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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JIN-WOO JUNG

Appeal 2011-012463
Application 11/698,804
Technology Center 2400

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

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1-9. (App. Br. 2). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellant's claimed invention "relates to an image communication terminal, and more particularly to an image communication terminal for providing superior image communications and a method of processing image communication data in the image communication terminal." (Spec 1:16-19).

Independent claim 1, reproduced below, is representative of the subject matter on appeal.

1. An image communication terminal, comprising:

a main processor for performing a control operation in accordance with image communications, decoding an inputted video data from a modem processor in the image communications, outputting the decoded video data to a display, and encoding a video data from images photographed through a camera and outputting the encoded video data to the modem processor; and

the modem processor for processing data in accordance with radio communications, dividing image communication data received from a communication network in the image communications into video and audio data, outputting the divided video data to the main processor, decoding the divided audio data and outputting the decoded audio data to a speaker, and encoding audio signals inputted from a microphone and combining the encoded audio signal with the encoded video data inputted from the main processor to transmit the combined audio signals and video data to the communication network,

wherein the main processor is distinct from the modem processor

REFERENCES and REJECTIONS

The Examiner rejected claims 1, 2, 4-6, 8, and 9 under 35 U.S.C.

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§ 103(a) based upon the teachings of Strandwitz (US Patent No.: US 6,522,352 B1) and Lee (US Patent Application Publication No. US 2003/0117585 A1). (Ans. 4-10).

The Examiner rejected claims 3 and 7 under 35 U.S.C. § 103(a) based upon the teachings of Strandwitz, Lee, and further in view of Rasanen (US Patent Application Publication No. US 2004/0028037 A1). (Ans. 10-12).

ANALYSIS

Appellant's arguments generally consist of repeating the Examiner's basic proposition, repeating the language of the claim, and addressing the teachings of each reference in a paragraph and then concluding that the combination does not teach:

the combination of *Strandwitz* and *Lee* may teach the use of two processors, one having a communications controller, and another having encoding/decoding modules for video, still images and audio. The combination of *Strandwitz* and *Lee* fails to teach or suggest a first processor that encodes/decodes video data and a second processor that both encodes/decodes audio data and processes data for radio communications, as recited in Claim 1. Specifically, the combination of *Strandwitz* and *Lee* fails to disclose a first processor that outputs decoded video data to a display and encoded video data to a second processor, and the second processor that outputs decoded audio data to a speaker and encoded video data to the first processor, as recited in Claim 1. Therefore, Claim 1 is patentable over the combination of *Strandwitz* and *Lee*.

(App. Br. 6-7). We find the functions and processing to be taught by the combined teachings of the two prior art references. Appellant has identified no unpredictable results from the mere placement of the various processors

and the labels attached thereto. Therefore, Appellant's argument is not persuasive of error in the Examiner's conclusion of obviousness.

The Supreme Court guides that "when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007) (citation omitted).

A claimed modification to the prior art may be obvious if the claimed structure performs the same function as in the prior art and it presents no novel or unexpected result over the prior art. *See In re Kuhle*, 526 F.2d 553, 555 (CCPA 1975) (use of claimed feature solves no stated problem and presents no unexpected result and "would be an obvious matter of design choice within the skill of the art") (citations omitted). However, when the claimed structure performs differently from the prior art, a finding of obvious design choice is precluded. *In re Gal*, 980 F.2d 717, 719 (Fed. Cir. 1992) (finding of obvious design choice precluded when claimed structure and the function it performs are different from the prior art). Here, Appellant has not identified that the claimed structure performs different functions than in the prior art. Therefore, Appellant's mere arguments that the functions are located/performed in a different processor are unpersuasive of error in the Examiner's conclusion of obviousness.

The Supreme Court has provided clear guidance that "when a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, the combination is obvious." *KSR*, 550 U.S. at 417 (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)). "Common

sense teaches . . . that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle." *Id.* at 420. Moreover, "the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.* at 418. This reasoning is applicable here. Thus, on this record, we are not persuaded of error regarding the Examiner's proffered reason for combining the cited references.

We find that the claimed invention is no more than a simple arrangement of old elements with each performing the same function it had been known to perform, yielding no more than one would expect from such an arrangement. *KSR*, 550 U.S. at 416. The skilled artisan would "be able to fit the teachings of multiple patents together like pieces of a puzzle" since the skilled artisan is "a person of ordinary creativity, not an automaton." *Id.* at 420-21. As stated by the Supreme Court, "[an obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.* at 418. *See also DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1368 (Fed. Cir. 2006).

With respect to independent claim 1, the Examiner in the responsive arguments identifies that the labels attached to the two processors is broad and that the claims must be given their broadest reasonable interpretation. (Ans. 12-15) (citations omitted). We agree with the Examiner and find that the Appellant has not identified functions which are not taught or suggested

in the prior art teachings, but that the functions are performed by a different labeled processor. We find such arguments to be unpersuasive of error in the Examiner's conclusion of obviousness. We further find that the prior art references clearly recognize multiple processors to process the functions of audio and video and outputting the processed signals.

Appellant's Reply Brief essentially repeats the same arguments set forth in the Appeal Brief which copy the claim language and maintain that the prior art fails to teach or suggest the claimed invention. (Reply Br. 1-5). We find Appellant's arguments to be unpersuasive of error in the Examiner's conclusion of obviousness. Attorney's arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984). "Argument in the brief does not take the place of evidence in the record." *In re Schulze*, 346 F.2d 600, 602 (CCPA 1965) (*citing In re Cole*, 326 F.2d 769, 773 (CCPA 1964)). For these reasons, we find Appellant's unsupported combinability argument unavailing.

We find the Examiner's interpretation and discussion of the prior art references and the claimed invention to be reasonable with respect to independent claim 1.

With respect to independent claim 8, Appellant relies upon the arguments advanced with respect to independent claim 1. (App. Br. 7). Since we found Appellant's arguments unpersuasive with respect to independent claim 1, we find the same arguments to be unpersuasive with respect to independent claim 8.

With respect to dependent claim 4, Appellant relies upon the arguments advanced with respect to independent claim 1 and further contends that the Lee reference "fails to disclose that a host processor comprises a multiplexor and an audio processor." (App. Br. 8). For similar reasons, we find Appellant's proffered distinction to be unavailing. We find the functions and processing to be taught and fairly suggested by the combined teachings of the two prior art references, and we find no unpredictable results from the mere placement of the various processors and the labels attached thereto. We find Appellant's arguments to be unpersuasive with respect to dependent claim 4.

With respect to dependent claims 5 and 9, Appellant relies upon the arguments advanced with respect to independent claims 1 and 8. (App. Br. 9). Since we found those arguments unpersuasive with respect to independent claims 1 and 8, we similarly find those arguments unpersuasive with respect to dependent claims 5 and 9. Appellant further contends that the Lee reference "fails to provide any disclosure indicating that the host processor outputs decoded audio data while synchronizing it with decoded video data, as recited in Claims 5 and 9." (*Id.*). While we agree with Appellant that the prior art references do not expressly detail the function of synchronizing, we agree with the Examiner's finding that synchronization between the audio and the video would be rather desirable in output multimedia presentations and since the prior art references clearly evidence the separation and processing of the two types of media: the references would clearly evidence a desire to be able to reproduce a synchronized output. (*See* Ans. 17-18). Therefore, we find Appellant's general argument to be unpersuasive of error in the Examiner's conclusion of obviousness.

With respect to dependent claim 6, Appellant relies upon the arguments advanced with respect to independent claim 1, which we found unpersuasive. (App. Br. 9-10). Appellant specifically contends that:

the combination of *Strandwitz* and *Lee* fails to disclose that the main processor outputs uplink and downlink initialization signals, an image communication level synchronous signals, uplink and downlink configuration signals, and uplink and downlink end signals to the modem processor, as recited in Claim 6. The combination also fails to disclose that the modem processor synchronizes and image communication level to output a synchronous end signal to the main processor when the image communication synchronous level is input, as recited in claim 6.

(*Id.* at 10). Appellant's argument essentially repeats the language of the claim without providing any persuasive showing as to why the prior art combination does not teach or suggest the claimed invention. We find the arguments to be unpersuasive with respect to dependent claim 6.

With respect to dependent claim 2, Appellant relies upon the arguments advanced with respect to independent claim 1. (App. Br. 10). Since we found Appellant's arguments unpersuasive with respect to independent claim 1, we find the same arguments to be unpersuasive with respect to dependent claim 2.

With respect to dependent claims 3 and 7, Appellant relies upon the arguments advanced with respect to independent claim 1. (App. Br. 11). Appellant further contends that *Rasanen* "fails to provide any disclosure that remedies the deficiencies of *Strandwitz* and *Lee* described above with respect to independent Claim 1." Since we found Appellant's arguments unpersuasive with respect to independent claim 1, we find the same arguments to be unpersuasive with respect to dependent claims 3 and 7.

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CONCLUSION

The Examiner did not err in rejecting claims 1-9 as obvious under 35 U.S.C. § 103.

DECISION

The Examiner's decision rejecting claims 1-9 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).

AFFIRMED

pgc/llw