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WARREN A. SKLAR (SOER)			HEWITT II, CALVIN L	
RENNER, OTTO, BOISSELLE & SKLAR, LLP			ART UNIT	PAPER NUMBER
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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE PATENT TRIAL AND APPEAL BOARD

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7 *Ex parte* STEFAN ANDERSSON

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10 Appeal 2011-003443
11 Application 11/340,890
12 Technology Center 3600
13 _____

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16 Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and
17 MEREDITH C. PETRAVICK, *Administrative Patent Judges*.

18
19 FETTING, *Administrative Patent Judge*.

20
21 DECISION ON APPEAL

1 *Narin*

2 02. Narin is directed to a digital license for allowing rendering of
3 digital content. Such a digital license has referral information
4 where the digital license is tied to a first computing device or
5 persona and not a second computing device or persona, where the
6 digital license if resident on the second computing device employs
7 the referral information in response to an attempt to render the
8 digital content on such second computing device, and where the
9 employed referral information points to a licensing site that can
10 provide for the digital content a digital license tied to the second
11 computing device. Narin para. [0001].

12 03. Since the retailer can specify the referral information including
13 any specific URL, such retailer can include within such URL an
14 ID that identifies User A for purposes of the bounty program. If
15 User B obtains the tied license, the retailer can also decide
16 whether *such tied license also includes as referral information the*
17 *ID for User A, the ID for User B, or both*, with regard to the
18 bounty program or any other program. Narin para. [0046].

19 *Khedouri*

20 04. Khedouri is directed to digital audio and video player devices
21 that are preferably portable and receive content either from a
22 secure subscription-based or "a-la-carte" content delivery service
23 or from other participant devices, and more particularly to a
24 portable player apparatus that is in wireless communications with
25 an Internet-based file server and laterally to a peer player

1 apparatus, and to delivery and management of such content to
2 such devices. Khedouri para. [0003].

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ANALYSIS

5 *Claims 1, 3-10, and 12-18 rejected under 35 U.S.C. § 103(a) as*
6 *unpatentable over Narin and Khedouri.*
7 *Claim 3 rejected under 35 U.S.C. § 103(a) as unpatentable over Narin,*
8 *Khedouri, and Kurose.*

9

10 Appellant argues claims 1 and 4 separately. The remaining claims are
11 argued on the basis of claim 1.

12 The sole issue argued as to claim 1 is whether the phrase “said identifier
13 indicative of a number of times the media content has been streamed
14 between electronic devices” in limitation [2] requires that the identifier be an
15 actual number whose value is that of the number of times streamed.
16 Examiner found Narin para. [0046] described this because Narin’s referral
17 information indicated whether the number of times exceeded zero or one.

18 We are not persuaded by the Appellant’s argument that the art fails to
19 describe the claimed number and that the claim has been misconstrued.

20 Appeal Br. 9-14. We agree with Examiner that

21 [i]n essence, Applicant argues that the Examiner's use of
22 referral info 18 for the limitation of an "identifier" is improper
23 because it is not a number. Claim 1 recites: "identifier
24 indicative of a number of times the media content has been
25 streamed " Claim 1 does not actually claim a **number** - it
26 claims an identifier which **indicates** a number. Narin, at [0046],
27 recites that a "retailer can also decide whether such tied license
28 16 also includes as referral information 18 the ID for User A,
29 the ID for User B, or both." If a content has been streamed from
30 User A to User B, the license that User B receives will contain
31 User A's identification. This identification indicates to User B
32 that one user previously possessed the content and license

1 before it was transferred to User B. Because one user
2 previously possessed the content, and User B now possesses the
3 content, the identification indicates that the content was
4 transferred one (1) time. Therefore, referral info 18 is an
5 "identifier indicative of a number of times the media content
6 has been streamed." The Examiner has shown that the claim
7 language indicates an "identifier indicative of a number," and
8 has further shown that the referral info 18 meets that claim
9 limitation.

10
11 Ans. 17-18. Examiner is correct that the issue is not the nature of the
12 number, but the breadth of the term "indicative of." The claim does not
13 narrow the manner in which such indication occurs, and certainly does not
14 narrow the indicator to being the number itself. Thus, whether the
15 Specification shows using an actual numeric value is not at issue given
16 Appellant's choice to broaden the scope with the "indicative of" construct.

17 We are not persuaded by the Appellant's argument that
18 since it is highly likely a significant number of people will not
19 take part in such bounty program, the referral information
20 cannot reliably be processed to indicate the number of times
21 media content has been transferred or streamed between
22 electronic devices.

23
24 Appeal Br. 15.

25 As the Examiner found

26 [t]his argument is moot because "[processing]" an identifier is
27 not recited in the claims. Claim 1 only recites encoding a media
28 content with an identifier.

29
30 Ans. 21.

31 We adopt the remaining Examiner's analysis from Answer 15-21 as to
32 Appellant's arguments in support of claim 1 and reach the same legal
33 conclusion that the rejection is proper.

1 As to claim 4, we are not persuaded by the Appellant's argument that

2 [a]s used in the present specification, the term "medium" refers
3 to the "conduit" by which the content is transferred from one
4 device to another device. Properly construed, a "medium"
5 cannot reasonably be said to be a first entity (i.e., a user or
6 user's device in the context of Narin). Thus, the Examiner's
7 reliance on the "first entity" as set forth in Narin as being a first
8 medium is incorrect.

9

10 Appeal Br. 18.

11 As the Examiner found,

12 . . . even if Applicant is able to insert language from the
13 specification into the claims without actually reciting the
14 language from the specification, Applicant's specification is
15 broad enough so that Narin's "first entity" is equivalent to
16 Applicant's claimed "first medium." Applicant's specification,
17 at [0042], states that "the distribution medium 38 can be . . . **any**
18 **other** medium that can be used to view and/or exchange data"
19 (emphasis added). This is an open ended recitation of the
20 limitations of the "distribution medium" - anything that "can be
21 used to view and/or exchange data" can function as a
22 "distribution medium".

23 Narin's "first entity" transmits the content 10 to the
24 "second entity" (see figure 3, step 303). As such, Narin's "first
25 entity" acts as a medium that exchanges data with the second
26 entity. Because Narin's "first entity" acts as a medium that
27 exchanges data with the second entity, the Examiner's usage of
28 Narin's "first entity" as the "medium" in the claims is proper.

29

30 Ans. 22.

31 *Claims 2, 11, 32, and 34 rejected under 35 U.S.C. § 103(a) as unpatentable*
32 *over Narin, Khedouri, and Admitted Prior Art.*

33

34 As to claims 11 and 32 denying a license, we are persuaded by the
35 Appellant's argument that

1 on its face the referral information (i.e., the alleged identifier
2 indicative of the number of times media content has been
3 transferred or streamed) does not indicate the number of times
4 media content has been streamed or transferred. Instead,
5 additional processing is required (which is not discussed or
6 suggested in Narin). Nevertheless, assuming one could
7 "process" the referral information to determine the number of
8 times the content has been streamed, there is no reasonable
9 basis to do so.

10

11 Appeal Br. 20. Examiner forgets that he explicitly argued that a number
12 per se was unnecessary in the parent claim, so he cannot rely on that number
13 in the dependent claim.

14 As to claim 34, we agree with Examiner that mobile phones for
15 computer applications were so notoriously well-known they were clearly
16 predictable. Whether the art explicitly recites using such phones to stream is
17 not at issue as the streaming itself is already shown by the art of the parent
18 claim rejection. Claim 2 is not separately argued.

19

20

CONCLUSIONS OF LAW

21 The rejection of claims 1, 3-10, and 12-18 under 35 U.S.C. § 103(a) as
22 unpatentable over Narin and Khedouri is proper.

23 The rejection of claim 3 under 35 U.S.C. § 103(a) as unpatentable over
24 Narin, Khedouri, and Kurose is proper.

25 The rejection of claims 2 and 34 under 35 U.S.C. § 103(a) as
26 unpatentable over Narin, Khedouri, and Admitted Prior Art is proper.

27 The rejection of claims 11 and 32 under 35 U.S.C. § 103(a) as
28 unpatentable over Narin, Khedouri, and Admitted Prior Art is improper.

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DECISION

The rejection of claims 1-10, 12-18, and 34 is affirmed.

The rejection of claims 11 and 32 is reversed.

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)(iv) (2011).

AFFIRMED-IN-PART

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