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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SCOTT L. VANCE and DAVID W. BENT JR.

Appeal 2011-007084
Application 11/018,519
Technology Center 2400

Before MARC S. HOFF, CARLA M. KRIVAK, and
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-39. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

Appellants' claimed invention is directed to a method of providing movie information by broadcasting movie previews in an order customized according to priority information associated with a movie provider (Spec. 2: 2-4).

Claim 1 reproduced below is exemplary of the subject matter on appeal.

1. A method of providing movie information comprising broadcasting movie previews in an order customized according to priority information associated with a movie provider, the broadcasting being performed by a movie information provision device.

REFERENCES and REJECTIONS

The Examiner rejected claims 1-5, 7-12, 15-19, 21-26, 29, 30, 32, 34, 35, 37, and 39 under 35 U.S.C. § 103(a) as being unpatentable over Avnet (US Patent Application Publication No. 2002/0094787 A1, published Jul. 18, 2002) in view of McCoy (US Patent No. 6,526,575 B1, issued Feb. 25, 2003).

The Examiner rejected claims 6, 13, 14, 20, 27, 28, 31, and 38 under 35 U.S.C. § 103(a) as being unpatentable over Avnet and Deas (US Patent No. 7,346,549 B2, issued Mar. 18, 2008).

The Examiner rejected claims 33 and 36 under 35 U.S.C. § 103(a) as being unpatentable over Avnet in view of McCoy and further in view of Moore (US Patent No. 7,584,269 B2, issued Sept. 1, 2009).

ISSUE

The issue is whether the combination of Avnet and McCoy teaches a method including broadcasting movie previews with “an order customized according to priority information associated with a movie provider” as recited in independent claim 1.

PRINCIPLES OF LAW

To teach away, prior art must “criticize, discredit, or otherwise discourage the solution claimed.” *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

ANALYSIS

Appellants argue that Avnet does not teach the limitation of broadcasting movie previews in “an order customized according to priority information associated with a movie provider” (App. Br. 5) and that there is no motivation to combine Avnet with McCoy (App.Br. 6).

We do not agree. The Examiner finds, and we agree, that Avnet teaches broadcasting time sensitive information, like an advertisement for a movie showing in a certain theater in the next couple of hours, thereby suggesting that this information is transmitted according to priority

information associated with the theater or movie provider (Ans. 17, ¶ [0011]). Avnet further teaches that the data can be altered and manually controlled by control signals by reference to time and day or by reference to environmental conditions (Ans. 16-17; ¶ [0025]). Thus, Avnet teaches broadcasting in an order customized according to priority information associated with a movie provider. That is, because the data transmitted by the Electronic Bill Board (EBB) can be manually altered based on time and day or environmental conditions, the data is customized before transmission (Ans. 16-17). Avnet further teaches a network controller which transmits a predetermined schedule (Ans. 18, ¶ [0026]), thus suggesting an order customized by the movie provider.

The Examiner relied upon McCoy for an explicit teaching of the customized order according to priority information (Ans. 18-21). The Examiner explains that McCoy provides examples of priority information by a movie provider, wherein the schedule of titles is reorganized according to *priority* given to certain titles based on the success of given movies (Ans. 15; col. 9, ll. 23-37) or events that are occurring within 4 hours (Ans. 15, 20; col. 12, ll. 4-11), or “up- next” in the line-up for events that start within a certain time period (Ans. 20; col. 14, l. 60-col. 15, l. 3).

We also disagree with Appellants’ argument that the Examiner improperly used their disclosure as a roadmap for combining Avnet with McCoy (App. Br. 6-7). The motivation to combine was based on McCoy’s teaching to generate sequences of multimedia that are broadcast from the provider to viewers, wherein the display of the multimedia is customized by each downlink facility in order *to better inform and entertain viewers* (Abstract and col. 2, lines 48-67).

We further disagree with Appellants' contention that Avnet and McCoy constitute unrelated art (App. Br. 8). Both references are in the field of movie broadcasting.

We also do not agree that McCoy teaches against the use of a display on a handheld device, as taught by Avnet (App. Br. 8). To teach away, prior art must "criticize, discredit, or otherwise discourage the solution claimed." *See Fulton*, 391 F.3d at 1201. Appellants have not identified a teaching in McCoy that discredits or criticizes the use of a movie broadcast to a handheld device. Appellants did not provide any evidentiary support for their assertion that sophistication of screen displays is undesirable or not feasible on portable electronic devices.

Accordingly, we affirm the Examiner's rejection of claim 1, and also the rejection of claims 2-39 for the same reasons as stated *supra*.

CONCLUSION

The Examiner did not err in finding the combination of Avnet and McCoy teaches broadcasting movie previews with "an order customized according to priority information associated with a movie provider" as recited in independent claim 1.

DECISION

The Examiner's decision rejecting claims 1-39 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) (2010).

AFFIRMED

rwk