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CRGO LAW STEVEN M. GREENBERG 7900 Glades Road SUITE 520 BOCA RATON, FL 33434			DEBNATH, SUMAN	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KEYS D. BOTZUM and PETER D. BIRK

Appeal 2015-004242
Application 13/464,338
Technology Center 2400

Before CARLA M. KRIVAK, KEVIN C. TROCK, and
AMBER L. HAGY, *Administrative Patent Judges*.

TROCK, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of the August 2, 2016, Decision on Appeal (“Decision”), wherein we affirmed the rejection of claims 17 and 20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter, and the rejection of claims 1, 5, 7–9, 13, 15–17, and 20 under 35 U.S.C. § 103(a) as being unpatentable over various references. We have reviewed the Decision in light of Appellants’ arguments, but for the reasons given below, we decline to change the Decision.

Section 101 Rejection

In the Request for Rehearing (“Request”), Appellants contend we incorrectly concluded that “there is no limiting definition of a computer readable storage medium in the Specification.” Req. Reh’g. 3. Appellants

argue the Specification provides that a “medium” is a system, apparatus or device, which does not include by definition a transitory signal or wave. *Id.* (citing Spec. ¶ 45). Appellants further argue that paragraph 44 of the Specification provides that the “computer-usable” medium is “tangible,” which excludes a signal or a wave, which is not “tangible” by definition. Req. Reh’g. 3, 4.

Appellants are essentially presenting arguments that were already presented and considered by us. In response to the Examiner’s Final Rejection, Appellants pointed to paragraph 45 of the Specification and argued that “paragraph [0045] indicates that a [tangible] medium can be electronic, magnetic, optical, etc. and further provides examples of some of these. For instance, examples of optical tangible medium include optical disks such as CD-ROMs and DVDs. Surely, one skilled in the art would recognize such as falling within one of the statutory classes.” App. Br. 5, 6 (citing Spec. ¶ 45). Appellants further argued that “the originally filed specification does specifically describe the nature of a ‘computer readable storage medium’ by including examples of tangible mediums that can store a program.” App. Br. 6. Appellants’ arguments addressing whether the Specification and the Claims expressly excluded non-statutory subject matter such as transitory signals from the claimed medium were fully considered by us and found to be non-persuasive. Decision 3, 4. Accordingly, we decline Appellants’ request to reconsider the findings of the Decision on this issue.

Section 103 Rejections

In the Request, Appellants contend that we have “not addressed any of Appellants’ arguments” with respect to the alleged deficiencies of Brickell

and Matt concerning “encryption of the key . . . to provide a secure key,” as variously recited in claims 1, 9, and 17. Req. Reh’g. 4–6. We disagree.

As we expressly stated in the Decision, we “*reviewed . . . Appellants’ arguments that the Examiner has erred.*” Decision 3 (emphasis added). We also stated in the Decision that we “*disagree[d] with Appellants’ arguments and conclusions.*” *Id.* (emphasis added). We went on to state that we “*adopt[ed] as our own, (1) the findings and reasons set forth by the Examiner in the Office Action . . . and (2) the findings and reasons set forth in the Examiner’s Answer.*” *Id.* (Emphasis added). This means, based upon the Examiner’s findings and our review of the record, we agreed Brickell teaches that each counter value is initialized and encrypted using a session key and symmetric encryption algorithm; where Brickell’s session key is equivalent to the recited “secure key” and the symmetric encryption is equivalent to the recited “masking algorithm.” Decision 4. We also found Brickell teaches initiating storage of a value (i.e., initializing a counter value) in a shared location. *Id.* We further found Brickell’s encryption unit 100 (Fig. 1) reads on the recited “shared distributed cache,” which stores the value using the “secure key” (i.e., using the session key). *Id.* (Citing Brickell, Fig. 2, ¶¶ 17–19).

Further, based upon the Examiner’s findings and our review of the record, we agreed that Matt teaches shared distributed storing by a second party, wherein a value can be retrieved from a shared distributed center using a secure key. Decision 5. We concluded that Matt, therefore, teaches the concept of sharing values from a distributed center by a second party. *Id.*

Based upon our findings that the combination of Brickell and Matt

teach Appellants' claimed shared distributed cache, initiating storage of the claimed secure key with the claimed masking algorithm, and a second party retrieving the stored value from the distributed cache using the secured key, we concluded Appellants' arguments concerning the alleged failure of Brickell and Matt to teach the claimed initiating, associating, encrypting, storing, requesting, computing, and retrieving limitations articulated by Appellants on pages 7–14 of the Appeal Brief and pages 2–8 of the Reply Brief, including Footnotes 3 and 1 set forth on page 11 of the Appeal Brief and page 3 of the Reply Brief, respectively, were unpersuasive of Examiner error concerning the Section 103 rejections of claims 1, 9, and 17. Decision 5. Accordingly, we have reviewed the Decision in light of Appellants' arguments, but we decline Appellants' request to change the Decision.

DECISION

The request for rehearing is denied.

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).

REHEARING DENIED