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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GRANT SUTHERLAND and PETER D. VAN DYKE

Appeal 2014-009597
Application 12/345,131
Technology Center 2100

Before DEBRA K. STEPHENS, JEREMY J. CURCURI, and
JOSEPH P. LENTIVECH, *Administrative Patent Judges*.

CURCURI, *Administrative Patent Judge*.

DECISION ON APPEAL

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

Claims 9–15 are rejected under 35 U.S.C. § 101. Ans. 2–3.

Claims 1–3, 5, 6, 9–11, 13, and 14 are rejected under 35 U.S.C. § 102(b) as anticipated by Aihara (US 5,179,700; Jan. 12, 1993). Ans. 3–8.

Claims 4, 7, 8, 12, and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Aihara and Cairns (Michael Cairns, “Customizing Your ISPF Environment,” IBM Systems Magazine, September 2007).

Ans. 9–14.

We affirm-in-part.

STATEMENT OF THE CASE

Appellants' invention relates to "defining ISPF panels for a terminal interface to a computing environment." Spec. ¶ 1. Claim 1 is illustrative and reproduced below:

1. A method for extensibly defining interactive system productivity facility (ISPF) panels, the method comprising:
 - loading a panel defined by a plurality of panel definition statements recognizable by an ISPF;
 - identifying a panel input exit facility amongst the panel definition statements defining the panel, the panel input exit facility referencing an external exit module;
 - determining an external exit module referenced by the panel input exit facility; and,
 - passing records of the panel to the external input exit facility for preprocessing of the panel outside of the ISPF.

ANALYSIS

THE 35 U.S.C. § 101 REJECTION OF CLAIMS 9–15

The Examiner finds claims 9–15 are directed to non-statutory subject matter because the recited (claim 9) "computer usable storage medium" includes signals. Ans. 2–3; *see also* Ans. 14–15.

Appellants present the following principal argument:

- i. *Storage* medium does not include signals. *See* App. Br. 5–6; *see also* Reply Br. 2–4.

We see no error in the Examiner's conclusion that claims 9–15 are directed to non-statutory subject matter.

Although the term “computer usable storage medium” is not defined explicitly in Appellants’ Specification, Appellants’ Specification (¶ 26) describes:

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. The medium can be an electronic, magnetic, optical, electromagnetic, infrared, or semiconductor system (or apparatus or device) or a propagation medium.

Generally, the term “computer usable storage medium” encompasses transitory media and is, therefore, ineligible under § 101. *See Ex parte Mewherter*, 107 USPQ2d 1857, 1862 (PTAB 2013) (precedential) (holding recited machine-readable storage medium ineligible under § 101 because it encompassed transitory media). Here, Appellants’ Specification does not expressly distinguish a computer usable *storage* medium from a *transitory* medium. *See* Spec. ¶ 26. In light of the Specification, we conclude that the broadest reasonable interpretation of “computer usable storage medium” includes transitory forms.

We, therefore, sustain the Examiner’s rejection of claims 9–15 under 35 U.S.C. § 101.

THE ANTICIPATION REJECTION OF CLAIMS 1–3, 5, 6, 9–11, 13, AND 14 BY
AIHARA

The Examiner finds Aihara discloses all limitations of claim 1. Ans. 3–4. The Examiner maps Aihara’s user interface mapping profile 230 (Figure 2) to the recited plurality of panel definition statements. Ans. 3–4 (citing Aihara col. 6, ll. 8–14). The Examiner maps Aihara’s source

application screen manager 221 (Figure 2), source application screen analyzer 222 (Figure 2), and virtual screen manager 223 (Figure 2) to the recited (claim 1) “identifying a panel input exit facility amongst the panel definition statements defining the panel, the panel input exit facility referencing an external exit module.” Ans. 4.

Appellants present, among other arguments, the following principal argument:

i.

Aihara does not indicate that amongst the source panel definition, the new panel definition, and the mapping definition (the panel definition statements, according to Examiner) a panel input exit facility is identified and that the panel input [exit] facility references an external exit [module], as required by Appellants’ claim language. Rather, Figure 2 illustrates the relations between the different programs run on a workstation, including a source interface controller, user interface converter, and an interface controller.

App. Br. 12.

In response, the Examiner finds Aihara’s Figures 3–5 and 8–10 disclose a plurality of panel definition statements. Ans. 17; Final Act. 7. The Examiner also finds “[t]he panel definitions enable the identification of the facilities that convert and execute the DTL [(Dialog Tag Language)] statements such that a user can see the panel on screen.” Ans. 19.

In the Reply Brief, among other arguments, Appellants further argue:

Finally, with respect to the claimed limitation directed to the identification of a panel input exit facility amongst the panel definition statements defining a panel, Examiner maintains [that] Aihara discloses such. Specifically, Examiner maintains that Appellants’ “panel input exit facility” includes Aihara’s “application screen manager,” “application screen analyzer,” and “virtual screen manager.”[] Further, as indicated by Examiner in

the Examiner's Answer, the panel definition statements are equivalent to Aihara's DTL statements, as such Aihara must disclose that the DTL statements identify a panel input exit facility. However, Aihara discloses no such thing.

Reply Br. 8–9.

Appellants persuade us that Aihara does not disclose the recited (claim 1) (emphasis added) “identifying a panel input exit facility *amongst the panel definition statements defining the panel*, the panel input exit facility referencing an external exit module.” To the extent Aihara's Figures 8–10 disclose panel definition statements defining the panel, the Examiner has not adequately explained, nor do we readily see, where Aihara discloses a panel input exit facility amongst the panel definition statements defining the panel as required by claim 1. The Examiner maps the panel input exit facility to Aihara's source application screen manager 221 (Figure 2), source application screen analyzer 222 (Figure 2), and virtual screen manager 223 (Figure 2). *See* Ans. 4. However, elements 221, 222, and 223 (Figure 2) are not amongst the panel definition statements defining the panel (Figures 8–10). At best, the Examiner explains “[t]he panel definitions *enable* the identification of the facilities that convert and execute the DTL [(Dialog Tag Language)] statements such that a user can see the panel on screen.” Ans. 19 (emphasis added). However, the claim specifically requires the identification of the panel input exit facility *amongst the panel definition statements defining the panel*, which is different than Aihara's disclosure of converting and executing DTL.

We, therefore, do not sustain the Examiner's rejection of claim 1, or of claims 2, 3, 5, and 6, which depend from claim 1.

We also do not sustain the Examiner's rejection of independent claim 9, which recites "computer usable program code for identifying a panel input exit facility amongst the panel definition statements defining the panel, the panel input exit facility referencing an external exit module," for the same reasons discussed above with respect to claim 1. Further, we do not sustain the Examiner's rejection of claims 10, 11, 13, and 14, which depend from claim 9.

THE OBVIOUSNESS REJECTION OF CLAIMS 4, 7, 8, 12, AND 15 OVER AIHARA
AND CAIRNS

The Examiner does not find that Cairns overcomes the deficiencies of Aihara discussed above when addressing claim 1. *See* Ans. 9–14.

Claims 4 and 7 depend from claim 1. We, therefore, do not sustain the Examiner's rejection of claims 4 and 7.

We also do not sustain the Examiner's rejection of independent claim 8, which recites "to identify a panel input exit facility amongst the panel definition statements defining the loaded panel, to determine an external exit module referenced by the loaded panel input exit facility," for reasons discussed above.

Claims 12 and 15 depend from claim 9. We, therefore, do not sustain the Examiner's rejection of claims 12 and 15.

DECISION

The Examiner's decision rejecting claims 1–3, 5, 6, 9–11, 13, and 14 under 35 U.S.C. § 102 is reversed.

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The Examiner's decision rejecting claims 4, 7, 8, 12, and 15 under 35 U.S.C. § 103 is reversed.

The Examiner's decision rejecting claims 9–15 under 35 U.S.C. § 101 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).

AFFIRMED-IN-PART