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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAMELA L. MCKISSICK, WILLIAM L. THOMAS, MICHAEL D. ELLIS, MARK A. REGOUBY, and JOEL G. HASSELL

Appeal 2011-001009
Application 11/408,747
Technology Center 2400

Before MAHSHID D. SAADAT, DENISE M. POTHIER, and JEFFREY S. SMITH, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-30, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Representative Claim

1. A method for purchasing gifts using an interactive application, the method comprising:

allowing a user to select a program to purchase as a gift for a recipient using the interactive application, wherein the recipient is different from the user;

allowing the user to provide information for purchasing the program as the gift using the interactive application; and

providing the program as the gift to the recipient.

Prior Art

Toga	US 6,757,711 B2	Jun. 29, 2004
Storey	US 2008/0109308 A1	May 8, 2008 (filed Dec. 14, 1995)

Examiner's Rejections

Claims 1-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Storey and Toga.

ANALYSIS

Appellants contend that the term "program" recited in claim 1 includes something more than audio and video data, and that the combination of Storey and Toga does not teach a program. Reply Br. 5-9. The Examiner finds that the term "program" encompasses a baseball program, a computer program, and video data. Ans. 10-11. The Examiner further finds that Toga teaches video data. Ans. 11. Appellants have not provided a definition of "program" that excludes the video data taught by Toga. We agree with the Examiner that the combination of Storey and Toga teaches a "program[1]" within the meaning of claim 1.

Appellants contend that neither Storey nor Toga teaches purchasing and providing a program as a gift. App. Br. 4; Reply Br. 10-11. The Examiner finds that Storey teaches purchasing and providing a gift certificate as a gift to a recipient, and Toga teaches providing video data to a recipient. The Examiner concludes that the combination of Storey and Toga teaches purchasing and providing a program as a gift to a recipient. Ans. 6, 11. We agree with the Examiner. One cannot show non-obviousness by attacking references individually, where the rejections are based on

[1] The "program" does not affect any steps or structural limitations recited in the method of claim 1. The method of claim 1 remains the same regardless of the type of data or item represented by the word "program." The "program" is a non-functional description of data provided to a recipient, such that the scope of claim 1 encompasses "providing [data] as the gift to the recipient." *See In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004). *Cf. In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983). *See also Ex parte Nehls*, 88 USPQ2d 1883, 1887-90 (BPAI 2008) (precedential).

combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Appellants contend that one skilled in the art would not combine the teachings of Storey and Toga. In particular, Appellants contend that modifying the purchase of a gift certificate as taught by Storey with the teaching of a destination address for a requested file as taught by Toga would render Storey unsatisfactory for its intended purpose of allowing the recipient to purchase a gift of his or her choice. App. Br. 5. The intended purpose of Storey is enabling a customer to order a product online (Abstract; ¶ 16), such as a gift sent to another user (¶¶ 46-48). Toga teaches video data sent to a user. Col. 5, ll. 5-35. Appellants have not provided persuasive evidence or argument to show that sending the video data taught by Toga as a gift to a recipient as taught by Storey was "uniquely challenging or difficult for one of ordinary skill in the art." *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 419 (2007)).

DECISION

The rejection of claims 1-30 under 35 U.S.C. § 103(a) as being unpatentable over Storey and Toga 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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

rwk