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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte OSAMA AL-SHAYKH, RICK SCHWARTZ, RALPH NEFF, MAGDALENA LEUCA ESPELIEN, and GREG SHERWOOD

Appeal 2013-001008
Application 12/459,090
Technology Center 2100

Before JEAN R. HOMERE, CATHERINE SHIANG, and DANIEL J. GALLIGAN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants[1] seek our review under 35 U.S.C. § 134(a) of the Examiner's rejection of claims 1–27 and 29–34. We have jurisdiction under 35 U.S.C. § 6(b). Claim 28 has been canceled. App. Br. 2.

We AFFIRM IN PART.[2]

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[1] The Appeal Brief identifies PacketVideo Corp. as the real party in interest. App. Br. 1. On January 19, 2015, Appellants filed a statement under 37 C.F.R. § 3.73(b) showing an assignment from PacketVideo Corp. to III Holdings 2, LLC.

[2] Our Decision refers to Appellants' Appeal Brief filed June 4, 2012 ("App. Br."); Appellants' Reply Brief filed October 16, 2012 ("Reply Br."); Examiner's Answer mailed August 16, 2012 ("Ans."); Final Office Action

STATEMENT OF THE CASE

Claims on Appeal

Claims 1, 16, and 21 are independent claims. Claim 1 is reproduced below:

> 1. A method for rendering internet multimedia content in a network connected to the internet wherein a rendering device is connected to the network, the method comprising the steps of:
>
> retrieving a first webpage from a remote content source via the internet wherein a first device connected to the network retrieves the first webpage from the remote content source and further wherein the first device is a different device than the rendering device;
>
> displaying the first webpage in a user interface provided by the first device wherein the first webpage provides access to the internet multimedia content;
>
> retrieving the internet multimedia content from the internet using the network wherein the internet multimedia content is retrieved from the internet based on user input accepted by the user interface provided by the first device;
>
> transmitting the internet multimedia content to the rendering device; and
>
> rendering the internet multimedia content on the rendering device wherein rendering by the rendering device is controlled by the first device.

The prior art relied upon by the Examiner in rejecting the claims on appeal:

Gran et al. (hereinafter "Gran")	US 2010/0095332 A1	Apr. 15, 2010

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mailed December 22, 2011 ("Final Act."); and original Specification filed June 26, 2009 ("Spec.").

Examiner's Rejection

Claims 1–27 and 29–34 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Gran. Final Act. 12–21.

ANALYSIS

Independent Claims 1 and 16

Appellants advance similar arguments with respect to claims 1 and 16. In particular, Appellants argue claims 1 and 16 are not anticipated because Gran does not disclose displaying a web page in the user interface of the first device as required by claim 1. App. Br. 15–18, 43–46; Reply Br. 2–6, 22–23. Appellants further argue Gran does not disclose retrieving internet multimedia content from the internet. App. Br. 44–45.

The Examiner found Gran discloses the control element 100 in Figure 4 gives the user control over content rendering. Ans. 4. Gran explains this is accomplished through a control interface, depicted in Figure 4:

> A first mobile device **141**, a second mobile device **142** and/or a third mobile device **143** (collectively "the mobile devices **141**, **142**, **143**") may be connected to the control element **100** by a first exposed control interface **151**, a second exposed control interface **152** and/or a third exposed control interface **153** (collectively "the control interfaces **151**, **152**, **153**"), respectively. The control interfaces **151**, **152**, **153** may be exposed via any available connection by which the control element **100** may communicate with the mobile devices **141**, **142**, **143**.

Gran ¶ 68. Gran further discloses presenting the control interface as a web page:

> The control interface may allow control of the control element **100** by a specialized software application installed on the mobile devices **141**, **142**, **143**. Alternatively, the control

> interface may allow control of the control element **100** via standard software that may be present on the mobile devices **141**, **142**, **143**. *Such standard software may be, for example, an HTML web browser, an XHTML web browser*, a JavaScript interpreter, a Java virtual machine, a Flash Player and/or the like. In these cases, the control interface may be designed and/or formatted for compatibility with specific standard software modules. *For example, the control element **100** may expose a control interface based on XHTML web pages supplemented with JavaScript*.

Gran ¶ 72 (emphasis added). Therefore, Gran discloses using standard software, such as a web browser, to present the control interface in a web page. Gran further discloses retrieving content from the internet:

> Each of the media servers **111**, **112**, **113** may store the multimedia content files and/or may access externally stored multimedia content. For example, a media server may have access to a remotely accessible multimedia content file, a content stream and/or a content feed via a content service which the media server may access using the Internet.

Gran ¶ 63.

Because Gran discloses presenting the control interface as a web page on the first mobile device and retrieving content from the internet, Appellants' arguments do not persuade us of Examiner error. As such, we sustain the rejection of claims 1 and 16.

Dependent Claims 3–5 and 8

Claims 3–5 and 8 depend from claim 1 and are not separately argued. As such, we also sustain the rejection of these claims.

Dependent Claims 19, 20, and 34

Claims 19, 20, and 34 depend from claim 16 and are not separately argued. As such, we also sustain the rejection of these claims.

Dependent Claim 2

Appellants argue Gran does not teach transcoding a file but merely teaches determining whether a rendering device is capable of rendering a file. App. Br. 22; Reply Br. 6–7. The Examiner found Gran discloses determining the capabilities of a media rendering device and determining the properties of multimedia files. Ans. 5–6 (citing Gran ¶¶ 91–92).

We are persuaded the Examiner has not demonstrated that Gran discloses transcoding the multimedia content, as required by claim 2. With respect to claims 21 and 22, the Examiner made further findings with respect to transcoding. For example, the Examiner found Gran's URL is a reference to "transcoded internet multimedia content." Ans. 20–21 (citing Gran ¶ 51). The Examiner also found Gran's teaching that "[t]he browse results may be formatted as plain text, as Extensible Markup Language ('XML'), as a Digital Item Declaration Language ('DIDL')-Lite fragment and/or in another appropriate format" discloses transcoded internet multimedia content. Ans. 22 (quoting Gran ¶ 91). However, the Examiner has not adequately articulated why this content is "transcoded" content, for example, by explaining where Gran discloses transcoding the content.

Based on the foregoing, we do not sustain the rejection of claim 2.

Dependent Claim 6

Appellants argue the device queue lock feature of Gran "has nothing to do with restricting transmittal of media content to a rendering device." App. Br. 24. Appellants also argue Gran "fail[s] to teach or suggest any restriction which prohibits transmittal of a multimedia content file to a rendering device." Reply Br. 8.

We are not persuaded of Examiner error. Claim 6 recites: "retrieving a restriction associated with the internet multimedia content before transmitting the internet multimedia content to the rendering device wherein the internet multimedia content is transmitted to the rendering device if the restriction does not prohibit transmittal to the rendering device." Thus, the claim does not require restricting transmittal; rather, it provides that content is transmitted if there is no restriction on transmitting it.

We agree with the Examiner that Gran's queue lock feature discloses the limitations of claim 6. Ans. 6–7 (citing Gran ¶ 117). First, Gran discloses a device queue is associated with multimedia content. Gran ¶ 103 ("Detailed information about a device queue may have, for example, an ordered list of multimedia content files located in the device queue . . . ."). Gran further discloses that the session or user that generated the request to lock the queue may have full access while "other mobile devices, the other sessions and/or the other users may be allowed to view contents of and/or the playback state of the device queue, but may be prohibited from editing, managing, deleting and/or controlling rendering of the locked device queue." Gran ¶ 117. Therefore, Gran discloses a lock on a queue is a restriction associated with the multimedia content in that queue, and it discloses that the lock may not prohibit transmittal of the content to the rendering device, such as in the situation where the user who requested the lock still has control over the queue.

As such, we sustain the rejection of claim 6.

Dependent Claim 7

Appellants contend Gran discloses determining whether a particular rendering device is capable of rendering the content but not displaying a list

indicating that the rendering device and an additional rendering device are capable of rendering the content. App. Br. 25–26; Reply Br. 8–9. We are not persuaded. Gran discloses displaying a list of rendering devices to the user. Gran ¶ 87 ("The user may utilize the mobile device **200** to request that the control element **100** provide a list of known media servers connected to the network and/or a list of known media rendering devices connected to the network (collectively 'the requested lists'). In response, the control element **100** may provide the requested lists to the mobile device **200**. . . . The mobile device **200** may display the requested lists to the user."). Gran further discloses:

> As shown at step **805**, the control element **100** may request detailed descriptions of the devices and their associated services. . . . The messages that may provide capability information to the control element **100** *may provide capability information for* each of the media servers **111**, **112**, **113** and/or *the media rendering devices **121**, **122**, **123*** available in the home network.
>
> . . . The capability information may be used internally by the control element **100** and/or *may be provided to mobile devices which request information* about the available media servers **111**, **112**, **113** connected to the home network and/or the available media rendering devices **121**, **122**, **123** connected to the home network. In the specific example depicted in FIGS. 8A and 8B, the control element **100** may receive and/or may store information about the first media server **111** and/or information about the second media rendering device **122**. The control element **100** may also receive and/or may store information about other media servers and media rendering devices.

Gran ¶¶ 161–162 (emphasis added). Therefore, Gran discloses determining the capabilities of more than one rendering device and providing that information to the requesting device, which Gran discloses can display a list

of rendering devices. Therefore, the evidence supports the Examiner's rejection (Ans. 7–8 (citing Gran Fig. 4, ¶¶ 51, 92)).

As such, we are not persuaded by Appellants' arguments and we sustain the rejection of claim 7.

Dependent Claim 9

Appellants argue Gran "merely disclose[s] that the mobile device uses the control point to browse multimedia files available from a local media server and controls rendering of one or more of the multimedia files" and does not disclose storing the content as a digital file in response to user input accepted by the device that controls rendering. App. Br. 29–30. Appellants further argue Gran discloses browsing files already stored on the server and, therefore, "[a]ccepting user input on a mobile device which causes a media file to be stored on a media server makes little sense when the media file is already stored on and available from the media server." Reply Br. 11.

We are not persuaded by these arguments because, as discussed above with respect to claim 1, Gran discloses providing access to content external to the media server:

> Each of the media servers **111**, **112**, **113** may store the multimedia content files and/or may access externally stored multimedia content. For example, a media server may have access to a remotely accessible multimedia content file, a content stream and/or a content feed via a content service which the media server may access using the Internet. . . . The present invention is not limited by the location in which multimedia content is stored, and may utilize multimedia content made available via a media server.

Gran ¶ 63. Therefore, the evidence supports the Examiner's findings that Gran discloses storing content on a server in response to user input (Ans. 9–

10), such as when a user browses external content that is not already stored on the media server. As such, we sustain the rejection of claim 9.

Dependent Claim 10

Claim 10 recites "rendering the internet multimedia content in the user interface in substantial synchronization with rendering of the internet multimedia content by the rendering device." The Examiner found Gran discloses the mobile device can be used to control content rendering. Ans. 9 (citing Gran ¶ 94). However, Appellants argue Gran does not disclose rendering the multimedia content in the user interface of the first device. *See* App. Br. 31–33; Reply Br. 12.

We are persuaded of Examiner error. The Examiner's findings show using the first device to control rendering on the rendering device, but the Examiner has not demonstrated that the content is rendered on the first device itself. As such, we do not sustain the rejection of claim 10.

Dependent Claim 11

Claim 11 recites "displaying a graphic representation of the rendering device wherein the user interface provided by the first device displays the graphic representation and further wherein the internet multimedia content is transmitted to the rendering device in response to selection of the graphic representation." Appellants contend Gran does not disclose the limitations of claim 11 and argue "FIG. 4 is a black-box diagram and does not disclose a graphic representation of a rendering device displayed so that selection of the graphic representation transmits internet multimedia content to the rendering device." App. Br. 34.

Appellants' characterization of Figure 4 as a "black-box diagram" that does not disclose certain features fails to appreciate the disclosure of Gran.

Gran states: "FIG. 4 generally illustrates a system **90** for controlling media rendering in a network using a mobile device in an embodiment of the present invention." Gran ¶ 57. Gran then provides further detail about the various components of Figure 4, including the user interface on the mobile device and commands for requesting and displaying information on the interface. For example, Gran discloses displaying a list of rendering devices on the mobile device. Gran ¶ 87 ("The user may utilize the mobile device **200** to request that the control element **100** provide a list of known media servers connected to the network and/or a list of known media rendering devices connected to the network (collectively 'the requested lists'). In response, the control element **100** may provide the requested lists to the mobile device **200**. . . . The mobile device **200** may display the requested lists to the user."). Gran further discloses: "The user may utilize the mobile device **200** to instruct the control element **100** to direct a specific media rendering device to render a specific multimedia content file." Gran ¶ 93. Gran still further discloses graphic icons are used in the user interface. Gran ¶ 101 ("The mobile device **200** may establish a preferred resolution for graphic thumbnail icons to be used in a user interface display located on the mobile device **200**."). Therefore, Gran discloses displaying a list of rendering devices and transmitting content to a specific rendering device based on the user's selection of that device, and Gran discloses using graphical icons to represent information in the interface.

Based on the foregoing, we are not persuaded that Gran does not disclose the limitations of claim 11. As such, we sustain the rejection of claim 11.

Dependent Claim 12

Claim 12 recites:

> creating a bookmark for the internet multimedia content using the user interface provided by the first device wherein a default rendering device connected to the network is associated with the bookmark and further wherein selection of the bookmark using the user interface provided by the first device initiates rendering of the internet multimedia content on the default rendering device.

As with claim 11, Appellants' characterization of Figure 4 as a "black-box diagram" that does not disclose the limitations of claim 12 (App. Br. 36) fails to appreciate the disclosure of Gran. Providing further detail about the system generally depicted in Figure 4, Gran discloses using the user interface to create a device queue (a bookmark for content):

> The user may utilize the mobile device **200** to request that the control element **100** create a new device queue. . . . The new device queue may be empty initially and/or the new device queue may have multimedia content files that may be specified by the mobile device **200** by the new device queue creation command. The new device queue may be associated with a default media rendering device.

Gran ¶ 104. Gran further discloses that a rendering device associated with the queue may be a default rendering device and selection of the queue initiates rendering of the content on the associated device:

> The user may utilize the mobile device **200** to instruct the control element **100** to initiate and/or to control rendering of a device queue by an associated media rendering device. The associated media rendering device may have been previously associated with the device queue, *may be a default media rendering device* or may be specified when the mobile device instructs the control element **100** to initiate the rendering of the device queue.

Gran ¶ 110. Therefore, Gran's teachings describing the system of Figure 4 disclose the limitations of dependent claim 12. As such, we sustain the rejection of claim 12.

Dependent Claim 13

Claim 13 recites: "The method of Claim 1 wherein the rendering device continues to render the internet multimedia content after the user interface navigates from the first webpage to a second webpage that is a different webpage than the first webpage."

As explained above with respect to claim 1, Gran discloses presenting the control interface as a web page. Gran ¶ 72. As such, Appellants' arguments that Gran does not disclose displaying web pages (App. Br. 38; Reply Br. 18) are unpersuasive. The Examiner found Gran teaches the user may utilize the mobile device to control content rendering. Ans. 11 (citing Gran ¶¶ 94, 170). According to Gran's disclosure of presenting the interface in a web page, the controls presented to the user for controlling content rendering would be in a web page in a web browser. We further note Gran discloses creating a new device queue while the first device queue is playing. Gran ¶ 200 ("FIGS. 11A and 11B generally illustrate the first user **91** utilizing the first mobile device **141** to create and/or use the second device queue **132**. . . . Thus, the first media rendering device **121** may be rendering the first device queue **131** which may have been created and/or may have been modified by the first user **91** using the first mobile device **141**."); Figs. 11A, 11B. Therefore, rendering of content continues while the user navigates to new pages in the interface to set up the new queue.

As such, we are not persuaded of Examiner error and we sustain the rejection of claim 13.

Dependent Claim 14

The Examiner found Gran's teaching of using a content recommendation engine to select content to include in a device queue discloses transmitting and rendering advertising content, as required by claim 14. Ans. 12 (citing Gran ¶¶ 64, 107). Appellants argue the recommended content is not "advertising content" but "simply normal multimedia content selected according to the user's preferences." Reply Br. 20.

Appellants' Specification broadly describes "advertising content": "The advertising content may have and/or may be image content, video content, audio content, graphics, animations, video clips, text, web formatting, links to URLs and/or the like." Spec. 52. Given this broad description, we are not persuaded the Examiner erred in finding content selected by a content recommendation engine is "advertising content." As such, we sustain the rejection of claim 14.

Dependent Claim 15

Claim 15 recites:

> The method of Claim 1 further comprising the step of:
>
> storing the internet multimedia content and advertising content associated with the internet multimedia content as a digital multimedia content file on a server connected to the network in response to user input accepted by the user interface provided by the first device.

Appellants' argument that Gran does not disclose advertising content (App. Br. 41–42) is unpersuasive for the reasons explained with respect to claim 14. Furthermore, Appellants' argument that Gran fails to disclose storing multimedia content on a server in response to user input (Reply Br.

21) is unpersuasive for the reasons explained with respect to claim 9. We further note Gran discloses that the content recommendation engine "select[s] multimedia content to be included in a new device queue *based on user preferences*" (Gran ¶ 107 (emphasis added)) and, therefore, discloses that the content is selected and stored in response to user input.

As, we are not persuaded of error in the Examiner's findings that Gran discloses the limitations of claim 15 (Ans. 12–13 (citing Gran Fig. 4, ¶¶ 64, 107)), and we sustain the rejection of claim 15.

Dependent Claim 17

Claim 17 recites "reviewing a restriction associated with the internet multimedia content wherein the at least one rendering device conforms to the restriction."

As we explained with respect to claim 6, the device queue lock is a restriction associated with multimedia content. As the Examiner found, Gran discloses that other devices or users may be prohibited from controlling rendering of the locked queue. Ans. 15 (citing Gran ¶¶ 116–117). If the lock (restriction) prohibits a user from controlling (i.e., playing) the queue, then the rendering device conforms to the restriction by not playing the locked queue. As such, we are not persuaded by Appellants' arguments (App. Br. 47; Reply Br. 23–24), and, therefore, we sustain the rejection of claim 17.

Dependent Claim 18

Claim 18 recites "displaying a restriction associated with the internet multimedia content in the user interface wherein the internet multimedia content is transmitted to the target rendering device in response to user input after display of the restriction."

We are not persuaded by Appellants' arguments. *See* App. Br. 49–50; Reply Br. 25–26. As we explained with respect to claim 6, the device queue lock is a restriction associated with multimedia content. Gran discloses:

> The mobile device **200** may indicate to the user whether the control element **200** granted the request to lock access or denied the request to lock access. . . . The core component **101** may allow full access to and/or full control of a locked device queue to the mobile device **200**, to the associated session and/or to the user which may have generated the request to lock access.

Gran ¶ 116. Thus, Gran discloses displaying (indicating to the user) the restriction and allowing the user who requested the restriction full control, including rendering control. As such, we sustain the rejection of claim 18.

Dependent Claims 31–33

With respect to claims 31, 32, and 33, each of which depends from claim 16, Appellants argue Gran does not disclose displaying a web page or accessing the information via the internet. App. Br. 50–59; Reply Br. 26–29. For the reasons discussed above with respect to claim 1, we are not persuaded by Appellants' arguments that Gran does not disclose displaying a web page. Furthermore, Gran discloses retrieving information via the internet. For example, Gran discloses that the mobile device can be connected to the control element via the internet: "Connection of a mobile device **340** to the control element may be accomplished using a carrier mobile network **320**, the internet **330** and/or the home Wi-Fi network **301** if the mobile device **340** may utilize the carrier mobile network **320**." Gran ¶ 135; *see also* Gran ¶ 68 ("The control interfaces **151**, **152**, **153** may be exposed via any available connection by which the control element **100** may communicate with the mobile devices **141**, **142**, **143**.").

As such, we are not persuaded of error and we sustain the rejection of claims 31–33.

Independent Claim 21

Independent claim 21 is directed to a "computer-readable medium"[3] having instructions for performing certain steps, including "transcoding the internet multimedia content to generate transcoded internet multimedia content in response to the user input wherein the transcoded internet multimedia content is based on the capabilities of the rendering device."

Appellants argue Gran does not disclose transcoding. App. Br. 61–62; Reply Br. 30. For the reasons discussed above with respect to claim 2, we are persuaded the Examiner has not shown Gran discloses transcoding. As such, we do not sustain the rejection of independent claim 21.

Dependent Claims 22–27, 29, and 30

Because we do not sustain the rejection of claim 21, we likewise do not sustain the rejection of claims 22–27, 29, and 30, which depend from claim 21.

[3] Should there be further prosecution of this application (including any review for allowance), the Examiner may wish to ascertain whether the "computer-readable medium" of claim 21 encompasses transitory media, rendering it patent ineligible. *See Ex parte Mewherter*, 107 USPQ2d 1857 (PTAB 2013) (precedential-in-part) (computer-readable media encompass transitory embodiments unless explicitly excluded). *See also In re Nuijten*, 500 F.3d 1346, 1355–57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter); *see also* MPEP § 2106 (discussing claims directed to a "computer readable medium"). *See* Spec. 20 (listing as examples of a computer readable medium "a compact disc, a DVD, a computer memory, a hard drive and/or the like" but not excluding any particular medium).

DECISION

We affirm the Examiner's rejection of claims 1, 3–9, 11–20, 31–34; however, we reverse the Examiner's rejection of claims 2, 10, 21–27, 29, and 30.

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-IN-PART

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