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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER S. ALKOV, TRAVIS M. GRIGSBY, RUTHIE D. LYLE, and LISA A. SEACAT

Appeal 2014-009564
Application 12/180,885
Technology Center 2100

Before JOSEPH L. DIXON, JOHN P. PINKERTON, and CARL L. SILVERMAN, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants[1] appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–19, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse and enter a new ground of rejection within the provisions of 37 C.F.R. § 41.50(b) (2011).

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[1] Appellants identify International Business Machines Corporation as the real party in interest. App. Br. 2.

STATEMENT OF THE CASE

Appellants' described and claimed invention generally addresses deficiencies in the art of virtual world management and provides for conversation detection in a virtual world. *See* Spec. ¶ 6.

Claim 1 is illustrative and provides as follows (with the disputed limitation *emphasized*):

> 1. A method for conversation management in a virtual world data processing system, the method comprising:
>
> recording a sequence of statements from different avatars in a virtual world;
>
> locating a position of each of the avatars in the virtual world;
>
> computing a temporal proximity of each of the recorded statements to others of the recorded statements;
>
> *grouping selected ones of the recorded statements in the virtual world if corresponding ones of the avatars are geographically proximate to one another in the virtual world* and if the selected ones of the statements have occurred within a threshold temporal proximity of one another; and,
>
> persisting the grouped statements in the virtual world as a conversation.

Rejection on Appeal

Claims 1–19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robbins (S. Robbins et al., *Second Life for Dummies* (Jan. 2008)) and Barsness (US 2007/0005701 A1; published Jan. 4, 2007).

ANALYSIS

The dispositive issue raised by Appellants' Briefs is whether Robbins teaches or suggests the limitation "grouping selected ones of the recorded statements in the virtual world if corresponding ones of the avatars are geographically proximate to one another in the virtual world," as recited in claim 1, and as similarly recited in claims 10 and 11. *See* App. Br. 7–9; Reply Br. 5–8.

The Examiner finds Robbins teaches or suggests the disputed limitation of claim 1. Final Act. 3; Ans. 3–4. In particular, the Examiner finds Robbins teaches grouping selected ones of the recorded statements if the corresponding avatars "are geographically proximate to one another" because Robbins teaches that all avatars have a chat log wherein all received communications are recorded (citing Robbins, page 5, section 6.3) and each chat log is based at least on the geographical distances between applicable avatars involved in sending and receiving the recorded statements. Ans. 3–4 (citing Robbins, page 3, section 6.2; page 5, section 6.3).

Appellants contend Robbins does not teach or suggest the disputed limitation of clam 1. App. Br. 6; Reply Br. 5–8. Specifically, Appellants argue Robbins does not teach the concept of grouping because, in Robbins, all chats are recorded, but the recorded chats are not grouped based on distance. App. Br. 8; Reply Br. 7. Appellants also argue that, in Robbins, "the distance [between avatars] determines whether you chat out loud or shout, but does not determine whether the recorded statements should be included in a particular 'conversation.'" App. Br. 9.

We agree with Appellants' arguments that the Examiner has erred. In particular, we agree with Appellants' argument that, in Robbins, the distance

determines whether you chat out loud or shout because section 6.2 of Robbins teaches one may chat out loud so "those within 20 meters of you can 'hear' you," or shout to "[f]olks who are more than 20 meters away." *See* App. Br. 9. We also agree with Appellants' argument that, "upon review of section 6.3 of Robbins, Robbins teaches that one can optionally log all chat, including IMs, by setting the appropriate preference." Reply Br. 7. Appellants further argue, and we agree, as follows:

> But Robbins does not teach or suggest the grouping of chats and IMs based on distance as Examiner asserts; instead, Robbins describes that chats, including IMs, are logged into a text document that can be read later, where only an end of a last IM is marked. In other words, there is no grouping of selected ones of the statements in Robbins; Robbins merely records all chat, including IMs, into a text file and marks a last IM in the log, if that preference is selected. Further, there is no indication as to how or if non-IM chat is marked.
>
> Additionally, as indicated above, there is no teaching in Robbins that the statements are recorded because corresponding avatars are geographically proximate to one another. In other words, Robbins records chats, including IMs, if the preference for logging the chat is selected, regardless of whether corresponding ones of the avatars are geographically proximate to one another.

Reply Br. 7–8.

Because Robbins teaches one can optionally log all chats and there is no teaching in Robbins that statements are recorded because corresponding avatars are geographically proximate to one another, we agree with Appellants' argument that Robbins does not teach "grouping selected ones of the recorded statements in the virtual world if corresponding ones of the avatars are geographically proximate to one another in the virtual world," as

recited in claim 1, and as similarly recited in claims 10 and 11. Thus, we do not sustain the Examiner's rejection of claims 1, 10, and 11, as well as dependent claims 2–9 and 12–19.

NEW GROUND OF REJECTON

Pursuant to the provisions of 37 C.F.R. § 41.50(b) (2011), we enter a new ground of rejection of claims 11–19 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claim 11 recites, a computer program product comprising a "computer usable storage medium." Appeal Br. 16 (Claims App.). We first note that the recited "computer usable storage medium" is not claimed as non-transitory. *Id.* Second, we note the Specification does not define "computer usable storage medium" to exclude signal propagation medium or transitory medium, but broadly defines the term to include a "propagation medium." *See* Spec. ¶ 22. Accordingly, we find that the broadest reasonable interpretation of the term "computer usuable storage medium" includes transitory propagating signals. *See Ex parte Mewherter*, 107 USPQ2d 1857, 1862 (PTAB 2013) (precedential in relevant part) (holding that where a specification does not limit the term "machine readable storage medium" expressly to exclude signals, carrier waves, and other transitory media, the term encompasses transitory propagating signals). Furthermore, by encompassing transitory propagating signals, claim 11, and its dependent claims 12–19, encompass non-statutory subject matter. *See In re Nuijten*, 500 F.3d 1346, 1355-57 (Fed. Cir. 2007) (holding that a transitory, propagating signal is non-statutory per se). Thus, claims 11–19 are rejected under 35 U.S.C. § 101.

DECISION

The Examiner's decision rejecting claims 1–19 is reversed.

A new ground of rejection is entered for claims 11–19.

37 C.F.R. § 41.50(b)

This Decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides that "[a] new ground of rejection . . . shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

> (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .
>
> (2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

REVERSED