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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FICUS KIRKPATRICK

Appeal 2015-004214
Application 13/043,214
Technology Center 2100

Before CAROLYN D. THOMAS, NABEEL U. KHAN, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

KHAN, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant¹ appeals under 35 U.S.C. § 134(a) from the Final Rejection of claims 1–4, 6–14, and 16–21. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ Appellant identifies Google, Inc. as the real party in interest. App. Br. 3.

THE INVENTION

Appellant's invention relates to techniques for identifying similar software applications based on programmed characteristics of the software applications. Spec. ¶ 4.

Exemplary independent claim 1 is reproduced below.

1. A method comprising:

selecting for analysis, by a computing device, an application;

monitoring, by the computing device, at least one of network behavior and system behavior of the application during execution of the application within a controlled environment;

identifying, based at least in part on at least one of the network behavior and the system behavior of the application, a group of application programming interfaces utilized by the application during execution;

determining, by the computing device and based on the group of application programming interfaces, that the application is undesired;

identifying a group of related applications that are each related to the application based on the group of application programming interfaces utilized by the application, wherein each related application of the group of related applications utilizes one or more application programming interfaces of the group of application programming interfaces utilized by the application, and wherein each related application of the group of related applications are available for download from an online application store that provides an interface for a plurality of mobile computing devices to download applications executable by the plurality of mobile computing devices; and

removing, from the online application store, the group of related applications.

REFERENCES and REJECTIONS²

1. Claims 1, 2, 14, and 16–20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Thorkelsson et al. (US 2011/0208801, Aug. 25, 2011), Made (US 2005/0268338, XX) and Gharabally et al. (US 2010/0205274, Aug. 12, 2010).

2. Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Thorkelsson, Made, Gharabally, and Park et al. (US 2011/0041078, Feb. 17, 2011).

3. Claim 6 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Thorkelsson, Made, Gharabally, and Haigh et al. (US 2007/0112754, May 17, 2007).

4. Claim 7 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Thorkelsson, Made, Gharabally, Rubenczyk et al. (US 2003/0217052, Nov. 20, 2003) and Burdick et al. (US 7,185,001, Feb. 27, 2007).

5. Claims 8–13 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Thorkelsson, Made, Gharabally, Rubenczyk, Burdick, and Park.

6. Claim 18 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Thorkelsson, Made, Gharabally, and Cisler et al. (US 2008/0033922, Feb. 7, 2008).

² Claim 19 is directed to a “computer-readable storage medium” but does not specify that the storage medium is non-transitory. Should there be further prosecution of this application (including any review for allowance), the Examiner may wish to review claim 19 for compliance under 35 U.S.C. § 101 in light of the Federal Circuit’s decision in *In re Nuijten*, 500 F.3d 1346 (Fed. Cir. 2007) and the Board’s decision in *Ex parte Mewherter*, No. 2012-007692 (May 8, 2013) (precedential).

7. Claim 21 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Thorkelsson, Made, Gharabally, and Rubenczyk.

ANALYSIS

The Examiner finds Thorkelsson teaches or suggests “identifying a group of related applications that are each related to the application based on the group of application programming interfaces utilized by the application, wherein each related application of the group of related applications utilizes one or more application programming interfaces of the group of application programming interfaces utilized by the application,” as recited in claim 1. Final Act. 3 (citing Thorkelsson ¶¶ 26–28, 31, 32, 42, 46, 49, 52, 53, and 55).

Appellant argues “Thorkelsson is silent as to ‘application programming interfaces.’” App. Br. 8, 11. Appellant further argues “Thorkelsson, which merely ‘determines alternate actions that corresponds [*sic*] to or is based, at least in part, on the acquired information about the website,’ cannot properly be considered as disclosing or suggesting” the aforementioned disputed limitation. App. Br. 11.

We agree with Appellant. Thorkelsson teaches a method for suggesting a native client application for accessing online content as an alternative to accessing that same content through a web browser. *See* Thorkelsson. at ¶¶ 20–21. Thorkelsson explains that although web browsers are often used to access online content, native client applications may be better suited to access that content. Thorkelsson ¶ 20. Thorkelsson, therefore, analyzes the content and functions being provided by the website

and suggests native applications that correspond to the content or the functions being provided. *Id.* at ¶¶ 26–27.

Thorkelsson does not, however, teach or suggest identifying applications that are related to other applications based on application programming interfaces utilized by the applications. Appellant correctly points out that Thorkelsson is silent with respect to application programming interfaces. Further, Thorkelsson does not identify application programming interfaces as a factor in determining which native application to suggest to a user corresponding to the website being accessed. We disagree with the Examiner that identifying a native application based on the “functions” it provides is sufficient to teach or suggest identifying a related application based on application programming interfaces utilized by the application. *See* Ans. 4–5.

Accordingly, we do not sustain the Examiner’s rejection of independent claim 1 and its dependent claims. For the same reasons, we also do not sustain the Examiner’s rejections of independent claims 19 and 20, which were rejected on substantially the same basis. *See* Final Act. 8.

DECISION

The Examiner’s rejections of claims 1–4, 6–14, and 16–21 is reversed.

REVERSED