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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MELVIN L. BARNES JR.,

Appeal 2015-000348
Application 13/323,253
Technology Center 2400

Before JEAN R. HOMERE, CAROLYN D. THOMAS, and KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of claims 1–8 and 10–23, all of the pending claims in the present application. Claims 9 and 24 are canceled. *See* Claim Appendix. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

The present invention relates generally to customizing content of broadcast transmissions. *See* Abstract.

Claim 1 is illustrative:

> 1. A method comprising:
>
> receiving at a viewing station a broadcast transmission, thereby resulting in a received broadcast transmission at the viewing station;
>
> performing, via the viewing station, a search to identify specified material in the received broadcast transmission;
>
> isolating background audio in an audio portion of the received broadcast transmission associated with the specified material from the specified material in the audio portion of the received broadcast transmission; and
>
> in response to identifying the specified material in the received broadcast transmission, modifying the received broadcast transmission to suppress the specified material so that the received broadcast transmission can be presented via the viewing station with the isolated background audio and without the specified material.

Appellant appeals the following rejections:[1]

R1. Claims 1–5, 11, 12, and 15–19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cragun (US 5,859,662, Jan. 12, 1999) and Grant (US 6,553,566 B1, Apr. 22, 2003);

R2. Claims 6–8 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cragun, Grant, and Stewart (US 5,870,708, Feb. 9, 1999);

R3. Claims 10 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cragun, Grant, and Porter (US 6,337,947 B1, Jan. 8, 2002); and

R4. Claims 20–23 are rejected under 35 U.S.C. § 103(a) as being

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[1] Appellant notes that independent claim 20 was amended in an after-final response filed January 29, 2014 to incorporate now canceled dependent claim 24. The amendment was entered for purposes of appeal (*see* Advisory Action dated February 24, 2014), therefore the rejection of claims 20 and 21 now fall under the rejection for previous claim 24, i.e., 35 U.S.C. 103(a). (*see* App. Br. 10).

unpatentable over Maissel (US 6,637,029 B1, Oct. 21, 2003) and Grant.

ANALYSIS

Issue: Did the Examiner err in finding that the combined cited art, particularly Grant, teaches or suggests isolating background audio in an audio portion of the received broadcast transmission, as set forth in claim 1?

Appellant contends in Grant "the background audio is muted along with the undesirable audio material and cannot be isolated or presented as recited in claim 1" (App. Br. 12; *see also id.* at 15). Appellant further contends that "Grant cannot possibly be understood to 'modulate' or 'mix' together an audio signal in the upper signal path and the occasionally muted audio signal in the lower path" (App. Br. 14) because "[t]he result, in that case, would reintroduce the undesired audio back into the signal" (*id.* at 15).

The Examiner finds that in Grant "only the portion of selected human speech or spoken word is being deleted while [the] rest of the audio signal is getting permitted . . . Grant does not suggest . . . to mute entire audio including background audio" (Ans. 39). We agree with the Examiner.

We refer to, rely on, and adopt the Examiner's findings and conclusions set forth in the Answer. Our discussions here will be limited to the following points of emphasis.

Although Appellant contends that in Grant "the background audio is muted along with the undesirable audio material" (*see* App. Br. 12), Appellant fails to direct our attention to the portion of Grant that expressly states the same. Instead, Grant discloses that "[t]he circuit **114** generates an audio signal that is altered by the signal alteration circuit **118** to effectively delete objectionable words or text on a video frame-by-frame basis" (3:19–

22). Grant further discloses that the method includes "recognizing the components of human speech . . . dissecting waveform equivalents of speech and strings of text into discrete components . . . deleting . . . previously selected and/or recognized human speech . . . and permitting the balance of sound signals" (*see* 2:16–32). In other words, Grant merely discloses deleting objectionable words/text and *permitting that the rest* of the audio, which reasonably includes permitting background audio, i.e., isolating background audio. Thus, we find unavailing Appellant's contention that Grant's background audio is muted given the lack of support directed thereto.

Appellant further contends that "[o]ne skilled in the art would most likely conclude that Grant's RF Modulator 116 takes the video signal from the upper path and the occasionally muted audio signal from the lower path" (App. Br. 14). However, the Examiner finds, and we agree, that "Grant [h]as described in column 3, line[s] 5–32 and as shown in Fig. 1, that only processing audio signal by dissecting audio waveform component and identifying unwanted human speech . . . then mixing the audio signal which does not have unwanted human speech with audio signal which has muted unwanted human speech" (Ans. 43). In other words, the Examiner finds that Grant processes audio signals on both the upper and lower paths feeding into RF modulator 116.

For example, Grant clearly illustrates in Figure 1 that circuit **114** generates an *audio signal* that is altered by signal alteration circuit **118** to delete objectionable words or text and the altered signal is fed to radio frequency (RF) modulator **116** (*see* Fig. 1 and 3:17–22). Also, in Grant, the audio signal from circuit **114**, without detected X out, is sent to RF

modulator **116** and this signal is mixed with the altered signal from circuit **118** (*see* 3:22–25). Thus, contrary to Appellant's contention, Grant's Fig. 1 is processing *audio* signals in both the aforementioned upper and lower paths identified by Appellant. Therefore, we find unavailing Appellant's contention that one skilled in the art would most likely conclude that Grant's RF Modulator 116 takes the *video* signal from the upper path and the occasionally muted *audio* signal from the lower path given the explicit disclosure in Grant to the contrary.

Regarding Appellant's contention that Grant "is not an enabling reference that can support a rejection" (App. Br. 16), we find this argument is based on a flawed characterization of the Examiner's findings, i.e., that the signal in the upper path of Grant's Figure 1 contains unaltered audio. As noted *supra*, the Examiner rather finds that Grant mixes the audio signal which does not have unwanted human speech with audio signal which has muted unwanted human speech (*see* Ans. 43). In any case, while a reference must enable someone to practice the invention in order to anticipate under § 102(b), a non-enabling reference may qualify as prior art for the purpose of determining obviousness under § 103. *Symbol Techs., Inc. v. Opticon, Inc.*, 935 F.2d 1569, 1578 (Fed. Cir. 1991).

Accordingly, we sustain the Examiner's rejection of claim 1. Appellant's arguments regarding the Examiner's rejection of independent claims 18–20, 22, and 23 rely on the same arguments as for claim 1, and Appellant does not argue separate patentability for the dependent claims. *See* App. Br. 10–20. We, therefore, also sustain the Examiner's rejection of claims 2–8, 10–17, and 21.

DECISION

We affirm the Examiner's § 103(a) rejections of claims 1–8 and 10–23 (R1–R4).

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