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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* HISAO CHANG, MARK HUBSCHER, and  
CARLTON LIGAR BROWN

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Appeal 2012-008857  
Application 11/751,445<sup>1</sup>  
Technology Center 2400

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Before JASON V. MORGAN, MICHAEL J. STRAUSS, and  
CARL L. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 6–20 and 35–43. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> The real party in interest is AT&T Intellectual Property I, LP. (App. Br. 2).

## STATEMENT OF THE CASE

Appellants' invention relates to methods and apparatus for communicating through a multi-fidelity gateway. Spec., Abstract, 24. Claim 6 is exemplary of the matter on appeal:

6. A method comprising:
  - identifying audio fidelity information associated with a source of a voice communication received at a multi-fidelity audio gateway of a media system; and
  - selecting, at the multi-fidelity audio gateway, an audio presentation device from a plurality of audio presentation devices of the media system to present the voice communication to a user based on the identified fidelity information associated with the source of the voice communication.

App. Br., Appendix A, 23.

## THE REJECTIONS

Claims 40–43 stand rejected under 35 U.S.C. § 101.

Claims 6–20 and 35–43 stand rejected under 35 U.S.C. § 103(a) over Benditovich (U.S. Publication No. 2007/0025338 A1) in view of Kawano (U.S. Patent 6,201,490 B1).

## ANALYSIS

*The 35 U.S.C. § 101 rejection of claims 40–43*

We are persuaded of error by the Examiner by Appellants' argument that the phrase “tangible article of manufacture . . .” does not claim a transitory signal and is statutory subject matter. We agree with the Examiner that a transitory media does not fall within one of the four categories of invention. Ans. 5–6. A key reason why transitory media are

non-statutory is they are not articles of manufacture. *See In re Nuijten*, 500 F. 3d 1346, 1356–57 (Fed. Cir. 2007). However, the claims expressly recite and are thereby limited to “[an] article of manufacture.” Because the claimed invention is directed to an article of manufacture, the claimed invention does not encompass transitory media. Therefore, we agree with Appellants that the Examiner does not persuasively show that the claims are unpatentable as being directed to non-statutory subject matter. App. Br. 9, Reply 2–3.

Therefore, we do not sustain the rejection of claims 40–43 under 35 U.S.C. § 101.

*The 35 U.S.C. § 103(a) rejection of claim 6*

The Examiner finds that Benditovich, at paragraphs 53–57, teaches or suggests the limitation “identifying . . .” but is silent as to using the call *fidelity* in deciding the device to which the communication is forwarded. The Examiner cites Kawano, column 2, ll. 32–34, as teaching or suggesting selecting data streams based on the signal quality of the input data. The Examiner concludes it would have been obvious to combine the quality-based selector of Kawano with the Benditovich gateway in order to take advantage of the higher quality communication by ensuring it is heard through high-end speakers. Ans. 6–7.

We are not persuaded of Examiner error by Appellants’ argument that the combination of Benditovich and Kawano does not teach selecting an audio presentation device based on fidelity information associated with a source of a voice communication. According to Appellants, Kawano

teaches a digital-to-analog converter that selects an output stream of a converter to form an output and does not select an audio presentation device based on fidelity information associated with a source of voice communication. App. Br. 13–14.

In response, the Examiner finds that Benditovich teaches, at paragraphs 53–57, selecting an attached handset of a phone on a network to which a call is forwarded and that Kawano, at column 2, lines 32–34, discloses selecting a data stream based on the signal quality, and this is a fidelity-based selection. Ans. 6, 13. The Kawano teaching would have allowed Benditovich to select handsets, which are audio presentation devices, to forward calls based on the fidelity of a stream of the call. Ans. 6–7, 13. Further, the Examiner finds motivation to combine the teachings to take advantage of higher quality audio by matching it with high quality speakers with low distortion. Ans. 7, 13.

A claim in a patent application is given the broadest reasonable interpretation consistent with the Specification, as understood by one of ordinary skill in the art. *In re Crish*, 393 F.3d 1253, 1256 (Fed. Cir. 2004). Great care should be taken to avoid reading limitations of the Specification into the claims. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

Applying a reasonably broad interpretation, consistent with the Specification, of the disputed limitation of claim 6, we agree with the Examiner’s finding that the term “fidelity” includes quality of signal, as in Kawano. *See* Ans. 6, 13. We also agree with the Examiner’s finding that Benditovich selects handsets and that Kawano selects data streams based on

quality. *See id.* Therefore, the combination teaches selecting an audio presentation device based on fidelity information associated with a source of a voice communication.

We also are not persuaded of error by the Examiner by Appellants' argument that the combination of Beditovich and Kawano does not teach selecting, at a gateway, an audio presentation device of the media system to present a voice communication to a user. App. Br. 14–16. According to Appellants, Beditovich serves as a bridge to a call already selected by the originating party. *Id.* Appellants argue Kawano does not cure the alleged deficiency of Beditovich because selecting an output stream of a DAC is not a selection of an audio presentation device. *Id.*

In response, the Examiner finds:

Beditovich disclosed an exemplary gateway ([0053]–[0057]). In this disclosure Beditovich explicitly states that a user may pick up the VoIP call and forward it to a specified PSTN number ([0056]). Here, it is demonstrated that the forwarding selection is done at the bridge itself when the call is received, rather than just following a pre-selected forwarding address. Further, the PSTN telephone number is always matched to an end device, such as handsets, softphones, or speakers, which are media systems. Ergo, Beditovich disclosed selecting at a gateway, an audio presentation device of a media system.

Ans. 14.

We find the Examiner's explanation to be reasonable and supported by the cited portions of Beditovich. We therefore agree with the Examiner's finding that Beditovich teaches selecting, at a gateway (bridge) of a media system (handsets, softphones, and speaker are media devices) to

present a voice communication to a user (forwarding call when received).  
Ans. 14.

In view of the above, we sustain the rejection of claim 6, and its dependent claims 7–11, 35, and 36 as these claims were not separately argued.

*The 35 U.S.C. § 103(a) rejection of claim 12*

Claim 12 (system) is similar to claim 6 (method) and Appellants rely on similar arguments. Therefore, for similar reasons, we sustain the rejection of claim 12 and its dependent claims, claims 13–20, as these claims were not separately argued.

*The 35 U.S.C. § 103(a) rejection of claim 37*

Independent claim 37 is similar to claims 6 and 12 and recites a selector to select an audio presentation device from a plurality of audio presentation devices based on fidelity information associated with a source of voice communication. Appellants rely on similar arguments to those presented in connection with claim 6.

Therefore, we sustain the rejection of claim 37 and its dependent claims, claims 38–39, as these claims were not separately argued.

*The 35 U.S.C. § 103(a) rejection of claim 40*

Independent claim 40 is similar to claim 6 and recites a “tangible article of manufacture having instructions stored thereon . . . .” Appellants rely on similar arguments. Therefore, we sustain the rejection of claim 40

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and its dependent claims, claims 41–43, as these claims were not separately argued.

#### DECISION

The Examiner’s decision rejecting claims 40–43 under 35 U.S.C. § 101 is REVERSED.

The Examiner’s decision rejecting claims 6–20 and 35–43 under 35 U.S.C. § 103(a) 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. § 1.136(a)(1)(iv).

AFFIRMED

gvw