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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PETER D. COHEN and CHRISTOPHER E. SMOAK

Appeal 2014-004141¹
Application 11/537,491²
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
NINA L. MEDLOCK, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 10–47. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ Our decision references Appellants’ Appeal Brief (“App. Br.,” filed December 2, 2013) and Reply Brief (“Reply Br.,” filed February 18, 2014), and the Examiner’s Answer (“Ans.,” mailed December 19, 2013), Final Office Action (“Final Act.,” mailed July 2, 2013), and Advisory Action (“Adv. Act.,” mailed December 13, 2013).

² Appellants identify Amazon Technologies, Inc. as the real party in interest. App. Br. 2.

CLAIMED INVENTION

Appellants' invention "relates generally to facilitating performance of tasks by task performer users, such as by distributing information regarding tasks via users' interactions with third-party Web sites" (Spec. ¶ 1).

Claims 10, 31, and 41 are the independent claims on appeal, and are reproduced below (bracketed notations are added in claim 10):

10. A computer-implemented method for a task exchange server to facilitate performance of tasks by task performers, the method comprising:

[(a)] receiving information at a task exchange server about tasks submitted by task requesters as being available for performance by human task performer users; and

[(b)] distributing, by one or more programmed computing systems of the task exchange server, information about at least some of the submitted tasks via one or more information services that are not provided by the task exchange server, the distributing including, for each of the one or more information services,

[(b)(1)] receiving one or more requests that are each for task information that is to be presented along with other information to a task performer user interacting with the information service, at least some of the other information to be presented being provided by the information service; and

[(b)(2)] for each of at least one of the requests, determining one or more available tasks based at least in part on the at least some other information being provided by the information service, and providing information about the determined tasks for presentation to a human task performer user via the information service, to enable the human task performer user to perform at least one of the determined tasks.

31. A non-transitory computer-readable medium having stored contents that configure a computing system to provide an electronically accessible information service that facilitates performance of tasks by tasks performers, by performing a method comprising:

receiving a request from a task performer user for information available from an electronically accessible information service, the available information not including information about tasks available to be performed;

interacting, by the configured computing system, with a remote task exchange server to obtain information about one or more available tasks, the task exchange server acting as an intermediary to facilitate performance by task performer users of tasks available from task requesters;

selecting at least one available task of the one or more available tasks based at least in part on the information available from the electronically accessible information service that is requested by the task performer user; and

responding to the request by providing information to the task performer user, the provided information including information about the selected at least one available task and the information available from the electronically accessible information service that is requested by the task performer user, to enable the task performer user to use the provided information to perform one or more of the selected at least one available tasks.

41 A computing device configured to facilitate performance of tasks by a user of the computing device, comprising:

- a processor;
- a memory; and

an executing task performance facilitator application having instructions stored on the memory that, when executed by the processor, configure the computing device to automatically determine whether to provide information about available tasks to a user of the computing device based at least in part on other information being provided to the user from one or more other third-party information services, and to provide information to the user about one or more available tasks if it is determined to provide that information.

REJECTIONS

Claims 31–40 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter that Appellants regard as the invention.³

Claims 10, 13–17, 21–24, 26, 27, 29–32, 34, 36, 37, and 39–47 are rejected under 35 U.S.C. §§ 102(a) and (e) as anticipated by Cohen (US 2006/0106675 A1, pub. May 18, 2006).

Claims 10, 13, 15–17, 21–23, 27, 28, 31, 32, 34, 37–41, and 44–47 are rejected under 35 U.S.C. §§ 102(a) and (e) as anticipated by Jilk (US 6,938,048 B1, iss. Aug. 30, 2005).

Claims 11, 12 and 35 are rejected under 35 U.S.C. § 103(a) as unpatentable over Cohen.

Claims 18–20, 25, and 28 are rejected under 35 U.S.C. § 103(a) as unpatentable over Cohen and Goswami (US 2004/0205554 A1, pub. Oct. 14, 2004).

³ The rejection of claims 12 and 41–47 under 35 U.S.C. § 112, second paragraph, has been withdrawn (Adv. Act. 2).

Claim 33 is rejected under 35 U.S.C. § 103(a) as unpatentable over Cohen and Marugabandhu (US 2007/0073610 A1, pub. Mar. 29, 2007).

Claim 38 is rejected under 35 U.S.C. § 103(a) as unpatentable over Cohen and Jilk.

Claims 11, 12, 14, 24, and 35 are rejected under 35 U.S.C. § 103(a) as unpatentable over Jilk.

Claims 18–20 and 25 are rejected under 35 U.S.C. § 103(a) as unpatentable over Jilk and Goswami.

Claim 26 is rejected under 35 U.S.C. § 103(a) as unpatentable over Jilk and Upton (US 2003/0105884 A1, pub. June 5, 2003).

Claims 29 and 36 are rejected under 35 U.S.C. § 103(a) as unpatentable over Jilk and Yu (US 7,640,548 B1, iss. Dec. 29, 2009).

Claims 30, 33, 42, and 43 are rejected under 35 U.S.C. § 103(a) as unpatentable over Jilk and Marugabandhu.

ANALYSIS

Appellants contend at the outset that the Examiner acted improperly in reopening prosecution after this Board’s prior decision in Appeal No. 2011-004922 (App. Br. 11–13). The decision to reopen prosecution is a procedural matter that is resolved by petition under 37 C.F.R. § 1.181 and, therefore, not properly before us. *See* MPEP § 1201 (“The Board will not ordinarily hear a question that should be decided by the Director on petition.”).

Indefiniteness

In rejecting claims 31–40 under 35 U.S.C. § 112, second paragraph, the Examiner notes that independent claim 31 recites “receiving a request from a task performer user for information available from an electronically accessible information service, the available information not including information about tasks available to be performed” in lines 4–6, and then, in lines 10–14, recites “responding to the request by providing information to the task performer user . . . including information about the selected at least one available task and the information available from the electronically accessible information service that is requested by the task performer user” (Final Act. 12). Based on these recitations, the Examiner concludes that it is unclear how the claim can receive a request for information that does not include information about tasks available to be performed and then respond to the request by providing information about the selected at least one available task (*id.*). We disagree.

The Specification discloses that information about tasks may be provided to users as they interact with third party Web sites or other electronically accessible information services, and further discloses that in some embodiments, the third-party sites may be unaffiliated with the task exchange server and not provide information about tasks to users, but a separate program executing on behalf of certain users may obtain and present information about tasks to the users, “such as in conjunction with information provided by the unaffiliated third-party sites” (Spec. ¶ 15).

The Examiner observes that claim 31 recites “receiving a request from a task performer user for information available from an electronically accessible information service, the available information not including

information about tasks available to be performed.” However, claim 31 also recites “interacting, by the configured computing system, with a remote task exchange server to obtain information about one or more available tasks” and “selecting at least one available task of the one or more available tasks based at least in part on the information available from the electronically accessible information service that is requested by the task performer user.” In our view, a person of ordinary skill in the art would understand what is claimed when claim 31 is considered in light of the Specification, including the claim language, namely that the response includes the requested information available from the electronically accessible information service and also includes additional information, i.e., information about a selected at least one available task, obtained from the remote task exchange server.

In view of the foregoing, we do not sustain the Examiner’s rejection under 35 U.S.C. § 112, second paragraph, of claim 31, and claims 32–40 that depend therefrom. *See Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986) (The test for definiteness under 35 U.S.C. § 112, second paragraph, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.”).

Anticipation and Obviousness

Independent Claim 10 and Dependent Claims 13–17, 21–24, and 26–30

Appellants argue that the Examiner erred in rejecting independent claim 10 under 35 U.S.C. §§102 (a), (e) as anticipated by Cohen, and also erred in rejecting claim 10 under 35 U.S.C. §§102 (a), (e) as anticipated by Jilk because neither Cohen nor Jilk discloses “any functionality related to a task exchange server that receives a request[,] for a distinct information

service[,] for task information to be presented by the information service to a task performer user along with other information from the information service” (App. Br. 22). That is, Appellants argue that neither Cohen nor Jilk discloses

one or more programmed computing systems of the task exchange server, . . . for each of the one or more information services [that are not provided by the task exchange server], receiving one or more requests that are each for task information that is to be presented along with other information to a task performer user interacting with the information service, at least some of the other information to be presented being provided by the information service[,]

as recited in claim 10 (*id.*).

Focusing first on Cohen, the Examiner cites paragraphs 27, 34, 35, 38, 40, 41, 42, 43, 46, 48, 50, 64, 86, 135, and Figures 1B and 3 of Cohen as disclosing the argued feature (Final Act. 15–17; *see also* Ans. 12–14). We have reviewed the cited portions of Cohen, on which the Examiner relies, and we agree with Appellants that none of the cited portions discloses a task exchange server that receives a request, via a third party information server, for task information to be presented to a task performer user, interacting with the third party information server, along with other information provided by the third-party information service, i.e., “one or more programmed computing systems of the task exchange server, . . . for . . . one or more information services [that are not provided by the task exchange server], receiving one or more requests . . . for task information that is to be presented along with other information to a task performer user interacting with the information service, at least some of the other information . . . being provided by the information service,” as recited in claim 10.

As Appellants observe, paragraph 34 is the only cited portion of Cohen that appears to disclose a remotely related third-party service (*see* App. Br. 23), i.e., “one or more . . . consoles or other mechanisms to interact with the TFF system . . . provided externally to the TFF system, such as by third parties” (*see* App. Br. 23). And that paragraph only describes the use of external consoles by task requester users who submit tasks to be performed; it does not disclose an information service, e.g., an external console or other mechanism, which presents task information, along with other information from the information service, to a task performer.

In view of the foregoing, we do not sustain the Examiner’s rejection of independent 10 and dependent claims 13–17, 21–24, 26, 27, 29, and 30 under 35 U.S.C. §§102 (a), (e) as anticipated by Cohen.

Turning to Jilk, the Examiner cites column 4, lines 26–41 and 61–67, column 5, lines 1–54, column 7, lines 33–59, column 11, lines 41–56, column 15, lines 48–67, column 22, lines 18–39, column 25, lines 13–17 and Figures 1 and 2 of Jilk as disclosing the argued limitation (Final Act. 53–55; *see also* Ans. 15–16). However, we find nothing the cited portions of Jilk that discloses or suggests a task exchange server that receives a request, via an information service that is not provided by the task exchange server, for task information to be presented by the information service to a task performer user along with other information from the information service, i.e., limitations (b) and (b)(1), as recited in claim 10.

Referring specifically to Figure 2 and column 5, lines 12–54 of Jilk, the Examiner asserts that

the task exchange server can read on [server computer system] 205 and the “information services” can read on [task management system] 100 (See FIG. 1, 2). Alternatively, the

“server computer system 200” can read on the “information service,” and the “task management system 100” can read on the “task exchange server” because they can be operated by “separate entities.” This reads on the claim limitation being argued.

Ans. 15. But even accepting that analysis, we find nothing in the cited portions of Jilk that discloses that either server computer system 200 or task management system 100 provides its own information to task performer users, along with task related information from the other one of server computer system 200 and task management system 100, which is required to meet the language of limitations (b) and (b)(1), as recited in claim 10.

Therefore, we do not sustain the Examiner’s rejection of independent 10 and dependent claims 13, 15–17, 21–23, 27, and 28 under 35 U.S.C. §§102 (a), (e) as anticipated by Jilk.

Independent Claim 31 and Dependent Claims 32, 34, and 36–40

Independent claim 31 includes language substantially similar to the language of claim 10. Therefore, we do not sustain the Examiner’s rejection of independent claim 31 and dependent claims 32, 34, 36, 37, 39, and 40 under 35 U.S.C. §§102 (a), (e) as anticipated by Cohen for the same reasons set forth above with respect to claim 10. We also do not sustain the Examiner’s rejection of independent claim 31 and dependent claims 32, 34, and 37–40 under 35 U.S.C. §§102 (a), (e) as anticipated by Jilk for the same reasons set forth above with respect to claim 10.

Independent Claim 41 and Dependent Claims 44 and 46

Appellants argue that the Examiner erred in rejecting claim 41 under 35 U.S.C. §§102 (a), (e) as anticipated by Cohen, and also erred in rejecting claim 41 as anticipated by Jilk with reference to Appellants’ arguments with

respect to claim 10 (App. Br. 45). Yet claim 41 is of different scope than claim 10 (*see* Ans. 7–8), and was rejected by the Examiner based on a different rationale (*see* Final Act. 33–35; *see also* Ans. 22).

Absent further explanation, we are not persuaded that the Examiner erred in rejecting independent claim 41 under 35 U.S.C. §§102 (a), (e) as anticipated by Cohan and also anticipated by Jilk. Therefore, we sustain the Examiner’s rejections of independent claim 41 under 35 U.S.C.

§§ 102 (a), (e). We also sustain the Examiner’s rejections under 35 U.S.C. §§ 102 (a), (e) of dependent claims 44 and 46, which are not argued separately.

Dependent Claim 45

Claim 45 depends from claim 41 and recites that “the executing task performance facilitator application is further configured to retrieve the information about the one or more available tasks in response to the information being provided by at least one of the third party information services.”

Appellants argue that the Examiner erred in rejecting claim 45 under 35 U.S.C. §§ 102 (a), (e) as anticipated by Cohan and also anticipated by Jilk for the reasons set forth with respect to claim 41, and further because

the Office has . . . failed to show that the Cohen and Jilk references disclose any functionality related to automated operations of the task performance facilitator application that include performing the retrieving of information about one or more available tasks in response to the information that is provided to the user’s computing device by the third-party information service.

App. Br. 46.

In rejecting claim 45 under 35 U.S.C. §§ 102 (a), (e), the Examiner cites paragraph 86 of Cohen (Final Act. 37–38) and column 4, lines 61–67 and column 5, lines 1–11 of Jilk (*id.* at 69–70) as disclosing the claimed subject matter. We have reviewed the cited portions of Cohen and Jilk, on which the Examiner relies, and we find nothing in those portions of Cohen and Jilk that discloses that “the executing task performance facilitator application is . . . configured to retrieve the information about the one or more available tasks in response to the information being provided by at least one of the third party information services,” as recited in claim 45.

Therefore, we do not sustain the Examiner’s rejections of claim 45 under 35 U.S.C. §§ 102 (a), (e).

Dependent Claim 47

Claim 47 depends from claim 46, which depends from independent claim 41. Claim 46 recites that “the computing device further comprises an executing Web browser, and . . . the executing task performance facilitator application interacts with the executing Web browser to facilitate the providing of the information to the user about the one or more available tasks.” Claim 47 recites that “the information about the one or more available tasks is from a remote task exchange server, and . . . the task performance facilitator application is . . . configured to retrieve information from the task exchange server about prior performance by the user of tasks via the task exchange server and to present the retrieved information to the user as part of the Web browser.”

In rejecting claim 47 under 35 U.S.C. §§ 102 (a), (e), the Examiner cites paragraphs 26, 29, 38, 39, claim 10, and Figure 1B of Cohen (Final Act. 38–39) and column 5, lines 12–54, column 7, lines 41–56, column 9,

lines 8–16, column 10, lines 39–46, column 12, lines 36–65, column 22, lines 5–19, and Figures 2 and 4B of Jilk (*id.* at 70–71) as disclosing the claimed subject matter.

Appellants argue that the Examiner has failed to show that the cited portions of Cohen and Jilk disclose each and every element of dependent claim 47 but Appellants do not substantively address the Examiner’s citations. Instead, Appellants merely assert,

While the Office points to portions of Cohen and Jilk that are alleged to generally show that a client device may receive and present various types of information (Final Office Action, pages 38-39 and 70-71), even if these allegations are assumed for the sake of argument to be correct, they still fail to satisfy even a *prima facie* case of anticipation of claim 47. In particular, even if these allegations are assumed for the sake of argument to be correct, such disclosure is unrelated to the additional task-related information, which is based on information from the third-party information service, being obtained from the remote task exchange server, and such disclosure is also unrelated to the task performance facilitator application executing on the user’s computing device, which is interacting with a Web browser that is also executing on the user’s computing device, retrieving information from the task exchange server about prior performance by the user of tasks via the task exchange server, and presenting that retrieved information to the user as part of the separate executing Web browser.

App. Br. 47–48.

We are not persuaded of error on the part of the Examiner at least because Appellants’ assertion does not rise to the level of a substantive argument in support of the patentability of claim 47. *Cf. In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that

the corresponding elements were not found in the prior art.”); *see also In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for [patentable] distinctions over the prior art.”).

In view of the foregoing, we sustain the Examiner’s rejections of claim 47 under 35 U.S.C. §§ 102 (a), (e).

Dependent Claims 42 and 43

Claims 42 and 43 depend from claim 41, and are rejected under 35 U.S.C. §§ 102 (a), (e) as anticipated by Cohen and under 35 U.S.C. § 103(a) as unpatentable over Jilk and Marugabandhu. Appellants do not present any arguments in support of the patentability of claims 42 and 43 except to assert that Marugabandhu does not cure the alleged deficiencies related to Jilk, and that claims 42 and 43 are allowable based on their dependence on claim 41 (App. Br. 50–51).

We are not persuaded for the reasons set forth above that the Examiner erred in rejecting independent claim 41 under 35 U.S.C. §§ 102 (a), (e). Therefore, we sustain the Examiner’s rejections of dependent claims 42 and 43 under 35 U.S.C. §§ 102 (a), (e) and 103(a).

Dependent Claims 11, 12, 14, 18–20, 25, 26, 29, 30, 33, 35, 36, and 38

Each of claims 11, 12, 14, 18–20, 25, 26, 29, 30, 33, 35, 36, and 38 depends, directly or indirectly, from one of claims 10 and 31. The rejections of these dependent claims under 35 U.S.C. § 103(a) based on one or more of Cohen, Jilk, Goswami, Upton, Yu and Marugabandhu do not cure the deficiency in the Examiner’s rejections of claims 10 and 31 under 35 U.S.C. §§ 102 (a), (e). Therefore, we do not sustain the Examiner’s rejections of

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claims 11, 12, 14, 18–20, 25, 26, 29, 30, 33, 35, 36, and 38 under 35 U.S.C. § 103(a).

DECISION

The Examiner's rejection of claims 31–40 under 35 U.S.C. § 112, second paragraph, is reversed.

The Examiner's rejections of claims 10, 13–17, 21–24, and 26–32, 34, 37–40, and 45 under 35 U.S.C. §§ 102(a), (e) are reversed.

The Examiner's rejections of claims 41–44, 46, and 47 under 35 U.S.C. §§ 102(a), (e) are affirmed.

The Examiner's rejection of claims 42 and 43 under 35 U.S.C. § 103(a) is affirmed.

The Examiner's rejections of claims 11, 12, 14, 18–20, 25, 26, 29, 30, 33, 35, 36, and 38 under 35 U.S.C. § 103(a) are reversed.

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