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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WILLIAM PHILIP SHAOUY and MATTHEW ADAM TERRY

Appeal 2014-009290
Application 12/886,200
Technology Center 3600

Before HUBERT C. LORIN, BIBHU R. MOHANTY, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL¹

STATEMENT OF CASE

Appellants² appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–19 and 21. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE DECISION

We AFFIRM-IN-PART.

¹ Our decision references Appellants' Appeal Brief ("Appeal Br.," filed Feb. 6, 2014), Reply Brief ("Reply Br.," filed Aug. 28, 2014), the Examiner's Answer ("Ans.," mailed July 2, 2014), and the Final Rejection ("Final Act.," mailed Sept. 11, 2013).

² Appellants identify the real party in interest as "International Business Machines Corporation" Appeal Br. 2.

CLAIMED INVENTION

The claimed invention relates to “a method and apparatus for finding persons using information on a network data processing system using a semantic web” (Spec. para. 1). Claims 1, 14, and 19 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the subject matter on appeal (Appeal Br. 20–21, Claims App.).

1. A method for locating people, the method comprising:

identifying, by a mobile data processing system, a number of degrees of separation from a requestor in searching for the people;

searching, by the mobile data processing system, a network data processing system for data structures that contain information about associations between the people that are within the number of degrees of separation from the requestor to generate an initial group of people;

defining a geographic boundary for the searching by receiving a drawing of a boundary with an irregular shape on a map;

identifying, by the mobile data processing system, a group of people from the initial group of people that are within a geographic location based on a location of the mobile data processing system and a portion of the group of people who are online; and

displaying, by the mobile data processing system, the portion of the group of people on a display device for the mobile data processing system;

displaying a first control and a second control, the first control to change the display to a relationship view and the second control to change the display to a map view;

displaying, in the relationship view:

an identification of each person in the portion of the group of people displayed on the display device;

a degree of separation from the requestor to the identification of the each person in the portion of the group of people displayed on the display device;

a distance between the each person in the portion of the group of people displayed on the display device and the mobile data processing system; and

a first communication control and a second communication control for each person in the portion of the group of people,

the first communication control to initiate a call with a respective person in the portion of the group of people, and

the second communication control to send a text message to the respective person;

displaying, in the map view:

a map with a location of each person in the portion of the group of people displayed on the display device for the mobile data processing system;

a balloon related to a person in the portion of the group of people when the person is selected;

a third communication control in the balloon to initiate a call with the person;

a fourth communication control in the balloon to send a text message to the respective person;

a distance in the balloon between the person and the mobile data processing system; and

a boundary control to control display of the geographic boundary used for the searching.

REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Birnie	US 2008/0104227 A1	May 1, 2008
Popp	US 2009/0153492 A1	June 18, 2009

Peh	US 2010/0087230 A1	Apr. 8, 2010
Kreitzberg	US 2011/0064074 A1	Mar. 17, 2011

Claims 1–19 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Birnie, Kreitzberg, Popp, and Peh.

ANALYSIS

Independent claim 1

Independent claim 1 requires, *inter alia*, “displaying, in the map view: . . . a balloon related to a person . . . a third communication control in the balloon to initiate a call with the person; a fourth communication control in the balloon to send a text message to the respective person” (Appeal Br. 21, Claims App.).

The Examiner finds the “balloon” in Birnie in the detailed display disclosed in paragraph 200, and also in Peh in icon 6204 shown in Figure 62 and described in paragraphs 143 and 145 (Ans. 5–6). The Examiner finds the third and fourth communication controls in Birnie in chat button 1220.

Appellants contend that Birnie does not disclose the third and fourth communication controls in the balloon as required by claim 1 because “Birnie’s chat button 1220 does not appear within the balloon” (Appeal Br. 14, 15).

In the Answer, the Examiner responds that “it is the Peh reference that teaches the balloon display” and “[i]t is the combination of these references which teach the limitation” (Ans. 17).

We are persuaded by Appellants’ arguments.

A rejection based on § 103 must clearly rest on a factual basis. The Examiner has the initial duty of supplying the factual basis for the rejection

and may not resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis. We have reviewed the cited portions of Birnie and see no discussion of any communication controls *in a balloon* as required by claim 1. Paragraph 200 of Birnie describes a detailed display such as display 1000 shown in Figure 10. There is no indication in paragraph 200 or Figure 10 that chat button 1220 is included in the detailed display that the Examiner equates to the “balloon” of claim 1. The Examiner has not made a determination on the record that it would have been obvious to include chat button 1220 in a balloon (such as display 1000). Although the Examiner indicates that the rejection is generally based on “the combination of these references” (Ans. 17), the Examiner has not specifically determined that it would have been obvious to include Birnie’s chat button 1220 in Peh’s icon 6204, and has not articulated any reason for such a hypothetical modification.

Accordingly, we do not sustain the rejection of independent claim 1 as obvious over Birnie, Kreitzberg, Popp, and Peh. For the same reasons, we do not sustain the rejection of claims 2–13 and 21 dependent thereon. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“dependent claims are nonobvious if the independent claims from which they depend are nonobvious”).

Claims 14–19

Appellants do not allege any error in the Examiner’s rejection of claims 14–19 (Appeal Br. 7) (“[t]he Appellants address only claim 1 in this brief”). Appellants argue, for the first time in the Reply Brief, that “[i]ndependent claims 14 and 19 have similar claimed subject matter as

distinguished claim 1” (Reply Br. 17)³. Contrary to Appellants’ assertion, claims 14 and 19 do not contain the limitation in claim 1 discussed above. For example, claims 14 and 19 do not recite “a balloon” (Appeal Br. 24–26). Accordingly, we sustain the rejection of claims 14–19.

DECISION

The Examiner’s decision to reject claims 14–19 under 35 U.S.C. § 103(a) is affirmed.

The Examiner’s decision to reject claims 1–13 and 21 under 35 U.S.C. § 103(a) is 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).

AFFIRMED-IN-PART

³ Although we choose to address it here, we note that Appellants use the Reply Brief to introduce new arguments with respect to claims 14 and 19 (see Reply Br. 17). “Any bases for asserting error, whether factual or legal, that are not raised in the principal brief are waived.” *Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative); see also *Optivus Tech., Inc. v. Ion Beam Appl’ns. S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) (“[A]n issue not raised by an appellant in its opening brief . . . is waived.”) (citing *Becton Dickinson & Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 800 (Fed. Cir. 1990)). The Examiner’s findings as to claims 14 and 19 remain unchanged from the Final Rejection, from which the instant appeal was taken (Ans. 7–9; Final Act. 7–9). Appellants could have presented the newly introduced arguments in the Appeal Brief. Appellants may not present arguments in a piecemeal fashion, holding back evidence and arguments until an examiner answers the original brief. This basis for asserting error is waived. See 37 C.F.R. §41.37(c)(1)(iv).