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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* XIN XUE

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Appeal 2010-011812  
Application 10/666,889  
Technology Center 2400

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

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a rejection of claims 1-44. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The claims are directed to downloading content based on authentication. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of downloading content from a server to an electronic device, comprising:

storing authentication data on a removable memory, wherein the authentication data includes a predetermined level of content access;

accessing the server with the electronic device;

authenticating the removable memory by reading the authentication data from the removable memory to determine the predetermined level of content access; and

downloading the content from the server to the removable memory according to the predetermined level of content access.

REFERENCES

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

Hori	US 2004/0010467 A1	Jan. 15, 2004 (PCT filed Mar. 28, 2001)
Howard	US 2004/0103064 A1	May 27, 2004 (filed Nov. 26, 2002)

## REJECTION

Claims 1-44 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Howard and Hori.

## ANALYSIS

While Appellant nominally argues each independent claim separately with its respective dependent claims (*see* App. Br. 10-12), the arguments for each group of claims merely refer back to the same general arguments (App. Br. 7-9). Thus, we treat claims 1-44 together as one group.

Appellant contends that neither reference teaches the claimed invention (App. Br. 7-8). Appellant also contends that the Examiner's asserted motivation for combining Howard and Hori "is nonexistent because there is no indication in Hori that downloading the content to the removable memory instead of the user PC would, on its own, prevent distributed copyrighted data from being replicated without permission of the copyright owner in Howard" (App. Br. 8). In other words, "[a]n inventor would not be motivated to combine two prior art references in order to achieve copyright protection benefits, if the asserted combination would not actually result in those benefits" (App. Br. 9). We disagree.

Although Appellant contends that neither reference teaches the claimed invention (App. Br. 7-8), Appellant does not contend that the collective teachings of Howard and Hori fail to disclose all the limitations of the claimed invention. Thus, the appeal turns on whether the Examiner's combination of Howard and Hori is proper. Appellant argues that the Examiner's motivation for combining Hori's feature of downloading content to a memory card with Howard's system—"it would prevent distributed

copyrighted data from being replicated without permission of the copyright owner (Hori paragraph 0010)” (Ans. 5, 13)—is not sufficient because simply downloading content to a memory card does not by itself provide the copyrighted data protection of Hori (*see* App. Br. 8-9). Specifically, Appellant argues that

Hori’s prevention of impermissible replication relies on the entirety of the invention of Hori, including a complex data storage structure that comprises a plurality of authentication data hold means, a select means, a key hold means, a first decryption means, a session key generation means, a session key encryption means, and a session key decryption means. In other words, even if Howard downloaded the content to the removable memory instead of the PC (as taught by Hori), Howard would be no more protected from copyright violations.

(App. Br. 8). However, we find that where Hori provides an explicit motivation to protect copyrighted data (Hori, ¶ 10) and Hori teaches all the features necessary to perform copyrighted data protection, as listed in Appellant’s argument above, including downloading encrypted content to the memory card (Hori, ¶¶ 65, 171), one of ordinary skill in the art would have included all the necessary encryption features of Hori’s system in the combined system of Howard and Hori to actually achieve the copyrighted data protection that Hori suggests. Moreover, Appellant does not argue that the motivation itself is invalid—that one would not have wanted to provide copyrighted data protection in Howard’s system. Accordingly, we are not persuaded that the Examiner’s motivation for combining the references is insufficient.

Additionally, Appellant’s argument that such combination would have impermissibly changed the principle of operation of Howard (App. Br. 9) is

not persuasive. Howard is primarily concerned with gaining access to online content by authenticating a smart card, i.e., a “removable memory,” inserted in a PC before downloading the content to the PC (*see* Howard, Abstract; ¶¶ 18-21). The storage location of the downloaded content is not critical in Howard’s system. Therefore, modifying Howard in view of Hori so that content would be downloaded to the removable memory does not alter Howard’s general principle of authentication before download. Rather, combining Hori with Howard merely adds another security feature to Howard’s system.

We are therefore not persuaded that the Examiner erred in rejecting claims 1-44.

#### CONCLUSION OF LAW

The Examiner did not err in rejecting claims 1-44 under 35 U.S.C. § 103(a).

#### DECISION

For the above reasons, we affirm the rejection under § 103 of claims 1-44.

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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