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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
13/334,480 12/22/2011 Paul Sharad Tuscano 20060405C1 5040

25537 7590 11/28/2016
VERIZON
PATENT MANAGEMENT GROUP
1320 North Court House Road
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EXAMINER

GOFMAN, ALEX N

ART UNIT PAPER NUMBER

2163

NOTIFICATION DATE DELIVERY MODE

11/28/2016

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* PAUL SHARAD TUSCANO and  
JESSE ELLIOTT MONEY

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Appeal 2015-004196  
Application 13/334,480  
Technology Center 2100

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Before: CAROLYN D. THOMAS, JASON V. MORGAN, and  
JOHN R. KENNY, *Administrative Patent Judges*.

KENNY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134 from rejections of claims 1, 2, 4–17, 19–26, and 28–31, which constitute all pending claims in the application. Final Act. 1; App. Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART and enter a NEW GROUND OF REJECTION under 37 C.F.R. § 41.50(b).

CLAIMED INVENTION

The claimed invention is directed to age verification and content filtering systems and methods. Spec. 1. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A computer system comprising:

a content decision point (CDP) and a policy enforcement point (PEP) in a carrier's network, at least one of the PEP and the CDP being configured to receive a request for content from a handset of a user via the carrier's network, each of the CDP and the PEP being external to the handset and on one or more servers of the carrier's network, each server comprising a processor and computer-readable instructions for performing respective operations, the CDP being configured to determine a rating for content accessible via the handset; and

a policy service profile (PSP) external to the handset, the PSP configured to store, in the carrier's network, profile information of the user,

the PEP being configured to work with the CDP to determine the content rating for the content requested by the handset, according to a plurality of defined content categories, and, based upon the profile information of the user and the determined content rating, to allow or deny the handset access through the carrier's network to the requested content.

REFERENCES

|            |                    |               |
|------------|--------------------|---------------|
| Lipsanen   | US 2005/0097595 A1 | May 5, 2005   |
| Igarashi   | US 2005/0148321 A1 | July 7, 2005  |
| Viitaharju | US 2006/0149727 A1 | July 6, 2006  |
| Mazerski   | US 2006/0293057 A1 | Dec. 28, 2006 |
| Allaire    | US 2007/0038931 A1 | Feb. 15, 2007 |
| Cai        | US 2007/0099609 A1 | May 3, 2007   |
| Damm       | US 8,006,279 B2    | Aug. 23, 2011 |

REJECTIONS

Claims 1, 2, 4, 16, 17, 19 and 22–24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Viitaharju and Cai. Final Act. 2.

Claims 5–9, 20 and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Viitaharju, Cai, and Damm. Final Act. 6.

Claims 10, 11, 13 and 15 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Viitaharju, Cai, and Lipsanen. Final Act. 11.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Viitaharju, Cai, Lipsanen, and Damm. Final Act. 14.

Claims 25, 26, and 28 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Viitaharju, Cai, and Igarashi. Final Act. 8.

Claim 29 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Viitaharju, Cai, and Mazerski. Final Act. 15.

Claims 30 and 31 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Viitaharju, Cai, and Allaire. Final Act. 16.

#### ANALYSIS

*Claim 1, 2, 4, 16, 17, 19 and 22–24*

The Examiner finds the combination of Viitaharju and Cai teaches or suggests all of the limitations of claim 1. Final Act. 2–3. Appellants argue that the combination fails to teach or suggest (i) both a CDP and PEP external to the handset and on one or more servers of the carrier’s network (ii) that the PEP that works with the CDP to allow or deny access to the handset through the carrier’s network based on profile information and a determined content rating. App. Br. 6; Reply Br. 1.

We are not persuaded by this argument. As the Examiner sets forth, Viitaharju teaches or suggests both a CDP that addresses age related restrictions and a PEP that address digital rights management based on profile information and a determined content rating. Final Act. 2–3, Ans. 3–4, citing Viitaharju ¶¶ 34, 37, 57, 61, 65, 66. Viitaharju’s CDP and PEP work together to allow or deny access to the handset (e.g., to DRM protected content and age protected content). *Id.* Although Viitaharju’s CDP and PEP are not external to the handset, Cai discloses locating restrictive functionality external to a handset in a carrier’s network. *Id.* at 4–5, citing Cai ¶¶ 17, 22, 27, Fig. 4D (restrictions selected through the Internet). We agree with the Examiner that collectively these disclosures teach or suggest (i) both a CDP and PEP external to the handset and on one or more servers of the carrier’s network and (ii) that the PEP works with the CDP to allow or deny access to

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the handset through the carrier's network based on profile information and a determined content rating. Ans. 3–5.

Appellants further argue that the combination of Viitaharju and Cai does not teach or suggest a PSP that is external to the handset in the carrier's network. App. Br. 8. We are also not persuaded by that argument. As the Examiner sets forth, Cai teaches or suggests an external policy service profile (PSP) by disclosing user-selected restrictions of a mobile plan—the restrictions are an externally stored profile. Ans. 4–5; Cai. Fig. 4D.

Appellants argue that Cai fails to disclose an external CDP or an external PEP. Reply Br. 1–3. We are not persuaded by this argument because the Examiner's rejection is based on the combined teachings of Cai and Viitaharju. *In re Mouttet*, 686 F.3d 1322, 1332–33 (Fed. Cir. 2012). As the Examiner sets forth, Viitaharju discloses both a CDP and a PEP. Ans. 3, citing Viitaharju ¶¶ 34, 37. Cai discloses locating related functionality externally to the handset. Ans. 4, citing Cai ¶¶ 17, 27, Fig. 4D. Combined, the references teach or suggest the external CDP and external PEP. Ans. 3–5.

Appellants further argue that the Examiner erred in citing the Specification to demonstrate that the claim term “content rating” includes adult ratings. Reply Br. 1–2. We are not persuaded by this argument because whether “content rating” encompasses adult ratings is an issue of claim construction for which the Examiner should consult the Specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (en banc).

Appellants further argue that combining Viitaharju and Cai would change the principle of operation and destroy the purpose of Viitaharju—to perform control/filtering on the mobile terminal and store user profile information on the mobile terminal to prevent tampering. App. Br. 10–11;

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Reply Br. 3–4, citing Viitaharju ¶¶ 3, 29, 53, 56–57, and 72. We are not persuaded by this argument because the cited portions of Viitaharju merely disclose one embodiment that stores a password and/or profile in a tamperproof area of the mobile device memory. *See, e.g.,* Viitaharju ¶ 57. The cited portions further disclose storing a password in another device. *Id.* Moreover, Appellants have not presented any persuasive arguments or evidence indicating that storing information on a server that user does not control (as with the proposed combination) would not be tamper resistant.

Appellants also argue that combining Viitaharju and Cai would destroy another fundamental operation of Viitaharju: to perform content review on a mobile device and storing a user profile on a mobile device. App. Br. 10–11. We are not persuaded by this argument because Appellants present no persuasive arguments or evidence demonstrating that performing content review on a mobile device or storing a user profile on a mobile device are fundamental operations of Viitaharju, rather than merely features of disclosed embodiments.

Appellants further argue that the Examiner has not set forth a sufficient rationale for combining Viitaharju and Cai. App. Br. 12–13; Reply Br. 3–4. We disagree. The Examiner sets forth that combining Cai with Viitaharju allows for restriction of content from a centralized location, which permits the simpler use of a computer to choose selections, rather than requiring the reprogramming of a SIM card: a sufficient rationale for the proposed combination. Ans. 6.

Accordingly, we sustain the rejection of claim 1 and of claims 2, 4, 16, 17, 19 and 22–24, not separately argued. App. Br. 6–16. We also adopt the Examiner’s findings and rationales for this rejection set forth in the Final Action and the Answer.

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*Claims 5–9, 14, 20, 21, and 29–31*

Appellants present the same arguments for claims 5–9, 14, 20, 21, and 29–31 as for claim 1. App. Br. 15–18. Accordingly, we sustain the rejections of claims 5–9, 14, 20, 21, and 29–31.

*Claims 10–13 and 15*

Appellants argue claim 10 is patentable for the same reasons as claim 1 and for the additional reason that claim 10 recites the routing limitation of “routing a content request to a product silo based on a product identified in the request.” App. Br. 14; Reply Br. 5–6. As discussed above, we are not persuaded by Appellants’ arguments for claim 1. For the routing limitation, we cannot address the merits of Appellants’ arguments because we are unable to construe the limitation due to its indefiniteness. *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970). In particular, the Specification defines “a product silo” as a “form of content.” Spec. ¶ 24 (“each form of content is herein referred to as a ‘product silo’”). Using that definition, the routing limitation is ambiguous because it means routing a content request to a form of content based on a product identified in a request.

The Specification also refers to “product silos” in the following passage: “the PEP 206, 208, 210 may employ a distributed architecture where enforcement occurs at the point where content enters the carrier’s network (e.g., the product silos).” Spec. ¶ 27. This passage, however, does not define the term “product silos,” but to the extent the passage were to be interpreted otherwise, its definition would conflict with the definition in paragraph 24 of the Specification, which would render the term “product silo” itself indefinite, and, hence, for an additional reason, the routing limitation indefinite. *Ex parte Miyazaki*, 2008 WL 5105055 at \*5 (BPAI Nov. 19, 2008) (precedential).

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Accordingly, because we cannot construe the routing limitation, we do not sustain the obviousness rejection of claim 10 and of claims 11–13 and 15, which depend from claim 10. Instead, pursuant to our authority under 37 C.F.R. § 41.50(b), we newly reject claims 10–13 and 15 under 35 U.S.C. § 112, second paragraph, for indefiniteness.

*Claims 25, 26, and 28*

Appellants present the same arguments for claims 25, 26, and 28 as for claim 1. App. Br. 16. As discussed above, we are not persuaded by those arguments. In addition, Appellants state various limitations in claims 25, 26, and 28 are not taught by the cited prior art, but such statements are not arguments for separate patentability. *Id.*; 37 C.F.R. § 41.39(iv). Accordingly, we sustain the rejection of claims 25, 26, and 28.

DECISION

We affirm the obviousness rejections of claims 1, 2, 4–9, 14, 16, 17, 19–26, and 28–31.

We reverse, pro forma, the obviousness rejection of claims 10–13 and 15.

We enter a NEW GROUND OF REJECTION, rejecting claims 10–13 and 15 under 35 U.S.C. § 112, second paragraph.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” Section 41.50(b) also provides:

When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

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-IN-PART; 37 C.F.R. § 41.50(b)