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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte IVAN DEAN BOGDANOVIC,
DEREK MACDONALD, and JOHN BRATT

Appeal 2015-002105
Application 12/813,022
Technology Center 2400

Before ELENI MANTIS MERCADER, JOHN A. EVANS, and
ALEX S. YAP, *Administrative Patent Judges*.

YAP, *Administrative Patent Judge*.

DECISION ON REHEARING

In a Decision entered July 8, 2016 (“Decision”) in relation to the above-captioned application, we: (1) affirmed the Examiner’s rejection of claims 1–8, 10, and 11 under 35 U.S.C. § 103(a) as being unpatentable over Baker in view of Wiatrak et al.; and (2) affirmed the Examiner’s rejection of claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Baker in view of Wiatrak, and further in view of Kelley et al. Appellants have requested rehearing of our Decision in relation to our rejections.

We have granted Appellants' request to the extent we have reconsidered our original Decision in light of Appellants' points, but we decline to modify the Decision.

DISCUSSION

Appellants urge that our Decision erred because we “misapprehended the disclosure in *Waitrak* [sic].” (Req. Reh’g 1.) According to Appellants, the Appellants are “quite familiar with the teaching of *Waitrak* [sic because it] was filed by the [Appellants] and prepared and prosecuted by the [Appellants’] Representative.” (*Id.*) Appellants contend that “it is clear that the Board is relying on misapprehension that *Wiatak* [sic] describes a situation in which ‘information [is] passed and accepted ... via the proxy and then passed through to the presence database’.” (*Id.* at 4.) Appellants explain that

because *Wiatrak*’s communication gateway (130) performs at least two distinct functions – these are the two functions that appear to have been merged in the Examiner’s analysis. One function is to pass voice and other messages between two distinct voice messaging systems whose user devices do not necessary know about both systems. The proxy provides the path for shuttling these messages between the systems. The second function has to do with coordinating presence information between the two voice messaging systems and maintaining combined presence information for the multiple systems. *This coordination of presence information is not based on communication that passes via the proxy. Rather, devices communicate directly with the presence server (330) at the communication gateway, which then updates the database (240).*

(*Id.* at 3, emphasis added.) In other words, Appellants continue to contend that “[t]here is no proxy device on the path between the user and presence database.” (Reply 4; *see* Req. Reh’g 2–5.) In support of its position,

Appellants provide Appendix 1, which purports to be “the entirety of all paragraphs and figures that refer to Waitrak’s [sic] proxy 230” and Appendix 2, purporting to contain “the entirety of all paragraphs and figures that refer to presence server 330 or its presence data 240.” (*Id.* at 3.)

We do not find Appellants’ arguments persuasive. We note that some paragraphs cited in the Appendixes are not cited in Appellants’ September 2, 2014, Appeal Brief or their November 26, 2014, Reply Brief, and Appellants have not provided good cause as to why they could not have cited to these paragraphs in their briefs. Importantly, Appellants have not persuaded us that we have misapprehended the teachings of Wiatrak. Wiatrak teaches that “the communication gateway 130 *interacts* with elements of the wireless telephone network for the purpose of maintaining presence information in the wireless telephone network.” (Wiatrak ¶ 39, emphasis added.) We agree with the Examiner’s findings that in Wiatrak, “once data[,] which includes presence information[,] is sent from a user device, to the communication gateway (item 130, Figure 2) ..., this [i]nformation is passed and accepted from the devices *via the proxy and then passed through to the presence database.* (Ans. 8–9, emphasis added; Wiatrak, Fig. 2; ¶¶ 14, 39.) For example, Wiatrak teaches “*a proxy for coordinating presence information of a first voice messaging system accessed through the first interface and presence information of a second voice messaging system accessed through the second interface and for passing voice messages between the voice messaging systems.* (Wiatrak ¶ 14, emphasis added.)

We are similarly not persuaded by Appellants’ contention that Appellants are in the best position to interpret Wiatrak because Appellants are “quite familiar with the teaching of Waitrak [sic because it] was filed by

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the [Appellants] and prepared and prosecuted by the [Appellants'] Representative.” (Req. Reh’g 1.) Appellants’ assertion is mere attorney argument and a conclusory statement, which is unsupported by factual evidence, and, thus is entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984).

SUMMARY

We are not persuaded that our Decision affirming the Examiner’s 35 U.S.C. § 103(a) rejections of claims 1–11 misapprehended or overlooked any point of fact or law advanced by Appellants. We, therefore, decline to modify our original Decision entered July 8, 2016.

DENIED