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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BARRY A. KRITT, THOMAS S. MAZZEO, and RODNEY E. SHEPARD II

Appeal 2015-003012
Application 11/852,309
Technology Center 2400

Before ELENI MANTIS MERCADER, CATHERINE SHIANG, and STEVEN M. AMUNDSON, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–19, which are all the claims pending and rejected in the application. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Introduction

According to the Specification, the present invention relates to data security control. *See generally* Spec. 1. Claim 1 is exemplary:

1. A method of securing confidential data comprising:

decrypting in memory of a computer confidential data in a document;

determining by a processor of the computer a subset of the decrypted confidential data specified by an author of the document;

rendering in a display of the computer a view of the decrypted confidential data including the subset of the decrypted confidential data; and,

responsive to detecting by the processor when an authorized viewer of the document no longer views the document, concealing in the display the subset of the decrypted confidential data while maintaining in the display a view of the decrypted confidential data not included in the subset of the decrypted confidential data.

References and Rejections

Claims 11–19 are rejected under 35 U.S.C. § 101 because they are directed to non-statutory subject matter.

Claims 1, 10, and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Uemura (US 2008/0013727 A1, published January 17, 2008) and King (US 7,072,683 B2, issued July 4, 2006).

Claims 2–6, 8, 9, and 12–16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Uemura, King, and Clapper (US 2003/0107584 A1, published June 12, 2003).

Claims 7 and 17–19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Uemura, King, Clapper, and Sawicki (US 2009/0150761 A1, published June 11, 2009).

Alternatively, claims 1, 10, and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Forlenza (US 2005/0091499, published April 28, 2005) and Hamzy (US 2006/0129948 A1, published June 15, 2006).

Alternatively, claims 2–6, 8, 9, and 12–16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Forlenza, Hamzy, and Clapper.

Alternatively, claims 7 and 17–19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Forlenza, Hamzy, Clapper, and Sawicki.

ANALYSIS

We disagree with Appellants' arguments, and agree with and adopt the Examiner's findings and conclusions in (i) the action from which this appeal is taken and (ii) the Answer to the extent they are consistent with our analysis below.[1]

Non-Statutory Subject Matter

On this record, we find no error in the Examiner's rejection of claims 11–19.

Claim 11 recites "a computer usable storage medium." Claims 12–19 depend from claim 11. In *Ex parte Mewherter*, 107 USPQ2d 1857 (PTAB

[1] To the extent Appellants advance new arguments in the Reply Brief without showing good cause, Appellants have waived such arguments. *See* 37 C.F.R. § 41.41(b)(2).

2013) (precedential-in-part), in light of the Specification's silence, the Board relied on extrinsic evidence and held that:

> [T]hose of ordinary skill in the art would understand the claim term "machine-readable storage medium" would include signals *per se*. Further, where, as here, the broadest reasonable interpretations of all the claims each covers a signal *per se*, the claims must be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter. *See In re Nuijten*, 500 F.3d 1346, 1356–57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter); *Subject Matter Eligibility of Computer-Readable Media, supra*; U.S. Patent & Trademark Office, *Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101*, Aug. 24, 2009; p. 2, available at http://www.uspto.gov/web/offices/pac/dapp/opla/2009-08-25_interim_101_ instructions.pdf; U.S. Patent & Trademark Office, *Evaluating Subject Matter Eligibility Under 35 USC § 101* (August 2012 Update); pp. 11–14, available at http://www.uspto.gov/patents/law/exam/101_training_aug2012.pdf.

Id. at 13–14. The Board noted that "[t]he term 'machine-readable medium' is equivalent to the more commonly used term 'computer-readable medium.'" *Id.* at 4 n.2. The Board also rejected the contention that the claimed machine-readable storage medium is distinguishable from a machine-readable medium because the machine-readable storage medium necessarily excludes transitory media from the scope of the term. *See id.* at 4, 6.

Appellants contend paragraph 22 of the Specification describes a "computer readable storage medium." *See* App. Br. 5–7; Reply Br. 2–4.

However, the claims recite "a computer usable storage medium"—not "computer readable storage medium." In any event, paragraph 22 of the Specification merely describes *non-limiting* examples, and does not assign any special meaning to the term "a computer usable storage medium." As a result, Appellants have not shown *Mewherter* is inapplicable here, and have not persuaded us that the claimed "computer usable storage medium" excludes transitory media from the scope of the term.

Therefore, the Examiner correctly concludes that the broadest reasonable interpretation of the term "a computer usable storage medium," according to its ordinary and customary meaning to a person of ordinary skill in the art, encompasses nonstatutory subject matter. *See* Ans. 3–4.

We note that Appellants are not precluded from amending the claims to overcome the rejection. Relevant guidance is in U.S. Patent & Trademark Office, *Subject Matter Eligibility of Computer Readable Media*, 1351 Off. Gaz. Pat. Office 212 (Feb. 23, 2010) ("A claim drawn to such a computer readable medium that covers both transitory and non-transitory embodiments may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 U.S.C. § 101 by adding the limitation 'non-transitory' to the claim."); U.S. Patent & Trademark Office, *Evaluating Subject Matter Eligibility Under 35 USC § 101* (August 2012 Update) pp. 11–14, available at http://www.uspto.gov/patents/law/exam/101_training_aug2012.pdf (noting that while "non-transitory" is a viable option for overcoming the presumption that the media encompass signals or carrier waves, *merely indicating that such media are "physical" or "tangible" will not overcome such presumption*).

Accordingly, we sustain the Examiner's rejection of claims 11–19 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Obviousness

On this record, the Examiner did not err in rejecting claim 1. Appellants contend Uemura and King do not collectively teach

> responsive to detecting by the processor when an authorized viewer of the document no longer views the document, concealing in the display the subset of the decrypted confidential data while maintaining in the display a view of the decrypted confidential data not included in the subset of the decrypted confidential data,

as recited in claim 1. *See* App. Br. 8–11; Reply Br. 4–6. In particular, Appellants assert "Examiner's analysis avoids accounting for the claimed limitation of 'concealing a subset of the decrypted confidential data while maintaining a view of the remaining decrypted confidential data in the view'" and "Umara only teaches the selection of a subset of confidential data and . . . King teaches the concealing of ALL data in a display." App. Br. 10; *see also* Reply Br. 5. Appellants argue Uemura cannot be modified to incorporate King's teachings "because the 'printed document' of Uemara cannot detect when it is viewed by an individual." App. Br. 10–11; *see also* Reply Br. 5–6.

Appellants have not persuaded us of error. The Examiner correctly finds:

> Regarding [] the limitation *"concealing a subset of the decrypted confidential data while maintaining a view of the remaining decrypted confidential data in the view"* Uemura discloses that the area 3e of figure 4A is not disclosed *(i.e.*

> ***concealed with dark color)*** while address and photo in fig 4A are displayed *(i.e.* ***display maintaining a view of data not included in the subset).***

Ans. 8.

Further, contrary to Appellants' assertion that Uemara merely teaches a "printed document" (App. Br. 10–11), Uemura states:

> Different outputs are illustrated in FIG. 4A and FIG. 4B. *The different outputs in FIG. 4A and FIG. 4B show the original document 1a being previewed at the display part 111* or a print state of the printed document *2a* output from the image processing apparatus 100. For the sake of convenience, *a case of the original document 1a being previewed at the display part 111 will be described.*

Uemura ¶ 50 (emphases added).

Because Uemura teaches "the original document . . . being previewed at the display part" (Uemura ¶ 50), Appellants' assertion that Uemura cannot be modified to incorporate King's teachings "because the 'printed document' of Uemara cannot detect when it is viewed by an individual" (App. Br. 10–11) is unpersuasive. Likewise, Appellants' assertion that King cannot be modified to incorporate Uemura's teachings (App. Br. 11) is unpersuasive, as the Examiner does not modify King for the proposed combination.

Because Appellants have not persuaded us the Examiner erred, we sustain the Examiner's rejection of independent claim 1, and independent claims 10 and 11 for similar reasons.

We also sustain the Examiner's rejection of corresponding dependent claims 2–9 and 12–19, as Appellants do not advance separate substantive arguments about those claims.

Alternative Rejections

Alternatively, the Examiner rejects independent claim 1 based on the collective teachings of Forlenza and Hamzy. *See* Final Act. 17–19. The Examiner acknowledges "*Forlenza* does not explicitly disclose" the disputed limitation[2] (Final Act 18), but relies on Hamzy:

> Hamzy discloses responsive to detecting when an authorized viewer of the document no longer views the document, concealing the subset of the decrypted confidential data while maintaining a view of the decrypted confidential data not included in the subset of the decrypted confidential data *(Hamzy: abstract: pars. 0006, 0009; Upon becoming inactive, windows* security *module overrides the application data being send to a secure window and displayed a predetermined screen-saver-type image in its place; See also pars. 0019, 33–34, and 37; fig. 8; fig. 10, step 1018 & 1029).*

Ans. 12; *see also* Final Act. 18.

We disagree. Hamzy's screen saver is non-confidential and does not teach "maintaining in the display a view of the decrypted confidential data not included in the subset of the decrypted confidential data," as required by claim 1. *See* App. Br. 13. Therefore, we reverse the Examiner's alternative rejection of independent claim 1 based on the collective teachings of Forlenza and Hamzy, and independent claims 10 and 11 for similar reasons.

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[2] As discussed above, the disputed limitation is "responsive to detecting by the processor when an authorized viewer of the document no longer views the document, concealing in the display the subset of the decrypted confidential data while maintaining in the display a view of the decrypted confidential data not included in the subset of the decrypted confidential data."

We also reverse the Examiner's alternative rejections of corresponding dependent claims 2–9 and 12–19. Although the Examiner cites additional references for rejecting those dependent claims, the Examiner has not shown the additional references overcome the deficiency discussed above with respect to the underlying independent claims 1, 10, and 11.

DECISION

We affirm the Examiner's decision rejecting claims 1–19.

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