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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EMMANUEL MARILLY and CORINNE OBLED

Appeal 2015-001093
Application 12/935,996
Technology Center 2400

Before ELENI MANTIS MERCADER, CARL W. WHITEHEAD JR., and
ADAM J. PYONIN, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–12. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

Appellants' claimed invention is directed to a "system . . . dedicated to managing accessibility to objects in different locations" (Abstract).

Independent claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method devoted to managing the accessibility of objects in different locations, said method comprising:

generating and storing digital images of said objects,

associating each image with stored information representative of: a location where the image is stored, an availability status of the image, and rules defining use of the image, and the location where the corresponding object depicted in the image is located, an accessibility status of the corresponding object depicted in the image, and rules defining use of the corresponding object depicted in the image, and

authorizing access, in a given location, to at least one object or one image thereof when the associated accessibility or availability status of object or image allows said access in that given location and if the associated usage rules are complied with.

REFERENCES and REJECTIONS

Claims 1, 2, and 6–12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Harper (US 2008/0015953 A1; Jan. 17, 2008) and further in view of Slik (US 2008/0126404 A1; May 29, 2008). Final Act. 5.

Claims 3–5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Harper in view of Slik, and further in view of Levien (US 2007/0222865 A1; Sept. 27, 2007). Final Act. 31.

ISSUES

The issues are whether the Examiner erred in:

1. finding Slik and Harper combinable as analogous art; and
2. finding the combination of Harper and Slik discloses or suggests “associating each image with stored information representative of: a location where the image is stored . . . and the location where the corresponding object depicted in the image is located,” as recited in claim 1.

ANALYSIS

Combination of the references: analogous art

Appellants argue the Examiner erred in combining the references because the combination is “inappropriate” (App. Br. 5). Appellants contend “Harper is directed to a media sampling, recommendation and purchasing system” and that “Slik is concerned with the storage and management of fixed content objects” (App. Br. 5). Appellants then argue “[t]he art is simply non-analogous in the present case, and it would have been inappropriate to combine the references together” (App. Br. 5).

We are not persuaded of Examiner error. Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of

endeavor as the claims, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004).

First, we note Appellants appear to argue each reference is non-analogous to each other, rather than to the present application. (*See* App. Br. 5.) In any event, the Examiner finds “Harper discloses a user-personalized product sampling and recommendation system [that] has a database storing individual customer profile data files” (Ans. 2, citing Harper ¶ 11) and “Slik discloses a storage system [that] receives a fixed-content object to be stored in accordance with information storage management policies” (Ans. 3, citing Slik ¶ 11), in which the objects may be “diagnostic images, lab results, doctor notes, or audio and video files” (Ans. 3, citing Slik ¶ 53). We find both references pertain to solving the problem of storing and retrieving information and furthermore they are both from the same field of endeavor as they relate to database applications. Second, Appellants' argument that the combination of references is “inappropriate” is conclusory. *See, e.g., In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997) (attorney arguments or conclusory statements are insufficient to rebut a *prima facie* case).

Combination of the references: disclosing or suggesting all claim elements

Appellants argue the Examiner erred in finding the combination of Harper and Slik discloses or suggests “associating each image with stored information representative of: a location where the image is stored . . . and the location where the corresponding object depicted in the image is located,” as recited in claim 1 (App. Br. 5). Appellants contend that “[a]ccording to the claims, the ‘object’ and the digital ‘image’ thereof are

NOT the same thing. Moreover, information representative of *the location where the image is stored* is distinct from information representative of *the location where the object is located*” (App. Br. 6). Appellants further contend “the ‘object’ referenced in Slik **IS** the stored digital information” (App. Br. 7.).

We are not persuaded by Appellants’ arguments. The Examiner finds, and we agree, Appellants’ Specification states that “[a]ll types of objects are concerned by the invention” (Ans. 5, citing Spec. 1:3). Appellants’ Specification additionally states that “[f]urthermore, here the word ‘object’ refers to anything that may be exhibited and/or sold in a location” (Spec. 5:15–16). The Examiner finds, and we agree, that the claimed “object” encompasses Harper’s movie DVD, and the claimed “image” encompasses Harper’s video clip, in which “UPC information of the DVD (i.e., object) is stored at the media server and is used to locate the metadata and video clips (i.e. object depicted in the image) of the movie DVD” (Ans. 7, citing Harper ¶¶ 70, 75, 47).¹ Appellants’ arguments do not address and rebut the Examiner’s findings regarding the broad but reasonable interpretation of the “object” and “image,” when applied to Harper.

Accordingly, we sustain the Examiner’s rejection of independent claim 1, and independent claim 2 and claims 3–12.

CONCLUSION

The Examiner did not err in:

1. finding Slik and Harper combinable as analogous art; and

¹ We also note that the Harper suggests the location of the DVD is tied to the DVD’s genre information, because “merchandise is typically arranged by genre in aisles or racks” (Harper ¶ 43).

2. finding the combination of Harper and Slik discloses or suggests “associating each image with stored information representative of: a location where the image is stored . . . and the location where the corresponding object depicted in the image is located,” as recited in claim 1.

DECISION

The Examiner’s decision rejecting claims 1–12 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)(iv).

AFFIRMED