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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes application details for 13/052,676 and 89885, 7590, 06/30/2016, listing FERENGE & ASSOCIATES LLC and examiner PATEL, HARESH N.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANURADHA BHAMIDIPATY and ANUBHA VERMA

Appeal 2015-001243
Application 13/052,676
Technology Center 2400

Before JOHN A. JEFFERY, BRADLEY W. BAUMEISTER, and
DENISE M. POTHIER, *Administrative Patent Judges*.

POTHIER, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–12 and 25. App. Br. 5.¹ Claims 13–24 have been canceled. *Id.* at 21, Claim App'x. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

¹ Throughout this opinion, we refer to (1) the Final Rejection (Final Act.) mailed January 14, 2014; (2) the Appeal Brief (App. Br.) filed June 4, 2014; (3) the Examiner's Answer (Ans.) mailed August 27, 2014; and (4) the Reply Brief (Reply Br.) filed October 27, 2014.

INVENTION

Appellants' invention detects non-compliant content. Spec. ¶ 1. Non-compliant content includes confidential or sensitive information. *See id.* ¶ 2. Current methods require a user to look for non-compliant information before sharing data. *Id.* ¶ 2. Appellants' invention analyzes data to be shared and identifies non-compliant content before the data is shared. *Id.* ¶ 3. Claim 1, reproduced below with our emphasis, is illustrative:

1. A computer program product comprising:
a computer readable storage medium having computer readable program code embodied therewith, the computer readable program code comprising:
computer readable program code configured to, responsive to *receiving a user selection to share data, convert data to a form suitable for analysis, and analyze the data to be shared*; and
computer readable program code configured to automatically identify noncompliant content within the data prior to sharing the data, wherein the non-compliant content is determined using at least one set of rules.

The Examiner relies on the following as evidence of unpatentability:

Chen	US 7,509,384 B1	Mar. 24, 2009
Zhang	US 2009/0313706 A1	Dec. 17, 2009
Thompson	US 2010/0049807 A1	Feb. 25, 2010
Lamanna	US 2012/0051657 A1	Mar. 1, 2012 (filed Aug. 30, 2010)

THE REJECTIONS²

Claims 1–5, 9, 12, and 25 are provisionally rejected on the ground of non-statutory obviousness-type double patenting over U.S. Patent Application No. 13/597,625. Final Act. 4.

Claims 1–12 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 9–11.

Claims 1–5, 9, 12, and 25 are rejected under 35 U.S.C. § 102(e) as anticipated by Lamanna. Final Act. 11–15.

Claims 6–8, 10, and 11 are rejected under 35 U.S.C. § 103(a) as unpatentable over Lamanna and Chen. Final Act. 15–16.

Claims 1–12 and 25 are rejected under 35 U.S.C. § 102(b) as anticipated by Zhang. Final Act. 17–20.

Claims 1–12 and 25 are rejected under 35 U.S.C. § 102(b) as anticipated by Thompson. Final Act. 21–24.

THE UNCONTESTED REJECTIONS

I

Claims 1–5, 9, 12, and 25 are provisionally rejected on the ground of non-statutory obviousness-type double patenting over U.S. Patent Application No. 13/597,625. Final Act. 4. Appellants do not argue this rejection. *See* App. Br. 14–18; Reply Br. 2.

Based on the facts in this record, we decline to reach the Examiner’s provisional rejection of claims 1–5, 9, 12, and 25 on the ground of

² The Examiner’s § 112 rejection (Final Act. 8–9) has been withdrawn. Ans. 2–3. Accordingly, Appellants’ arguments related to this rejection (App. Br. 16–17) are moot.

non-statutory obviousness-type double patenting. *See Ex parte Moncla*, 95 USPQ2d 1884 (BPAI 2010) (precedential) (indicating panels have the flexibility to reach or not to reach provisional obviousness-type double patenting rejections).

II

The Examiner additionally rejects (1) claims 1–12 under 35 U.S.C. § 101, and (2) claims 1–12 and 25 under 35 U.S.C. § 102(b) as anticipated by each of (a) Zhang and (b) Thompson, individually. Ans. 2. Although Appellants appeal from the last decision of the Examiner (*see* Notice of Appeal, filed April 4, 2014), Appellants do not argue these rejections. *See* App. Br. 14–18; Reply Br. 2.

Because Appellants do not contest these rejections (*see* App. Br. 14–18; Reply Br. 2), we summarily sustain the rejections of (1) claims 1–12 under § 101 and (2) claims 1–12 and 25 under § 102(b) as anticipated by each of (a) Zhang and (b) Thompson. Ans. 2. *See Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008) (explaining that when appellant fails to contest a ground of rejection, the Board may affirm the rejection without considering its substantive merits); *see also* 37 C.F.R. § 41.37(c)(1)(iv) and Manual of Patent Examining Procedure (MPEP) § 1205.02, 9th ed. (Nov. 2015) (“If a ground of rejection stated by the examiner is not addressed in the appellant’s brief, that ground of rejection will be summarily sustained by the Board.”).

Although we do not reach the merits of the Examiner’s § 101 rejection, we note that claims 1–12 recite a “computer program product comprising: computer readable storage medium” Our precedent indicates that those of ordinary skill in the art would interpret a storage medium broadly, but reasonably, to include signals per se, which is

non-statutory subject matter, when the Specification lacks a definition to the contrary. *See Ex parte Mewherter*, 107 USPQ2d 1857, 1862 (PTAB 2013) (precedential) (citing *In re Nuijten*, 500 F.3d 1346, 1356–57 (Fed. Cir. 2007)).

THE ANTICIPATION REJECTION OVER LAMANNA

Contentions

The Examiner finds that Lamanna discloses all limitations of claim 1, including converting data to a form suitable for analysis. Final Act. 11–13 (citing Lamanna ¶¶ 53–55). According to the Examiner, Lamanna automatically identifies and removes sensitive information from files. Final Act. 12.

Appellants argue that Lamanna does not convert data to a form suitable for analysis. App. Br. 15. According to Appellants, Lamanna requires metatags or templates to parse complex files with images or non-textual information. *Id.* at 14.

Dependent claims 2–5, 9, and 12 and independent claim 25 are not argued separately. We select claim 1 as representative. App. Br. 14–15.

Issue

Under § 102, has the Examiner erred in rejecting claim 1 by finding that Lamanna converts data to a form suitable for analysis?

Analysis

Based on the record before us, we find no error in the Examiner’s rejection of claim 1, which calls for, in pertinent part, “computer readable

program code configured to . . . convert data to a form suitable for analysis.”

As understood, the Examiner’s citation to paragraph 53 indicates that Lamanna’s document comparison corresponds to the recited code configured to “analyze the data to be shared.” *See* Final Act. 12. Furthermore, in response to Appellants’ contention concerning Lamanna, the Examiner cites to paragraph 59 describing a fingerprint library. Ans. 4. Accordingly, Lamanna’s mapped analysis of “the data to be shared” (e.g., document comparison) is carried out using two pieces of information obtained from the document: containment coefficients (Lamanna ¶ 53, *cited in* Final Act. 12) and document fingerprints (Lamanna ¶ 59, *cited in* Ans. 4). Based on this understanding, we further understand the Examiner finds Lamanna’s containment coefficients and document fingerprints correspond to the recited data after being converted to “a form suitable for analysis.” *See* Final Act. 12; Ans. 4.

Turning now to the limitation at issue, Appellants do not argue that “a form suitable for analysis” is expressly defined in the Specification. *See* App. Br. 15. Rather, Appellants note that the Specification merely provides examples of this form. *Id.* at 15 (citing Spec. ¶ 28). For example, the raw data could be converted to strings or phrases. Spec. ¶ 28. Although this non-limiting embodiment (*id.*) informs our construction of the limitation at issue, we understand that the recited converted form encompasses different styles. This breadth is significant, for nothing on this record precludes the recited “a form suitable for analysis” from constituting, among other things, Lamanna’s containment coefficients (Lamanna ¶ 53, *cited in* Final Act. 12) or document fingerprints (Lamanna ¶ 59, *cited in* Ans. 4).

Lamanna uses document fingerprints to compare documents. Lamanna ¶ 31. Before comparing documents, Lamanna creates a fingerprint for a document. *Id.* ¶ 59 (referring to the methods “described above,” e.g., paragraphs 23–30). These document fingerprints are created using hashing. *See id.* ¶ 59; *see also, e.g., id.* ¶ 23 (describing minwise hashing) and 30. This hashing generates hash values from the document’s word units. *Id.* ¶¶ 59, 26. Lamanna extracts word units from the document’s text. *Id.* ¶ 25; *see also* ¶ 59, Fig. 1. For example, a number can be assigned to each character in a word unit. *Id.* ¶ 26. A hash function then converts the sum of these numbers into a hash value. *Id.* The fingerprint values are based on these hash values. *See id.* ¶¶ 59, 30. The document’s fingerprint is an ordered set of these fingerprint values. *Id.* ¶ 30. According to Lamanna, this ordered set makes comparing fingerprints easy. *Id.*

On this record, we see no error in the Examiner’s finding that Lamanna discloses “code configured to . . . convert data to a form suitable for analysis.” Ans. 4 (citing Lamanna ¶ 59). Like the conversion described in the Specification (Spec. ¶ 28, *cited in* App. Br. 15), Lamanna’s document-to-fingerprint conversion produces a string—e.g., the ordered set of values. *See* Lamanna ¶ 30. Furthermore, the Examiner’s finding that Lamanna discloses data converted a form suitable for analysis (*see* Ans. 4) is supported by Lamanna’s discussion of the ease using these fingerprints (*see* Lamanna ¶ 30). That is, the easy comparison that comes with using fingerprints based on their nature makes this format a suitable one for analysis. *See id.*

Lamanna also uses a second form to carry out the document comparison: the containment coefficient. *Id.* ¶ 53, *cited in* Final Act. 12. In

particular, the containment coefficient is based on at least one document. *See id.* ¶ 30. In one embodiment, the containment coefficient is calculated from the document’s fingerprint. *See, e.g., id.* ¶¶ 31–33, 44–46. And as described above, Lamanna converts the document’s text to create the fingerprint. *Id.* ¶¶ 59, 23–30. So through these calculations, the document’s data is converted to a containment coefficient. *See id.* ¶ 53.

The Examiner’s finding that Lamanna’s containment coefficients are suitable for analysis (Final Act. 12 (citing Lamanna ¶ 53)) is reasonable.

We agree with the Examiner that the recited analysis reads on Lamanna’s document comparison, which uses the containment coefficient.

Lamanna ¶ 53. For example, Lamanna discusses using the coefficient to determine a document is a template for another document and to group the document into a particular sensitivity level. *Id.* As another example, Lamanna compares the containment coefficient to a threshold to determine whether one document is a subset of another. *Id.* ¶ 46. Accordingly, we are unpersuaded by Appellants’ argument that Lamanna lacks the recited “code configured to . . . to convert data to a suitable form for analysis.”

App. Br. 14–15.

We are also unpersuaded by Appellants’ argument that Lamanna requires metatags or templates to parse particular complex files with images or non-textual information. *Id.* at 14. This argument is not commensurate with the scope of the claim; that is, claim 1 does not recite specific files with images or non-textual information. *Id.* Nor does the claim recite “complex documents or data,” as mentioned by Appellants. *See id.* at 15. Rather, claim 1 is directed to converting “data” generally. To the extent that the Examiner’s rejection depends on Lamanna’s metatags and templates for

analyzing images or non-textual information (*see* Ans. 4), we find nothing in the claim that precludes their use.

For the foregoing reasons, Appellants have not persuaded us of error in the rejection of independent claim 1 and claims 2–5, 9, 12, and 25 not separately argued with particularity. *See* App. Br. 14–15; Reply Br. 2.

THE OBVIOUSNESS REJECTION

Claims 6–8, 10, and 11 depend directly or indirectly from claim 1 and are rejected under § 103 based on Lamanna and Chen. Final Act. 15–16. Appellants fail to present any additional arguments against these rejections. *See* App. Br. 14–18; Reply Br. 2. The issues before us, then, are the same as those in connection with claim 1, and we refer Appellants to our previous discussion.

CONCLUSIONS

The Examiner did not err in rejecting (1) claims 1–12 under § 101; (2) claims 1–12 and 25 under § 102; and (3) claims 6–8, 10, and 11 under § 103.

DECISION

The Examiner’s decision rejecting claims 1–12 and 25 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