a portable device,” and an access point, i.e., “a wireless hotspot” (Ans. 3-4, 13 *citing* Uhlik, ¶¶ [0018]-[0022] and Figure 1). Hollenbeck teaches the general idea of disconnecting a session between client and server devices upon timeout, or by request of the client device (Hollenbeck, ¶ [0107]).

“[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) (citations omitted). Appellants have not specifically explained why it would have been beyond the ordinary skill in the art to apply Hollenbeck’s technique to Uhlik’s connection between a UT and access point. Accordingly, regardless of whether Hollenbeck discloses “a wireless hotspot,” as Appellants argue (App. Br. 15-16), we are not persuaded that the Examiner erred in finding that the combination of Uhlik and Hollenbeck discloses “wherein access to the wireless hotspot is maintained until one or both of a specific period of inactivity is detected and a disconnect request is made by either the wireless hotspot or the portable device” (claim 1).

We are therefore not persuaded that the Examiner erred in rejecting claim 1, and claims 2, 3, 7-12, 16-24, 28-33, 37-45, 49-54, and 58-63 not separately argued.

Claims 4, 13, 25, 34, 46, and 55

Appellants contend that Uhlik does not disclose supplying account information that is either “a wireless telephone number,” or “a wireless telephone account number,” as recited in claim 4 (App. Br. 17-18).

We find that the limitations “a wireless telephone number” and “a wireless telephone account number” are merely non-functional descriptive material. That is, the nature of the actual data used as account information does not functionally distinguish the claimed invention. Thus, we do not give these limitations patentable weight.

Moreover, even if we did give weight to these limitations, they do not distinguish claim 4 over the cited art. Uhlik requires that some account number be provided by the UT, otherwise there would be no way to accomplish Uhlik’s goal of tracking the UT’s usage of the access point for billing purposes (*see* Uhlik, ¶ [0023]). Where Uhlik’s UT can be a cellular telephone (Uhlik, ¶ [0020]), one of ordinary skill in the art would have recognized that the account number provided for access and billing would be the account number for the cellular telephone service, i.e., “a wireless telephone account number.”

We are therefore not persuaded that the Examiner erred in rejecting claim 4, and claims 13, 25, 34, 46, and 55 not separately argued.

Claims 5, 14, 26, 35, 47, and 56

Appellants contend that Uhlik does not disclose supplying account information that is either “a landline telephone number,” or “a landline telephone account number,” as recited in claim 5 (App. Br. 18-19).

We find that the limitations “a landline telephone number” and “a landline telephone account number” are merely non-functional descriptive material. That is, the nature of the actual data used as account information does not functionally distinguish the claimed invention. Thus we do not give these limitations patentable weight.

Moreover, even if we did give weight to these limitations, they do not distinguish claim 5 over the cited art. Uhlik’s UT subscriber can have access to Voice over Internet Protocol (VoIP), a service that enables telephone calls over the Internet (Uhlik, ¶ [0018]), where the Internet link can be cable modem, xDSL line, or dial-up (Uhlik, ¶ [0021]), i.e., a landline link. Further, Uhlik discloses that “[t]he authenticator also collects billing information (for example, VoIP telephone call detail records) from the ISP’s [i.e., Internet Service Providers] for each user terminal session” (Uhlik, ¶ [0042]). One of ordinary skill in the art would have recognized that the account number for the VoIP service, i.e., “a landline telephone account number” would have to be provided for recording VoIP call details for the account associated with the UT.

We are therefore not persuaded that the Examiner erred in rejecting claim 5, and claims 14, 26, 35, 47, and 56 not separately argued.

Claims 6, 15, 27, 36, 48, and 57

The Examiner finds that Uhlik discloses a bank that can provide data to an access point of an ISP in response to receiving account information

from a subscriber (Ans. 16). Specifically, Uhlik discloses that when attempting to access the Internet through the access point, the subscriber sends a certificate, for example, a certificate representing 1000 units, to an online bank along with a request to use a certain number of units, for example, 2 units. The online bank subtracts the requested number of units from the certificate, and issues two new certificates: a certificate of 998 units to the subscriber representing the subscriber's new balance, and a certificate of 2 units to the access point representing the amount of Internet usage to which the subscriber is entitled. (Uhlik, ¶¶ [0051]-[0053]).

Appellants do not specifically explain why the operations of Uhlik's online bank as detailed above fail to disclose the disputed limitations, namely, "supplying the account information to a third party service provider, wherein the third part service provider receives the account information and transfers data specific to one of a landline telephone service provider, a wireless telephone service provider and an internet service provider" (Reply Br. 6) (emphasis omitted). We are therefore not persuaded that the Examiner erred in rejecting claim 6, and claims 15, 27, 36, 48, and 57 not separately argued.

CONCLUSION OF LAW

The Examiner did not err in rejecting claims 1-63 under 35 U.S.C. § 112, first paragraph, and the Examiner did not err in rejecting claims 1-63 under 35 U.S.C. § 103(a).

Appeal 2010-009413
Application 11/099,457

DECISION

For the above reasons, we affirm the rejection of claims 1-63.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

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