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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CRAIG STEPHEN ETCHEGOYEN

Appeal 2014-009055¹
Application 12/792,359²
Technology Center 3600

Before HUBERT C. LORIN, JAMES A. WORTH, and
TARA L. HUTCHINGS, *Administrative Patent Judges*.

WORTH, *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 1–5 and 7–11.³ We have jurisdiction under 35 U.S.C. §§ 134 and 6(b).

We AFFIRM.

¹ Our decision refers to the Appellant’s Amended Appeal Brief (“Appeal Br.,” filed Oct. 24, 2013) and Reply Brief (“Reply Br.,” filed Aug. 19, 2014), and the Examiner’s Final Office Action (“Final Act.,” mailed Aug. 13, 2012), Advisory Action (“Adv. Act.,” mailed Sept. 19, 2013), and Answer (“Ans.,” mailed June 19, 2014).

² According to Appellant, the real parties in interest are “Uniloc USA, Inc., Uniloc Luxembourg S.A, and the assignee NetAuthority, Inc” (Appeal Br. 3).

³ Claim 6 has been cancelled (Adv. Act.; Appeal Br. 19 (Claims App.)).

Introduction

Appellant's application relates to "methods and systems for selectively allowing or authorizing payment via an on-line or network transaction system, such as a payment authorization system, and for maintaining and updating a list of known devices that are associated with known user account or payment information" (Spec. ¶ 2).

Claims 1 and 8 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the subject matter on appeal:

1. A method, at one or more servers, for selectively authorizing a transaction, comprising:
 - receiving a request to authorize the transaction;
 - receiving a first machine fingerprint data associated with the request to authorize the transaction;
 - receiving a payment information associated with the request to authorize the transaction;
 - storing the payment information and the first machine fingerprint data in a memory;
 - retrieving the stored first machine fingerprint data associated with the payment information;
 - comparing the first machine fingerprint data with a second machine fingerprint data associated with the payment information, wherein the second machine fingerprint data was previously stored in the memory;
 - determining, using the first machine fingerprint data, whether to authorize the transaction; wherein each of the first machine fingerprint data and the second machine fingerprint data defines a masked fingerprint data.

(Appeal Br., Claims App. (underlining omitted).)

Rejections on Appeal

The Examiner maintains, and Appellant appeals, the following rejections:

- I. Claims 7–11 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- II. Claims 1, 2, 4, 5, and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Aucsmith (US 6,148,407, iss. Nov. 14, 2000), Sancho (US 2005/0108177 A1, pub. May 19, 2005), and Broder (US 5,974,481, iss. Oct. 26, 1999).
- III. Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Aucsmith, Sancho, Broder, and Ebert (US 2006/0064756 A1, pub. Mar. 23, 2006).
- IV. Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sancho and McArdle (US 7,231,665 B1, iss. June 12, 2007)
- V. Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Sancho, McArdle, and Aucsmith.
- VI. Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Sancho, McArdle, and Nanavati (US 7,890,950 B1, iss. Feb. 15, 2011).

ANALYSIS

Rejection I (Indefiniteness)

Claim 7–11

Appellant’s Appeal Brief does not contain arguments with respect to this rejection. As such, any arguments with respect thereto are waived. 37 C.F.R. § 41.37(c)(1)(iv). Thus, we affirm the rejection under § 112, second paragraph, of claims 7–11.

Rejection II–VI (Obviousness)

Independent claim 1 and dependent claims 2–5 and 7

We are unpersuaded by Appellant’s argument that Aucsmith and Sancho fail to disclose “comparing the first machine fingerprint data with a second machine fingerprint data associated with the payment information, wherein the second machine fingerprint data was previously stored in the memory;” and “wherein each of the first machine fingerprint data and the second machine fingerprint data defines a masked fingerprint data,” as recited in independent claim 1 (Appeal Br. 10–12 (underlining omitted)). Appellant characterizes the individual references as follows.

Appellant asserts that Aucsmith (cols. 5–6, col. 6 ll. 5–40) discloses comparing a sum of weighted trait values with a previously stored threshold value in order to decide the identity of the computer (Appeal Br. 10). Appellant asserts that Sancho (¶ 36) describes a credit card transaction over the internet in which an IP address and a buyer-ID (assigned for the transaction) are used to verify the identity of the buyer (Appeal Br. 11–12). Appellant asserts that Broder (col.

1, 13–17, col. 2, ll. 12–15) uses fingerprints to refer to webpages, and in particular, to optimize search results based on similarity.

However, one cannot show non-obviousness by attacking references individually when the rejection is based on a combination of references. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). The Examiner relies on the combination of Aucsmith with Sancho and Broder. In this regard, the Examiner relies on Aucsmith (col. 6, ll. 62–64, Fig. 4 (Step 440)) for the teaching of comparing data and for first machine fingerprint data (Final Act. 6). The Examiner relies on Sancho (¶ 73) for the teaching of associating fingerprint data with payment information (Final Act. 6). The Examiner further relies on Broder (Abstr. & Fig. 1), in combination therewith, for the teaching of second machine fingerprint data, in which the data is masked (Final Act. 7). We agree with the Examiner’s findings. Indeed, Aucsmith (Fig. 4) compares trait values from an unidentified machine against a template to determine machine identity; Sancho (¶ 73) describes associating, with credit information, a unique identification for the user using the identifying characteristics of the user’s PC; and Broder (col. 3, ll. 53–54) discloses the comparison of masked fingerprints.

Appellant further contends that the Examiner’s combination is based on an improper hindsight reconstruction and that it relies on the application under examination (Appeal Br. 13–14). In particular, Appellant asserts that “[w]hile the references are directed to online activities, only one contemplates online transactions” (*id.* at 14). We

are unpersuaded by Appellant's argument in view of the references of record.

The Examiner reasons that a person of ordinary skill in the art would have been motivated to combine the fingerprint teachings of Aucsmith with the fingerprinted payment method of Sancho in order to facilitate billing the proper user (Final Act. 7). The Examiner also reasons that a person of ordinary skill would have further applied the masking method of Broder thereto, in order to incorporate secure data processing features, with predictable results (*id.*). We agree that a person of ordinary skill in the art would have found it obvious to combine the teachings of the prior art for the reasons stated by the Examiner (*see id.*). Therefore, we sustain the Examiner's rejection under § 103 of independent claim 1.

Appellant does not argue the patentability of claims 2–5 and 7 separately from that of claim 1, from which they depend. We sustain the Examiner's under § 103 of claims 2–5 and 7, for similar reasons as for independent claim 1.

Independent claim 8 and dependent claims 9–11

We are persuaded by Appellant's argument that Sancho and McArdle fail to disclose "aggregating a configuration according to a template to create a defined data series," as recited in claim 8, i.e., "generating machine fingerprint data by reading configuration data indicating non-user-configurable settings for different hardware components of the client device, and aggregating a configuration according to a template to create a defined data series" (Appeal Br.

15–17). Appellant asserts that Sancho (¶ 73) discloses that a unique identification (“UID”) may include identification characteristics of the user’s PC but does not disclose aggregating data according to a template, as recited (Appeal Br. 15). Appellant asserts that McArdle discloses converting fingerprint data consistent with one operating system (“OS”) to another but does not aggregate data into a larger series (*id.* at 17).

The Examiner relies on McArdle (col. 3, ll. 23–55, col. 4, ll. 16–27, col. 5, ll. 60–64, Fig. 2) for aggregation of data (Final Act. 10; Ans. 5–6). We have reviewed the portions of McArdle relied on by the Examiner, and do not find a teaching of aggregation. We agree with Appellant that these portions of McArdle disclose data replacement rather than data aggregation, (or data aggregation according to a template), as recited by claim 8.

Therefore, we do not sustain the Examiner’s rejection under § 103 of claim 8. For the same reason, we do not sustain the Examiner’s rejection under § 103 of claims 9–11, which depend from claim 8.

DECISION

The Examiner’s decision to reject claims 7–11 under § 112, second paragraph, is affirmed.

The Examiner’s decision to reject claims 1–5 and 7 under § 103(a) is affirmed.

The Examiner’s decision to reject claims 8–11 under § 103(a) is reversed.

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Application 12/792,359

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