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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SHELDON KASOWER

Appeal 2011-000733
Application 11/173,440
Technology Center 3600

Before MURRIEL E. CRAWFORD, BIBHU R. MOHANTY, and
MEREDITH C. PETRAVICK, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's rejection of claims 1, 3-12, 14, 16, and 17. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

BACKGROUND

Appellant's invention is directed to a method for monitoring and reporting real estate valuation (Spec., para. [0001]).

Claim 1 is illustrative:

1. A method to monitor real estate values comprising:
 - monitoring the local real estate market periodically near a property of interest for a recent completed local sale via an electronic monitoring service comprising a processor, a database and a server;
 - determining whether the recent completed local sale affects the real estate value of the property of interest via the electronic monitoring service; and
 - notifying clients of the monitoring service electronically of said recent completed local sale.

The Examiner made the following rejections:

Claims 1, 16, and 17 rejected under 35 U.S.C. § 103(a) as unpatentable over Raveis (US 2002/0049624 A1; pub. Apr. 25, 2002), Florance (US 2003/0078897 A1; pub. Apr. 24, 2003), and Ford (US 2004/0133493 A1; pub. Jul. 8, 2004).

Claims 3-5, 8, 10, and 11 rejected under 35 U.S.C. § 103(a) as unpatentable over Raveis, Florance, Ford, and Dugan (US 5,857,174; iss. Jan. 5, 1999).

Claims 6, 7, and 9 rejected under 35 U.S.C. § 103(a) as unpatentable over Raveis, Florance, Ford, and Cheetham (US 6,115,694; iss. Sep. 5, 2000).

Claim 12 rejected under 35 U.S.C. § 103(a) as unpatentable over Raveis, Florance, Ford, and Jost (US 5,361,201; iss. Nov. 1, 1994).

Claim 14 rejected under 35 U.S.C. § 103(a) as unpatentable over Raveis, Florance, Ford, and Bernard (US 2004/0243450 A1; pub. Dec. 2, 2004).

FACTUAL FINDINGS

We find the following facts by a preponderance of the evidence. Additional facts may appear below in the Analysis.

1. Florance discloses:

[p]rior to the system of the present invention, however, there has been no unified way of storing an investor's investment criteria and continually monitoring the market so as to have the ability to provide a real-time alert when a property matching the investor's investment criteria has become available. This advantage is achieved because databases containing leasing information are linked with databases concerning buildings for sale, which are linked to databases that store a particular investor's investment criteria, which are linked to databases that store the data necessary to determine market conditions, and so on.

(Para. [0270]).

2. Florance states that “[a]s the for-sale researcher polls data sources A10 and records properties that have been sold, data mining applications A12 determines that that sale information is relevant to comparable sales information as well.” (Para. [0292]).

ANALYSIS

*Claims 1, 16, and 17 rejected under 35 U.S.C. § 103(a) as unpatentable over
Raveis, Florance, and Ford.*

Independent claim 1

We are persuaded of error by Appellant's argument that the combination of Raveis, Florance, and Ford fails to teach or suggest determining whether the recent completed local sale affects the real estate value of the property of interest, as recited in claim 1. App. Br. 11; Reply Br. 8. The Examiner relies on paragraphs [0289] – [0291] of Florance to address this limitation, however, we find this portion of Florance teaches determining whether information provided by one researcher is relevant to a second researcher (para. [0288]), which is not the same as determining whether a recent completed local sale affects the real estate value of the property of interest.

While the Examiner may be correct that “a completed sale nearby a property of interest may or may not affect the assessment of that property” (Ans. 6), the Examiner has not adequately articulated how determining whether information is relevant to a sale renders obvious a determination as to whether the recent completed local sale affects the real estate value of the property of interest, as required by independent claim 1. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”).

In view of the foregoing, we will not sustain the Examiner's rejection of independent claim 1 under 35 U.S.C. § 103(a) and claim 16 dependent thereon.

Independent claim 17

We are not persuaded of error on the part of the Examiner by Appellant's argument that the combination of Raveis, Florance, and Ford fails to teach or suggest "monitoring the local real estate market periodically near a property of interest for a recent completed local sale via the electronic monitoring service," as recited by independent claim 17. Br. 8-11; Reply Br. 5-7. We agree with the Examiner that Raveis discloses a method for monitoring activity related to a real estate listing (Ans. 4; citing Raveis at para. [0055]). Additionally, we agree with the Examiner that Florance teaches data mining applications which track comparable sales information (Ans. 13-14; *See* FF 2).

In addition, Florance describes that its system continually monitors the market to provide real-time alerts when a property matching an investor's investment criteria has become available using *inter alia* databases concerning buildings for sale which are linked to databases that store a particular investor's investment criteria, which are linked to databases that store the data necessary to determine market conditions (FF 1). While we acknowledge that monitoring the market to alert an investor when a property becomes available, is not the same as monitoring the market for completed sales, one of ordinary skill in the art would appreciate that the investor's investment criteria could simply be to monitor the local real estate market near a property of interest for a recent completed

local sale using Florance's databases. *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 421 (2007). ("A person of ordinary skill is . . . a person of ordinary creativity, not an automaton.").

Therefore, given the Examiner's broad, but reasonable interpretation of "monitor" as "*to watch, keep track of, or check usually for a special purpose*" (Ans. 13; citing <http://www.merriam-webster.com/dictionary/monitor>), in light of Raveis's ability to monitor activity related to a real estate listing using MLS data and Florance's tracking comparable sales information, which the Examiner points out are the same as completed sales (Ans. 14), we find the combination of Raveis, Florance, and Ford teaches or suggests the step of "monitoring the local real estate market periodically near a property of interest for a recent completed local sale via the electronic monitoring service," as presently recited by independent claim 17.

In view of the foregoing, we will sustain the Examiner's rejection of independent claim 17.

Claims 3-5, 8, 10, and 11 rejected under 35 U.S.C. § 103(a) as unpatentable over Raveis, Florance, Ford, and Dugan, claims 6, 7, and 9 rejected under 35 U.S.C. § 103(a) as unpatentable over Raveis, Florance, Ford, and Cheetham, claim 12 rejected under 35 U.S.C. § 103(a) as unpatentable over Raveis, Florance, Ford, and Jost, claim 14 rejected under 35 U.S.C. § 103(a) as unpatentable over Raveis, Florance, Ford, and Bernard.

These rejections are directed to claims dependent on independent claim 1, whose rejection we have reversed above. For the same reasons, we will not sustain the rejections of claims 3-12, 14, and 16 over the cited prior

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art. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“[D]ependent claims are nonobvious if the independent claims from which they depend are nonobvious.”).

DECISION

We affirm the Examiner’s § 103(a) rejection of claim 17.

We reverse the Examiner’s § 103(a) rejections of claims 1, 3-12, 14, and 16.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1) (2011).

AFFIRMED-IN-PART

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