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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GERO BASE and NORBERT OERTEL

Appeal 2013-009505
Application 10/489,651
Technology Center 2400

Before JOHN G. NEW, TERRENCE W. McMILLIN, and
NORMAN H. BEAMER, *Administrative Patent Judges*.

MCMILLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ seeks our review under 35 U.S.C. § 134(a) of the final rejection of claims 11, 13–17, and 19–21.² Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse and institute a NEW GROUND OF REJECTION within the provisions of 37 C.F.R. § 41.50(b) (2012).

¹ Appellants identify the real party in interest as Siemens Aktiengesellschaft. App. Br. 2.

² Claims 1–10, 12, and 18 are canceled. App. Br. 13–14.

THE CLAIMED INVENTION

According to Appellants, “[t]he invention relates to a method for producing video coding as well as to a computer program product.” Spec. 1. Independent claims 11 and 21 are directed to methods and independent claim 20 is directed to a computer program. App. Br. 13, 15. Claim 11 recites:

11. A method for video coding using symbols, the method performed by execution of a computer program stored on a non-transitory computer readable medium and comprising the steps of:

- providing a prediction error matrix;
- converting the prediction error matrix by coefficient sampling into a series of symbols; and
- performing context-adaptive arithmetic encoding of the symbols, wherein the encoding includes for a symbol being encoded, selecting from different predetermined distributions of symbol frequencies a particular predetermined distribution of symbol frequencies based on the symbol encoded immediately beforehand, the predetermined distribution of symbol frequencies indicating the likelihood of different types of symbols occurring immediately following the type of the symbol encoded immediately beforehand based on known statistical interdependencies between different types of symbols occurring in succession;

wherein a number of symbols read out for coefficient sampling is encoded and transmitted.

App. Br. 13.

THE REJECTION

Claims 11, 13–17, and 19–21 stand rejected under 35 U.S.C. § 102(b) as anticipated by Tsai et al. (US 5,818,877; issued Oct. 6, 1998) (“Tsai”).
Final Act. 3.

ANALYSIS

Rejection Under 35 U.S.C. § 102

We agree with Appellants that Tsai fails to disclose:

performing context-adaptive arithmetic encoding of the symbols, wherein the encoding includes for a symbol being encoded, selecting from different predetermined distributions of symbol frequencies a particular predetermined distribution of symbol frequencies based on the symbol encoded immediately beforehand, the predetermined distribution of symbol frequencies indicating the likelihood of different types of symbols occurring immediately following the type of the symbol encoded immediately beforehand based on known statistical interdependencies between different types of symbols occurring in succession,

as recited in independent claims 11, 20, and 21. App. Br. 10. We do not find any disclosure of selecting the distribution of symbol frequencies depending on the symbol encoded immediately beforehand or of statistical interdependencies between different types of symbols occurring in succession in the passages of Tsai cited by the Examiner. Therefore, on the record before us, we find the Examiner erred in rejecting the pending claims as anticipated by Tsai.

New Ground of Rejection pursuant to 37 C.F.R. § 41.50(b)

All the pending claims (11, 13–17, and 19–21) are rejected under a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) as directed to non-statutory subject matter under 35 U.S.C. § 101. In particular, we find that the claims recite a patent-ineligible abstract idea. *See Alice Corp. Pty, Ltd. v. CLS Bank Int'l*, 134 S.Ct. 2347, 2355 (2014). Independent claims 11, 20, and 21 are directed to methods of video coding using symbols with three

steps: providing a prediction error matrix; converting the prediction into a series of symbols; and performing context-adaptive arithmetic encoding of the symbols. App. Br. 13, 15. These are mental process steps which “can be performed in the human mind, or by a human using a pen and paper.” *Cybersource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371–1372 (Fed. Cir. 2011) (“methods which can be performed mentally, or which are the equivalent of human mental work, are unpatentable abstract ideas”).

The additional limitations in the independent claims and the dependent claims also recite process steps that can be performed mentally and are similarly abstract. And the recitation in the preamble of independent claims 11 and 21 of performing the method “by execution of a computer program” does not transform the recited abstract idea into a patentable invention. As the Court stated in *Alice*, “if a patent’s recitation of a computer amounts to a mere instruction to ‘implemen[t]’ an abstract idea ‘on a computer,’ that addition cannot impart patent eligibility.” 134 S. Ct. 2358. We find nothing in any of the pending claims that is anything more than a patent-ineligible abstract idea.

Accordingly, we find claims 11, 13–17, and 19–21 are directed to non-statutory subject matter. We, therefore, conclude claims 11, 13–17, and 19–21 are unpatentable.

DECISION

The Examiner’s rejection of claims 11, 13–17, and 19–21 under 35 U.S.C. § 102(b) is reversed.

We enter a new ground of rejection for claims 11, 13–17, and 19–21 under 35 U.S.C. § 101.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). Regarding the new rejections, 37 C.F.R. § 41.52(a)(1) provides “Appellant may file a single request for rehearing within two months from the date of the original decision of the Board.” 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection . . . shall not be considered final for judicial review.” 37 C.F.R. § 41.50(b) also provides that Appellants **WITHIN TWO MONTHS FROM THE DATE OF THE DECISION**, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record.

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).

REVERSED
37 C.F.R. § 41.50(b)

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