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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WILLIAM BITTLES, DAVID GRANDSHAW,
and JOHN B. PICKERING

Appeal 2014-005397
Application 13/027,041
Technology Center 2800

Before TERRY J. OWENS, PETER F. KRATZ, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–12 and 15–25. We have jurisdiction under 35 U.S.C. § 6(b).

The Invention

The Appellants claim a method, system and computer software product for message handling. Claim 1 is illustrative:

1. A method for message handling, wherein a structured message is transmitted as a reduced message with the structure removed, the method comprising:

monitoring messages to be transmitted, the step of monitoring comprising:

for each message, identifying one or more elements within the message and structural information associated with the one or more elements;

determining the probability that a message will conform to a previously identified format based on the identified elements and the structural information associated therewith; and

using the determined probability to decide when to transmit a format template for the message, wherein the format template contains structural information for use by a destination to add the structure removed by a message source back into the message.

The References

Hirsch	US 2005/0228865 A1	Oct. 13, 2005
Cope	US 2009/0144357 A1	June 4, 2009
Shkolnikov	US 2010/0011076 A1	Jan. 14, 2010
Aggarwal	US 8,020,029 B2	Sep. 13, 2011

The Rejections

The claims stand rejected as follows: claims 1–5, 7–9, 12, 15–22, 24, and 25 under 35 U.S.C. § 103 over Cope in view of Aggarwal and Hirsch, claims 6, 10, 11, and 23 under 35 U.S.C. § 103 over Cope in view of Aggarwal, Hirsch, and Shkolnikov, and claim 15 under 35 U.S.C. § 101 as directed to non-statutory subject matter.

OPINION

We reverse the rejections.

Rejections under 35 U.S.C. § 103

We need address only the independent claims (1, 15, and 16). Those claims require determining the probability that a message will conform to a previously identified format based on identified elements within the message and associated structural information, and using the determined probability to decide when to transmit a format template for the message, wherein the

format template contains structural information of use by a destination to add structure removed by a message source back into the message.

Cope "enables applications to exchange messages in two parts; a set of 'template messages', which contain the bulk of the data to be exchanged, which only change content infrequently, or which need to be centrally administered for consistency of formats between applications; and the series of 'field messages', which contain the subset of message data which changes for every message" (¶ 11). "By examining the correlation id of the field messages, the appropriate template message is looked up, and a known or will be known algorithm is used to insert the contents of the field message **114** into the specified template message **112** in order to build the complete messages **116** for the recipient to use" (¶ 16; Fig. 1).

Aggarwal attempts to synchronize delivery of game player movement information at a plurality of receiving game systems by determining an accumulated export error for each of the receiving systems and transmitting current messages toward the receiving systems in a manner adapted to reduce the accumulated export errors (col. 1, ll. 15–17; col. 2, ll. 45–53). "[T]ransmitting the current messages includes determining, using the accumulated export errors, a plurality of transmission probabilities for the receiving systems and transmitting the current messages toward a portion of the receiving game systems using the transmission probabilities" (col. 3, ll. 1–6). A dead-reckoning vector, which "includes information about the position and movement of a player/entity within the game space on the system from which the dead-reckoning vector is sent" (col. 1, ll. 43–46), "is transmitted to a subset of receiving game systems scheduled, according to

respective scheduled transmission times of receiving game systems, to receive the dead-reckoning vector" (col. 21, ll. 23–27).

The Examiner asserts that "Aggarwal teaches determining probabilities associated to transmission based on a comparison result and the previous vector which is a previously identified format in this instant case *(col. 21, ln. 15-30; determine a transmission probability for each receiving system, the higher the determining value for the receiving system the higher transmit probability would be. The schedule transmission times by which transmission of the vector is controlled are computed with respect to the previous vectors)*" (Final Act. 10).

That assertion improperly implies that Aggarwal's disclosure regarding probabilities pertains to dead-reckoning vectors. Aggarwal's only probabilities are transmit probabilities determined using accumulated export errors (col. 3, ll. 1–6; col. 21, ll. 16–23). The dead-reckoning vectors are transmitted according to scheduled transmission times (col. 21, ll. 23–30).

The Examiner asserts that "[o]ne of ordinary skill of the art at the time of invention would recognize that the prior art *Aggarwal* teaches a method and an apparatus for determining a probability of a given subject matter such as vector or template, and using the determined probability in sending the vector or template because it is helpful to have a probability scheme to match and determine when to transmit the best suited, most likely vector or template information associated with previous vector or template" (Ans. 8).

The Examiner does not point out, and it is not apparent, where that disclosure appears in Aggarwal.

Thus, the Examiner has not set forth a factual basis which is sufficient to support a prima facie case of obviousness of the Appellants' claimed

invention.[1] *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) ("A rejection based on section 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art"). Accordingly, we reverse the rejections under 35 U.S.C. § 103.

Rejection under 35 U.S.C. § 101

The Examiner asserts that the Appellants' claim 15's recited computer-readable storage medium in which a program comprising computer-executable instructions is stored is non-statutory subject matter because the Appellants' Specification does not exclude it from being a signal which, according to the majority in *In re Nuijten*, 500 F.3d 1346, 1357 (Fed. Cir. 2007), is not a process, machine, manufacture or composition of matter and, therefore, is not patentable subject matter (Final Act. 7–8; Ans. 3–5).

The Appellants' Specification states that "[f]or purposes of this description, a computer usable or computer readable medium can be any apparatus that can contain, store, communicate, propagate, or transport the program for use by or in connection with the instruction execution system, apparatus or device" (Spec. ¶ 113). The Appellants' claim 15 limits the computer readable medium to a computer readable storage medium which stores a program comprising computer executable instructions. The Examiner does not establish that such a medium which stores a program can be a signal. Hence, we reverse the rejection under 35 U.S.C. § 101.

[1] The Examiner does not rely upon Hirsch or Shkolnikov for any disclosure that remedies the above-discussed deficiency in Cope and Aggarwal (Final Act. 10–11, 17–18).

DECISION/ORDER

The rejections of claims 1–5, 7–9, 12, 15–22, 24, and 25 under 35 U.S.C. § 103 over Cope in view of Aggarwal and Hirsch, claims 6, 10, 11, and 23 under 35 U.S.C. § 103 over Cope in view of Aggarwal, Hirsch, and Shkolnikov, and claim 15 under 35 U.S.C. § 101 as directed to non-statutory subject matter are reversed.

It is ordered that the Examiner's decision is reversed.

REVERSED