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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEYHAN KARAOGUZ and JAMES BENNETT

Appeal 2010-011406
Application 10/675,654
Technology Center 2400

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

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-42 (App. Br. 2). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

According to Appellants, the invention relates to information transfer and storage in a distributed media network, and more specifically to migration of media, data and/or services through a media processing system (Spec. 2, ¶[04])

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary:

> 1. A method for communicating information in a distributed network, the method comprising:
>
> automatically and without user intervention, initiating detection and detecting whether one or more of new media, data and/or service becomes newly available within the distributed network;
>
> migrating said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network; and
>
> storing said migrated newly available one or more of new media, data and/or service at said at least a first media processing system.

C. REFERENCE

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

Gregerson	US 5,526,358	June 11, 1996
Carter	US 2002/0194309 A1	Dec. 19, 2002

The Gnutella Protocol Specification v0.4: Document Revision 1.0, pp1-13, http://www.clip2.com/GnutellaProtocol04.pdf (lasted visited on June 3, 2001) (hereinafter "Gnutella").

D. REJECTIONS

Claims 1-4, 7-14, 17-24, 27-35, and 38-42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gnutella and Gregerson.[1]

Claims 5, 6, 15, 16, 25, 26, 36, and 37 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gnutella, Gregerson, and Carter.

II. ISSUE

The issue before us is whether the Examiner has erred in finding that the combined teachings of Gnutella and Gregerson disclose or would have suggested "*automatically and without user intervention*, initiation detection and detecting" (claim 1, emphasis added).

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

[1] Although claims 36 and 37 were listed by the Examiner as rejected over Gnutella and Gregerson, the Examiner's Answer indicates that claims 36 and 37 "are substantially similar to claims 5 [and] 6, and are rejected for substantially similar reasons" (Ans. 13). Accordingly, we deem this listing to be a typographical error and will review claims 36 and 37 as being rejected over Gnutella, Gregerson, and Carter, similar to claims 5 and 6.

Gnutella

1. Gnutella discloses a servent which receives a Query descriptor and responds with a QueryHit if a match is found against its local data set, wherein a Gnutella servent connects itself to the network by establishing a connection with another servent currently on the network (p. 1).

Gregerson

2. Gregerson discloses kernels residing at a network node having one or more resources associated therewith, wherein the kernels dynamically locate one another in real-time to form and maintain a hierarchical structure that supports a virtually unlimited number of independently running kennels and a dynamic context bridge communicates between end nodes thereby allowing applications residing on different stacks to communicate with one another automatically and transparently (col. 2, ll. 52-65)

3. "A Find Query will begin searching for resources at the local machine" and moving up the network hierarchy if no resources are found, (col. 13, ll. 26-36), wherein "[i]f a resource is not available at the time an application executes a Find Query," the application executes a Persistent Find Query (col. 12, ll. 29-34).

IV. ANALYSIS

Claims 1-4, 7-14, 17-24, and 27-35, and 38-42

With respect to independent claim 1, Appellants contend that "the Query descriptor [of Gnutella] is used to locate a match (and a QueryHit) against existing data within the local data set of the specific servant" (App. Br. 8, emphasis omitted). Accordingly, Appellants argue that "[t]he Query descriptor, as well as any of the remaining Gnutella descriptors, is not used

(and cannot be used) for purposes of initiating detection and detecting" wherein "a user has to specifically designate the search criteria (or the search string)" and "the Query descriptor, as well as any other descriptor of the Gnutella protocol, requires user participation (the user has to initiate the query)" (App. Br. 8-9, emphasis omitted).

However, the Examiner finds that, in Gnutella, "the actual act of detecting is performed automatically" (Ans. 3). Though the Examiner concedes that "Gnutella does not disclose expressly initiating detecting without user intervention," the Examiner finds that "persistent query's, such as that disclosed in Gregerson, are very well known in the art" wherein "[i]f the item being searched for is not found, the system automatically, and without user intervention, searches for the item again after some interval or in a continuous fashion" (Ans. 4). We find no error in the Examiner's findings and conclusion.

We give the claim its broadest reasonable interpretation *consistent* with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). However, we will not read limitations from the Specification or any other reference into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Although Appellants adds an argument in the Reply Brief that "the 'persistent query' of Gregerson does not occur 'automatically and without user intervention' because a user must set up the initially query" (Reply Br. 6), Appellants appear to be arguing that a query cannot occur automatically and without user intervention if the user set up the initial query. However, such argument is no commensurate in scope with the recited language of claim 1. Contrary to Appellants' argument, claim 1 does not preclude a

query that is initiated automatically and without intervention after an initial query is set up. That is, claim 1 merely requires any detection that is initiated automatically without user intervention.

Gnutella discloses detecting a resource becomes available (FF 1). We find no error in the Examiner's finding that in Gnutella, "the actual act of detecting is performed automatically" (Ans. 3).

Furthermore, Gregerson discloses applications residing on different stacks that communicate with one another automatically and transparently (FF 2), wherein a Find Query begins searching for resources and if a resource is not available, the application executes a Persistent Find Query (FF 3). We find no error in the Examiner's finding that, in Gregerson, "[i]f the item being searched for is not found, the system automatically, and without user intervention, searches for the item again after some interval or in a continuous fashion" (Ans. 4). That is, we find that Gregerson's Persistent Find Query is initiated automatically if the item being searched is not found, wherein there is no user intervention in such initiation.

Accordingly, we find no error in the Examiner's conclusion that combined teachings of Gnutella and Gregerson would at least have suggested "automatically and without user intervention, initiation detection and detecting" as recited in claim 1. Appellants do not provide arguments for independent claims 11, 21, and 32 separate from those of claims 1 (App. Br. 10), and thus, claims 1, 21, and 32 fall with claim 1.

As for claims dependent claims 2, 3, 10, 12, 13, 20, 22, 23, 30, 33, 34, and 41, although Appellants contend that Examiner erred in taking of Official Notice (App. Br. 12-17 and 19-20), the Examiner points to Microsoft Internet Explorer version 6, Microsoft Windows Media Player

7.1, and Microsoft Support Document 320926 as references that specifically disclose this well-known concept (Ans. 19-20). In response, Appellants do not point to any evidence or express any persuasive reasoning tending to establish that the Examiner erred in his finding of Official Notice (*see* Reply Br.).

"To adequately traverse such a finding [of official notice], an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b)." M.P.E.P. § 2144.03(C). An adequate traverse must contain adequate information or argument to create on its face, a reasonable doubt regarding the circumstances justifying notice of what is well known to one of ordinary skill in the art. *In re Boon*, 439 F.2d 724, 728 (CCPA 1971).

Thus, though the Examiner offers evidence to support his taking of notice, Appellants do not address this evidence. We find that Appellants' arguments do not contain adequate information to create on its face, a reasonable doubt regarding the circumstances justifying notice of what is well known to one of ordinary skill in the art.

Accordingly, we find no error in the Examiner's rejection of claims 2, 3, 10, 12, 13, 20, 22, 23, 30, 33, 34, and 41 over Gnutella and Gregerson in view of Official Notice.

Appellants do no provide arguments for dependent claims 4, 7, 9, 14, 17, 19, 24, 27, 29, 31, 35, 38, 40, and 42 separate from those of claims 1, 11, 21, and 32, from which they respectively depend (App. Br. 17-20). Accordingly, claims 4, 7, 9, 14, 17, 19, 24, 27, 29, 31, 35, 38, 40, and 42 fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

As to claims 8, 18, 28, and 39, in response to the Examiner's finding that "Internet Explorer allowed a file to be scheduled to be immediately downloaded" (Ans. 21), Appellants merely argue in the Reply Brief that "[t]he Examiner offers absolutely no credible support for construing 'scheduling' to cover an instance where a user chooses to immediately download a file in the manner set forth [in claim 8]" (Reply Br. 7).

However, since we give the claims its broadest reasonable interpretation, we find no error in the Examiner's broad reading of claim 8. That is, claim 8 merely requires a step of "scheduling" the migration. Thus, though the Examiner offers evidence to support his taking of notice that scheduling of migration is well-known, Appellants do not address this evidence. Accordingly, we find no error in the Examiner's rejection of claim 8 and claims 18, 28, and 39 falling therewith (App. Br. 19) over Gnutella and Gregerson.

Claims 5, 6, 15, 16, 25, 26, 36, and 37

Appellants do not provide any arguments for claims 5, 6, 15, 16, 25, 26, 36, and 37 separate from those of claim 1, 11, 21, and 32 from which they respectively depend (App. Br. 21). Accordingly, we also find no error with the rejection of claims 5, 6, 15, 16, 25, 26, 36, and 37 over Gnutella and Gregerson, in further view of Carter.

V. CONCLUSION AND DECISION

The Examiner's rejection of claims 1-42 under 35 U.S.C. § 103(a) is affirmed.

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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