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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/474,205	06/23/2006	Jeffrey Jason Griffin	2002-309 / PU06 0129US1	8906

54472 7590 01/23/2013

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ART UNIT	PAPER NUMBER
2447	

MAIL DATE	DELIVERY MODE
01/23/2013	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY JASON GRIFFIN

Appeal 2010-010600
Application 11/474,205
Technology Center 2400

Before JOSEPH L. DIXON, ST. JOHN COURTENAY III, and CARLA M. KRIVAK, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1-13 (App. Br. 2). We have jurisdiction under 35 U.S.C. § 6(b).

We Affirm.

STATEMENT OF THE CASE

Appellant's claimed invention "relates generally to wireless communications devices, and particularly to systems and methods of transferring multimedia content across wireless communications devices." (Spec. 1, ¶[0001]). Independent claim 1, reproduced below, is representative of the subject matter on appeal.

1. A wireless communications device comprising:

a communications interface to communicatively connect the wireless communications device to a remote device;

a memory to store multimedia content;

application logic stored in the memory; and

a controller communicatively connected to the memory and the communications interface, and configured to execute the application logic to:

generate an encapsulated data structure comprising the multimedia content and *one or more pointers, each pointer identifying a user-selected start position for the multimedia content*; and

transmit the encapsulated data structure to the remote device.

(disputed limitation emphasized).

REJECTION

The Examiner rejected claims 1-13 under 35 U.S.C. § 102(b) as anticipated by Bodic (GWENAËL LE BODIC, MULTIMEDIA MESSAGING SERVICE AN ENGINEERING APPROACH TO MMS 35-205 John Wiley & Sons Ltd, (2003)). (Ans. 5-9).

GROUPING OF CLAIMS

Based on Appellant's arguments, we decide the appeal of the rejection of claims 1-13 on the basis of representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Issue: Under §102, did the Examiner err in finding that Bodic discloses "generat[ing] an encapsulated data structure comprising the multimedia content and *one or more pointers, each pointer identifying a user-selected start position for the multimedia content*," within the meaning of independent claim 1 (emphasis added)?

ANALYSIS

Appellant contends "while Bodic discloses that MMS [Multimedia Messaging Service] messages may carry encapsulated multimedia content, Bodic does not disclose that the MMS messages include one or more pointers that identify a corresponding number of user-selected start positions *within* the encapsulated multimedia content as claimed in claim 1." (App. Br. 5, emphasis added). Appellant restates essentially the same argument in the Reply Brief:

> Bodic and the claimed invention are simply not the same. Defining a delay between the start of two or more audio files that will always begin rendering at time 0, as is done in Bodic, does not teach defining a start time *within a file* as claimed. Therefore, Bodic does not anticipate claims 1 or 7, or any of their respective dependent claims.

(Reply Br. 4, emphasis added).

Appellant's arguments are not persuasive because we accord no patentable weight to the content of claimed "encapsulated data structure"

and the "one or more pointers." As presently claimed, these elements are non-functional descriptive material because the "encapsulated data structure" and "one or more pointers" are not positively recited as actually being employed to affect or change any machine or computer function.[1] Instead, Appellant claims an arrangement of data, i.e., an "encapsulated data structure" (claim 1) that is *generated* and *transmitted*, but not positively recited as actually being used to impart machine or computer functionality. As such, the *informational content* of the recited "encapsulated data structure" and "one or more pointers" is not entitled to weight in the patentability analysis.[2]

Even assuming *arguendo* that the recited "encapsulated data structure" and "one or more pointers" may be accorded patentable weight, Appellant's arguments are not persuasive because Appellant is arguing limitations that are not claimed.[3] The claim language does not require

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[1] *Cf.* Functional descriptive material consists of data structures and computer programs which impart functionality *when employed as a computer component*. *See* Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility ("Guidelines"), 1300 Off. Gaz. Pat. Office 142 (November 22, 2005), especially pages 151-152. The Manual of Patent Examining Procedure (MPEP) includes substantively the same guidance. *See* MPEP, 8th edition (Rev. 9, Aug. 2012), §2111.05.

[2] The *informational content* of non-functional descriptive material is not entitled to weight in the patentability analysis. *See Ex parte Nehls*, 88 USPQ2d 1883, 1887-90 (BPAI 2008) (precedential); *Ex parte Curry*, 84 USPQ2d 1272 (BPAI 2005) (informative) (Federal Circuit Appeal No. 2006-1003, *aff'd*, Rule 36 (June 12, 2006)); *Ex parte Mathias*, 84 USPQ2d 1276 (BPAI 2005) (informative), *aff'd,* 191 Fed. Appx. 959 (Fed. Cir. 2006).

[3] "In the patentability context, claims are to be given their broadest reasonable interpretations . . . limitations are not to be read into the claims

"[i]dentify[ing] a corresponding number of user-selected start positions *within* the encapsulated multimedia content" as Appellant repeatedly urges regarding claim 1. (App. Br. 5 (emphasis added); *See* also Reply Br. 4). Instead, claim 1 more broadly recites "one or more pointers, each pointer *identifying a user-selected start position for the multimedia content*" (emphasis added). Therefore, we agree with the Examiner's responsive arguments and finding of anticipation over Bodic's Fig. 5.5 (p. 96):

> The applicant claims a user selected start position for multimedia content and not a user selected start position **within** the multimedia content, therefore the claim is broad enough to include the user selecting time equal to zero thus this reference still meets the claimed subject matter;

(Ans. 10).

> The applicant argues on pages 4-6, that Bodic does not disclose one or more pointers. The examiner respectfully traverses because Bodic discloses one or more pointers, (i.e., Each media object is encapsulated in a containers known as body parts, section 5.1.2, paragraph 1; and this container identified by the seq tag enables the sequencing of an ordered list of objects, section 5.4.4, paragraph 2, these tags teach pointers; further sections 0021 and 0027 on pages 6 and 8 of the instance application disclosure clearly defines pointers as tags).

(Ans. 11).

As noted by the Examiner (*id.*), we observe that Appellant's Specification describes pointers as *tags*, and even more broadly as *time markers*: "The *tag* section 54 includes one or more pointers $P_1 \ldots P_n$ that identify a corresponding number of user-selected start positions for the payload 58. The pointers may comprise, *for example*, one or more *time*

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from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citations omitted).

markers for an audio file such as those generated in co-pending U.S. Patent Application Serial No. 11/252,152." (Spec. 6, ¶[0021], emphasis added).

Therefore, on this record, we are not persuaded that the Examiner's claim interpretation is overly broad, unreasonable, or inconsistent with Appellant's Specification. Accordingly, we sustain the anticipation rejection of claim 1. Claims 2-13 (not argued separately) fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We affirm the Examiner's rejection under §102 of claims 1-13.

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) (2009).

ORDER

AFFIRMED

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