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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SIDDHARTH PANDEY

Appeal 2014-007574¹
Application 12/337,902²
Technology Center 3600

Before JOSEPH A. FISCHETTI, BRADLEY B. BAYAT, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's
Final rejection of claims 1–27. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellant's Appeal Brief ("Appeal Br.," filed December 20, 2013), and Reply Brief ("Reply Br.," filed June 20, 2014), the Examiner's Answer ("Ans.," mailed April 24, 2014) and Final Office Action ("Final Act.," mailed August 22, 2013).

² Appellant identifies Verizon Communications Inc., as the real party in interest (Appeal Br. 1).

CLAIMED INVENTION

Appellant's claimed invention relates generally to "[a] system and method . . . for facilitating sale transactions using radio-frequency identifications (RFID) and/or barcodes" (Spec. ¶ 8).

Claims 1, 11, 13, and 20 are the independent claims on appeal. Claim 1, reproduced below with bracketing matter added, is illustrative of the subject matter on appeal:

1. A method, comprising:

[a] detecting, via a wireless device, identification information associated with at least one of products and services, wherein the at least one products and services are identified based at least in part on the identification information;

[b] providing the identification information associated with one or more of the identified products and services to a server;

[c] receiving, from the server, solicited retail information associated with the one or more identified products and services offered by a plurality of retailers;

[d] displaying, via a set-top box, the solicited retail information associated with the one or more identified at least one of products and services offered by the plurality of retailers to a user, wherein the wireless device is capable of detecting the identification information associated with at least one of products and services at any of the plurality of retailers; and

[e] receiving, via the set-top box, verification information, wherein the verification information indicates at least whether the displayed retail information corresponds to the at least one products and services.

REJECTION

Claims 1–27 are rejected under 35 U.S.C. § 103(a) as unpatentable over Treyz (US 6,587,835 B1, iss. July 1, 2003) and Maggio (US 2006/0282319 A1, pub. Dec. 14, 2006).

ANALYSIS

Obviousness

Independent claim 1 and dependent claims 2–11

We are not persuaded by Appellant’s argument that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 103(a) because the proposed combination of Treyz and Maggio fails to suggest limitations [d] and [e] of independent claim 1 (*See* Appeal Br. 5–9; *see also* Reply Br. 2–4). Instead, we agree with, and adopt the Examiner’s findings and rationale, as set forth at pages 3–6 of the Final Action (*see* Final Act. 4–5 (citing Treyz, col. 26, ll. 16–25, 40–45, and 50–65; col. 27, ll. 55–60; col. 31, l. 66 – col. 32, l. 11; Figs. 28, 29; Maggio ¶¶ 518–524)) and the Examiner’s response to Appellant’s arguments, as set forth at pages 17–19 of the Answer. We add the following discussion for emphasis only.

Treyz is directed to “handheld computing devices that assist users in shopping and in performing wireless transactions” (Treyz col. 1, ll. 7–9) which includes “a radio-frequency identification (RFID) unit” (*id.* at col. 1, ll. 55–57) to identify items in stores (*id.* at col. 2, ll. 38–40) and a shopping assistance service to “provide product information” and “[i]nteractive advertisements” (*id.* at col. 1, ll. 45–45). Treyz discloses that its “[h]andheld computing device **12** may be used to interact wirelessly with a merchant or service provider or other entity” (*id.* at col. 20, ll. 57–67; *see also id.* at col. 26, ll. 34–65) “to receive materials from a kiosk associated with the merchant or other entity” (*id.* at col. 21, ll. 4–6). More particularly, Treyz discloses that “a link may be used, for example, to push promotional materials or other information to a user’s handheld computing device or to consummate a wireless purchase transaction or to receive a shopping list or

directory from computer **184**” (*id.* at col. 21, ll. 11–14). In this regard, Treyz discloses that “[a] remote link may be used to obtain a shopping list from a remote server, to retrieve a directory, to retrieve product information from a remote database, to access a remote web site containing product information or personal information, to access a service implemented at a remote service provider, etc.” (Treyz, col. 21, ll. 18–23)

Treyz also discloses that its shopping assistance service enables a user to create a shopping list based on video content and “[t]he video content may be displayed on in-home electronic equipment or the handheld computing device” (*id.* at col. 3, ll. 56–61). More particularly, Treyz discloses that “[p]latforms such as in-home electronic device **28**, handheld computing device **12**, computer **42**, and automobile personal computer **44** may support remote interactions with stores, malls, and other establishments and with one or more service providers **46**” (*id.* at col. 11, ll. 39–44). In this regard, Treyz discloses

a handheld computing device **12** that has obtained information on an item in a store or other facility **34** (e.g., by scanning the item with a bar code, by using an RFID unit, by receiving input from the user through a touch screen, or by receiving information over a local wireless link, etc.) may obtain additional information and services related to the item from computer **28** over link **52**. Information and services may be obtained from manufacturer **48**, service provider **46**, order fulfillment facility **30**, and other such entities over communications network **32**.

(*Id.* at col. 27, ll. 55–65).

Maggio is directed a system for presenting advertisements by “substituting media content for presentation on a media device, such as a television” (Maggio ¶ 5). Maggio describes one embodiment which utilizes an interactive remote control that controls television content (*id.* ¶ 518).

Maggio further discloses that its remote control includes a bar code scanner which “can acquire UPC data as well as other data represented in barcode format” (*id.* ¶¶ 518, 519). In this regard, Maggio discloses that

[a]n appearance of a CRĀV Ad on the magazine can draw the user’s attention from the content **3510** presented on the broadcast receiver **2205** to the CRĀV Ad. Recognizing the advertisement as being interactive based on a CRĀV logo or other distinguishing feature, the user **3421** can direct the interactive remote control **4700** to the magazine to initiate an immersion level of interaction with the magazine’s advertising content.

(*Id.* ¶ 520). Maggio further discloses

server computer **2230** processes scanned data and returns messages via the Internet **2225** and the data station **3450** for display on the interactive remote control’s display **2306**. Such exemplary messages can comprise CRĀV questions, promotional content, follow-on advertisements, gaming information, product usage suggestions, awards, discounts, survey questions, contest information, prize redemption codes, or detailed product specifications, for example.

(*Id.* ¶ 522). Maggio still further discloses

user **3421** can make entries via the interactive response keypad **2308** in respon[se] to messages presented on the interactive remote control’s display **2306**. For example, the user **3421** can reply to CRĀV questions, request additional product details, enter a contest, request mailing of an award certificate or coupon, rate product performance, characterize satisfaction with a product, order a product, or redeem prizes using the interactive response keypad **2308**. The interactive transmitter/receiver **2302** transmits such user entries to the server computer **2230** via the data station **3450** and the Internet **2225**.

(*Id.* ¶ 523). Maggio also discloses that its interactive remote can include “an RFID device (not shown) that can acquire data from items that have an associated RFID tag. The RFID device can be an “RFID scanner or reader

that supplies radiant energy to an RFID tag, coupled to a product, an advertisement, or to another physical item” (*id.* ¶ 525).

We are not persuaded by Appellant’s argument that Maggio fails to disclose or suggest limitation [d] of independent claim 1 because “the display in Maggio simply displays information from one source, the singular retailer associated with the scanned advertisement. Maggio does not disclose displaying solicited retail information associated with one or more identified at least one or products and services offered by *the plurality of retailers* to a user” (Appeal Br. 6; *see also* Reply Br. 2–3).

Appellant’s argument is not persuasive at least because claim 1 is rejected as unpatentable over the combination Treyz and Maggio, and not over either Treyz or Maggio alone. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (“Non-obviousness cannot be established by attacking the references individually where the rejection is based upon the teachings of a combination of references.”). Here, the Examiner relies on Maggio to “show that it is well established that product information can be scanned by a device and displayed via a set top box” (Ans. 18), but relies on Treyz as disclosing “receiving solicited retail information associated with the one or more identified products offered by a plurality of retailers” (*id.*; *see also* Final Act. 4–5 (citing Treyz, Fig. 28)) and being “used within a plurality of retailers” (Ans. 18; *see also* Treyz, Fig. 28).

We also are not persuaded by Appellant’s argument that the “Examiner’s Answer fails to show how replacing the handheld computing device 12 in Treyz with the set top box in Maggio would still read on the claims, given that the set top box in Maggio is only configured to display information from a single scanned CRAV ad” (Reply Br. 3). Instead, as the

Examiner points out, the Maggio reference is relied upon to disclose “that product information can be scanned by a device and displayed via a set top box” (Ans. 18). Moreover, the Examiner’s proposed combination of Treyz and Maggio does not suggest “replacing the handheld computing device 12 in Treyz with the set top box in Maggio,” as Appellant asserts (Reply Br. 3); but rather, the Examiner proposes “applying the known techniques of displaying the product data via a set-top device and receiving verification information via the set top device as shown by Maggio to the teachings in Treyz” (Final Act. 6).

To the extent that Appellant argues there is inadequate articulated reasoning with rational underpinning to support the Examiner’s legal conclusion of obviousness (Reply Br. 3), we find that the Examiner has provided “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” (*see KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006))). On pages 5–6 of the Final Action, the Examiner provides the required rationale to support the combination. And, moreover,

[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.

KSR, 550 U.S. at 417. We note that Appellant’s argument does not address whether the modification described by the Examiner is more than the predictable use of prior art elements according to their established functions nor do they specifically mention or contest the substance of the Examiner’s rationale, but rather only generally asserts that “[t]he fact that Treyz and Maggio exist in a similar field is not enough to show that the combination of

the two would be obvious, or that the combination would yield the claimed features” (Reply Br. 3).

We also are not persuaded by Appellant’s argument that the combination of Treyz and Maggio fails to disclose or suggest limitation [e] of independent claim 1 (*see* Appeal Br. 6–9; *see also* Reply Br. 3–4). More particularly, Appellant argues that “[w]hile Maggio discloses a variety of user responses in reply to an advertiser’s message, none of the user responses include ‘verification information [that] *indicates* at least *whether the displayed retail information corresponds to the at least one products and services*’” (Appeal Br. 7; *see also* Reply Br. 4). Instead, we agree with the Examiner that the combination of Treyz and Maggio discloses the argued limitation (*see* Final Act. 5–6; *see also* Ans. 18–19).

In making this determination, we note that Appellant has not directed us to any special definition in the Specification for the term “verification information;” and, after reviewing Appellant’s Specification, we are unable to find any such clear and explicit definition for the term. Instead, we find the Specification broadly describes

[t]he user **120** may verify whether the products and/or services **130** displayed are desired by the user **120**. For example, the user **120** may confirm that the displayed products and/or services **130** are desired by the user **120**. Also, the user **120** may refute that the displayed products and/or services **130** are desired by the user **120**.

(Spec. ¶ 25). Therefore, in the absence of an explicit definition, the Examiner may adopt the broadest reasonable interpretation of the term consistent with the Specification. *In re Morris*, 127 F.3d 1048, 1053–54 (Fed. Cir. 1997).

Here, we agree with the Examiner that Maggio's disclosure regarding "receiving an order for the product or requesting additional product specifications is an indication that the displayed data refer[] to the product that was scanned" (Ans. 18–19), under a broad, but reasonable interpretation of "verification information." Thus, Appellant's argument is not persuasive to show error in the Examiner's rejection.

In view of the foregoing, we sustain the Examiner's rejection of independent claim 1 under 35 U.S.C. § 103(a). We also sustain the Examiner's rejection of dependent claims 2–11, which is not separately argued (*see* Appeal Br. 10).

Independent claims 12, 13, and 20, and dependent claims 14–19 and 21–27

Appellant argues that independent claims 12, 13, and 20 are patentable for reasons similar to those set forth with respect to independent claim 1 (Appeal Br. 9). We are not persuaded for the reasons set forth above that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a). Therefore, we sustain the rejection under 35 U.S.C. § 103(a) of independent claims 12, 13, and 20 for the same reasons. We also sustain the rejection of claims 14–19 and 21–27, which depend from independent claims 12, 13, and 20, and are not argued separately (*see* Appeal Br. 10).

DECISION

The Examiner's rejection of claims 1–27 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)(1)(iv).

AFFIRMED