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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CIPRIAN AGAPI, VANESSA V. MICHELINI,
and WALLACE J. SADOWSKI

Appeal 2012-008262
Application 10/744,254
Technology Center 2600

Before CAROLYN D. THOMAS, ELENI MANTIS MERCADER, and
CARL W. WHITEHEAD, Jr., *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 a final rejection of claim 12.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

Appellants' claimed invention is directed to automated local weather reports (Spec. ¶ [0006]).

Claim 12, reproduced below, is the subject matter on appeal.

12. A computer-readable storage medium storing a computer program which when executed performs a method for providing localized content to a wireless communication device comprising:

determining the location of a wireless communication device; and

transmitting content related to the location of the wireless communication device to the wireless communication device, wherein content is repeatedly transmitted to the wireless communication device continuously while the communication device is within a geographic area associated with the particular transmitter.

¹ The Examiner withdrew the 35 U.S.C § 112, first paragraph rejection of claims 2-7, 9, 10, and 12 (Ans. 3). Accordingly, the rejection is not before us for review.

THE REJECTION

The Examiner rejected claim 12 under 35 U.S.C. § 101.

THE ISSUE

The issue is whether the Examiner erred in finding that the “computer readable storage medium,” as recited in claim 12, encompasses transitory propagating signals *per se* which constitute non-statutory subject matter.

ANALYSIS

Appellants argue that their Specification at paragraph [0022] distinguishes between a propagation medium and a storage medium (Br. 8). Appellants explain that paragraph [0022] describes the medium as being “electronic, magnetic, optical, electromagnetic, infrared, or semiconductor system (or apparatus or device) or a propagation medium” (Br. 8). Appellants further assert that Appellants’ Specification distinguishes a propagation medium from a non-exhaustive list of storage media because paragraph [0022] recites storage media including a magnetic disk and an optical disk, such as a compact disk (CD-ROM) and DVD (Br. 9).

We do not agree with Appellants’ arguments. At the outset we note that from the record before us paragraph [0022] states:

A typical combination of hardware and software could be a general purpose computer system with a computer program that, when being loaded and executed, controls the computer system such that it carries out the methods described herein.

The present invention can also be embedded in a computer program product, which comprises all the features enabling the implementation of the methods described herein, and which, when loaded in a computer system is able to carry out these methods.

¶ [0022].

Accordingly, we see no distinction between a storage medium and a transitory signal in Appellants' Specification.

To determine whether the claims are directed to patentable subject matter, we give the claims their broadest reasonable interpretation. *See In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989). Appellants' Specification is silent as to a definition of "computer readable storage medium."

Thus, on the record before us, we broadly but reasonably interpret the "computer readable storage medium" as any medium having program instructions, including a transitory propagating signal. That is, because Appellants' Specification does not expressly exclude transitory signals from the computer-readable storage medium, we give "computer-readable storage medium" its broadest reasonable interpretation as covering both forms of non-transitory tangible media and transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media.

Our reviewing court has held that "[a] transitory, propagating signal [however] . . . is not a 'process, machine, manufacture, or composition of matter.' [These] four categories define the explicit scope and reach of subject matter patentable under 35 U.S.C. § 101; thus, such a signal cannot be patentable subject matter." *In re Nuijten*, 500 F.3d 1346, 1357 (Fed. Cir. 2007). Specifically, signals are "unpatentable . . . as failing a tangibility requirement to be 'manufactures'" because they are not "tangible medi[a]." *Id.* at 1366 (emphasis added).

Furthermore, contrary to Appellants' argument that a "storage medium" cannot be a signal (Br. 6), we agree with the Examiner's provided

evidentiary support that a signal carrier wave can store/contain information which can be transmitted between different entities (Ans. 6).

Thus, the broadest reasonable interpretation of claim 12 covers a signal *per se*. Accordingly, we see no error in the rejection of the claim under 35 U.S.C. § 101 as covering non-statutory subject matter. *In re Nuijten*, 500 F.3d at 1356-57 (transitory embodiments are not directed to statutory subject matter).

Therefore, we affirm the Examiner's rejection of independent claim 12 under 35 U.S.C. § 101 as being directed to nonstatutory subject matter.

CONCLUSION

The Examiner did not err in finding that the "computer-readable storage medium", as recited in claim 12, encompasses transitory propagating signals *per se* which constitute non-statutory subject matter.

DECISION

The Examiner's decision rejecting claim 12 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