



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/744,063	12/22/2003	Randy Zimler	030527 (BLL0155US)	6360
36192	7590	01/31/2013	EXAMINER	
AT&T Legal Department - CC			CHRISTENSEN, SCOTT B	
Attn: Patent Docketing			ART UNIT	
Room 2A-207			PAPER NUMBER	
One AT&T Way			2444	
Bedminster, NJ 07921			MAIL DATE	
			DELIVERY MODE	
			01/31/2013	
			PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RANDY ZIMLER and WILLIAM WHITED

Appeal 2010-009836
Application 10/744,063
Technology Center 2400

Before THU A. DANG, JAMES R. HUGHES, and
GREGORY J. GONSALVES, *Administrative Patent Judges.*

GONSALVES, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-26 (App. Br. 1). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The Invention

Exemplary Claim 1 follows:

1. A method of distributing segmented content to a consumer, the method comprising:

receiving a request from a consumer for segmented content, the segmented content being arranged in a plurality of separate, independent chapters, the plurality of separate independent chapters corresponding to chapters of a movie;

classifying segments of said segmented content as primary content and secondary content, the primary content being audio-visual content corresponding to a first chapter of the segmented content, the secondary content being audio-visual content corresponding to a subsequent chapter of the segmented content different from the first chapter;

transmitting to said consumer a segment of primary content corresponding to the first chapter at a first bandwidth along with at least one secondary content segment corresponding to the second chapter at a second bandwidth, said second bandwidth lower than said first bandwidth.

Claims 1, 5-7, 9, 17, 18, and 21-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Omoigui (U.S. Pat. No. 7,096,271), Taylor (U.S. Pat. No. 6,721,794), and Dagtas (U.S. Pat. Pub. No. 2002/0080286) (Ans. 3-14).

Claims 2-4 and 10-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Omoigui, Taylor, Dagtas and Peterka (U.S. Pat. Pub. No. 2002/0172368) (Ans. 14-20).

Claims 8 and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Omoigui, Taylor, Dagtas and Jolitz (U.S. Pat. Pub. No. 2001/0025315) (Ans. 20-21).

Claim 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Omoigui, Taylor, Dagtas, Peterka and Jolitz (Ans. 21-22).

Claims 19, 20, 25, and 26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Omoigui, Taylor, Dagtas and Hazra (U.S. Pat. No. 6,510,553 (Ans. 22).

FACTUAL FINDINGS

We adopt the Examiner's factual findings as set forth in the Answer (Ans. 3, *et seq.*).

ISSUES

Appellants' responses to the Examiner's position present the following issues:

1. Did the Examiner err in concluding that the combination of Omoigui, Taylor, and Dagtas teaches:

the segmented content being arranged in a plurality of separate, independent chapters, the plurality of separate independent chapters corresponding to chapters of a movie ... transmitting to said consumer a segment of primary content corresponding to the first chapter at a first bandwidth along with at least one secondary content segment corresponding to the second chapter

at a second bandwidth, said second bandwidth lower than said first bandwidth as recited in independent claim 1, and as similarly recited in independent claims 9, 17, and 21?

2. Did the Examiner err in concluding that the combination of Omoigui, Taylor, Dagtas and Peterka teaches that “a predetermined amount of primary content is transmitted prior to transmission of said secondary content,” as recited in dependent claim 4, and as similarly recited in dependent claim 12?

3. Did the Examiner err in concluding that the combination of Omoigui, Taylor, Dagtas and Jolitz teaches “identifying said secondary content segment as said primary content when said segment of primary content is completely transmitted,” as recited in dependent claim 8, and as similarly recited in dependent claim 24?

4. Did the Examiner err in concluding that the combination of Omoigui, Taylor, Dagtas and Hazra teaches “identifying said new segment as said primary content includes designating a secondary content segment as primary content when said consumer selects said new segment for viewing,” as recited in dependent claims 19 and 25?

ANALYSIS

Obviousness Rejection of Claims 1, 5-7, 9, 17, 18, and 21-23 Over Omoigui, Taylor, and Dagtas

Appellants contend that the Examiner erred in rejecting independent claims 1, 9, 17, and 21 as obvious because the combination of Omoigui, Taylor, and Dagtas does not teach dividing content into segments corresponding to chapters in a movie and transmitting different chapters

with different bandwidths (App. Br. 4-8). In support of their contention, Appellants argue that the “components of the multimedia presentation in Omoigui are not separate, independent chapters and do not correspond to independent chapters of a movie” (*id.* at 5). Appellants also argue that “[t]here is no teaching [in Taylor] that subsequent chapters are sent to the user at a low bandwidth while a first chapter is sent at a high bandwidth” (*id.*).

The Examiner found, however, that Omoigui discloses “that in situations where a bandwidth has been exceeded due to, for example, a reduction in available bandwidth, the streams may be altered (which would alter the stream to a lesser bandwidth amount)” (Ans. 26). The Examiner also found that “Taylor discloses a system for retrieving [sic] video content, where the video content may be divided into distinct portions, or chapters” (*id.*). The Examiner then concluded that “[b]y utilizing distinct portions stored in a fashion similar to that in Taylor, the video of Omoigui may be more efficiently retrieved, as the individual files in the server that need to be processed for transmission would be smaller, thus requiring less processing for each individual segment” (*id.*).

We agree with the Examiner’s conclusion and underlying findings of fact. Omoigui teaches that different data streams may be transmitted with different bandwidths: “If the allotted bandwidth or processing capacity has been exceeded, then master control 230 selects a stream(s) to be altered (step 356)” (col. 4, ll. 57-59). Taylor teaches dividing content into different chapters: “in the case of a title divided into a plurality of chapters such as used in digital versatile disks (DVD) storage media, a title loaded onto the secondary server may be loaded as a plurality of chapters, where each

chapter may be rapidly entered (i.e., retrieved) based on client requests” (col. 7, ll. 62-67). We conclude, therefore, that the claim limitation of transmitting different chapters of a movie with different bandwidths is a combination of the familiar element of dividing a movie into different chapters as taught by Taylor and transmitting different portions of data with different bandwidths as taught by Omoigui that would have yielded predictable results. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

Thus, we find no error in the Examiner’s obviousness rejection of independent claims 1, 9, 17, and 21 as well as claims 5-7, 18, 22, and 23 dependent therefrom because Appellants did not set forth any separate patentability arguments for the dependent claims (*see* App. Br. 6-8).

Obviousness Rejection of Claims 2-4 and 10-15 Over Omoigui, Taylor, Dagtas, and Peterka

Appellants argue that the Examiner erred in rejecting claims 4 and 12 because Peterka does not teach “primary content, which is transmitted at a higher bandwidth than the secondary content and has a higher quality than the preliminary content” (App. Br. 8). Appellants’ argument, however, is not commensurate with the scope of claims 4 and 12 because they do not require primary and secondary content to be transmitted at different qualities. Rather, claims 4 and 12 require transmitting primary content before secondary content.

Moreover, the Examiner concluded that “Peterka teaches sending a portion of the program, and waiting for a user to pay for the content before sending additional portions. Thus, a predetermined amount of the primary content is transmitted, then the secondary content is transmitted upon payment” (Ans. 29). We agree with the Examiner’s conclusion. Peterka

discloses that “[t]he free preview could, for example, take the form of . . . a first portion of the actual movie” (¶[0009]). That is, Peterka teaches transmitting a portion of a movie (i.e., the primary content) before transmitting the remainder of the content (i.e., the secondary content). Accordingly, we find no error in the Examiner’s rejection of dependent claims 4 and 12. We also find no error in the Examiner’s rejection of dependent claims 2, 3, 10, 11, and 13-15 because Appellants did not set forth any separate patentability arguments for those claims (*see* App. Br. 8).

*Obviousness Rejection of Claims 8 and 24 Over Omoigui,
Taylor, Dagtas, and Jolitz*

Appellants argue that the Examiner erred in rejecting claims 8 and 24 because “[t]here is no teaching in Jolitz of ‘identifying said secondary content segment as said primary content when said segment of primary content is completely transmitted’” (App. Br. 9). The Examiner concluded, however, that this claim limitation would have been obvious in light of the teachings of Omoigui, Taylor, Dagtas and Jolitz:

Jolitz teaches the identification of when content has finished transmission. Thus, rather than waiting for the entire content to be displayed and another request is made, a person of ordinary skill in the art would recognize that the identification of Jolitz would allow the system of Omoigui as modified by Taylor and Dagtas to begin transmission of the next segment upon completion of transmission of the first segment without waiting for an explicit request for the next segment, allowing for more seamless transmission and playback of the content. Further, when the next segment begins to transmit, it is no longer the secondary content, but is instead the primary content.

(Ans. 30-31).

We agree with the Examiner's conclusion and underlying findings of fact. As explained *supra* with respect to claim 1, the combination of Omoigui, Taylor, and Dagtas teaches dividing content into different segments and transmitting the different segments sequentially. Moreover, Jolitz discloses that “[d]ata from the segment is read into the dual transport application memory 24 until the segment is completely received, which can be determined by a length counter” (¶[0081]). That is, when the transmission of a primary segment is determined to be completed as taught by Jolitz, the next or secondary content segment to be transmitted may be considered as the new primary segment and the following segment may be considered as the new secondary segment. Accordingly, we do not find error in the Examiner's rejection of claims 8 and 24.

*Obviousness Rejection of Claim 16 Over Omoigui, Taylor,
Dagtas, Peterka, and Jolitz*

In support of their contention that the Examiner erred in rejecting claim 16, Appellants set forth the same argument that they set forth for claims 8 and 24 (App. Br. 9). In particular, Appellants argue that “[t]here is no teaching in Jolitz of ‘said controller identifies said secondary content segment as said primary content when said segment of primary content is completely transmitted’” (App. Br. 9). As explained *supra* with respect to claims 8 and 24, however, this claim limitation would have been obvious in light of the teachings of Omoigui, Taylor, Dagtas, and Jolitz. Accordingly, we find no error in the Examiner's rejection of claim 16.

*Obviousness Rejection of Claims 19, 20, 25, and 26 Over
Omoigui, Taylor, Dagtas, and Hazra*

Appellants argue that the Examiner erred in rejecting claims 19 and 25 because the combination of Omoigui, Taylor, Dagtas, and Hazra does not teach that "identifying said new segment as said primary content includes designating a secondary content segment as primary content when said consumer selects said new segment for viewing" (App. Br. 10). The Examiner found, however, that in light of selecting content segments as taught by Hazra, and "as the segments are stored separately, as in Omoigui as modified by Taylor and Dagtas, it is clear that it would have been obvious to allow a user to select a subsequent portion of the same video content, thus making the secondary content the primary content" (Ans. 32).

We agree with the Examiner's conclusion and underlying findings of fact. As explained *supra* with respect to claim 1, the combination of Omoigui, Taylor, and Dagtas teaches dividing content into different segments and transmitting the different segments sequentially. Moreover, Hazra discloses that "the identities of the primary and secondary sources are switched or otherwise exchanged (i.e., the primary source becomes the secondary source and vice versa)" (col. 8, ll. 50-53). In other words, upon selection of a secondary content segment by the user, the secondary content segment may be considered as the new primary content segment. Accordingly, we find no error in the Examiner's rejection of claims 19 and 25.

In support of their contention that the Examiner erred in rejecting claims 20 and 26, Appellants set forth the same argument that they set forth for claims 8 and 24 (App. Br. 11). In particular, Appellants argue that the combination of prior art references does not teach "identifying said

Appeal 2010-009836
Application 10/744,063

secondary content segment as said primary content includes designating said secondary content segment as primary content when said segment of primary content is completely transmitted" (*id.*)

As explained *supra* with respect to claims 8 and 24, however, this claim limitation would have been obvious in light of the teachings of the prior art. Accordingly, we find no error in the Examiner's rejection of claim 20 and 26.

DECISION

We affirm the Examiner's decision rejecting claims 1-26 as being unpatentable under 35 U.S.C. § 103(a).

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

pgc