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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* KATSUSHI OHIZUMI, HIDEAKI KIZUKI, and JIRO KIYAMA

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Appeal 2015-004925  
Application 12/751,979  
Technology Center 2400

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Before CAROLYN D. THOMAS, JEFFREY S. SMITH, and  
TERRENCE W. McMILLIN, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner twice rejecting claims 37–39, all the claims pending in the application. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

The present invention relates to “a method of recording, reproducing, and file access of AV data constituted by video data, audio data, etc. and a managing method of the AV data with the user of management information” (Spec. ¶ 1).

Claim 37 is illustrative:

37. An AV data reproducing method with a reproducing apparatus, comprising:

an external device interface for reading out data from an external recording medium, wherein:

the data is first AV data that is recorded in the external recording medium,

second AV data and first management information are downloaded from a server and recorded in an internal recording area of the reproducing apparatus, wherein the second AV data is associated AV data that is associated with the first AV data, the second AV data being supplemental information of a type different from the first AV data that is configured to be combined and reproduced with the first AV data,

the first management information includes information which refers to the first AV data and the second AV data, and

the reproducing apparatus performs a synchronized reproducing of the first AV data and the second AV data based on the first management information.

Appellants appeal the following rejections:

R1. Claims 37 and 39 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ikeda et al. (US 2010/0046924 A1, Feb. 25, 2010).

R2. Claim 38 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ikeda and Cheng (US 7,096,491 B2, Aug. 22, 2006).

### Claim Groupings

Based on Appellants' arguments in the Appeal Brief, we will decide the appeal on the basis of claim 37, as set forth below. *See* 37 C.F.R. § 41.37(c)(1)(iv).

ANALYSIS

*Rejection under § 102 over Ikeda*

**Issue 1:** Did the Examiner err in finding that Ikeda describes “second AV data and first management information are downloaded from a server . . . wherein the second AV data is associated AV data that is associated with the first AV data,” as recited in claim 37?

Appellants contend that Ikeda “does not teach or suggest at least that associated AV data is downloaded in addition to the first AV data.” (App. Br. 7).

The Examiner finds, and we agree, that Ikeda’s BD-ROM with AV data discloses the claimed “first AV data,” Ikeda’s update kit discloses the claimed “second AV data is associated AV data,” and Ikeda’s replacement dynamic scenario providing information of a new version discloses the claimed “first management information” upon which “a synchronized reproducing of the first AV data and the second AV data” is based (Ans. 7–8).

For example, Ikeda discloses:

The playback apparatus 200, the television 300, and the remote controller 400 form a home theater system. *The BD-ROM 100 is a recording medium to supply a movie production to this home theater system.* The playback apparatus 200 serves to play back the movie production recorded on the BD-ROM 100, according to a user operation on the remote controller 400.

. . .

In response to a request from the playback apparatus 200, the *WWW server 500 transmits an update kit for what is recorded on the BD-ROM 100 to the playback apparatus 200.* When the update kit has been transmitted, the playback apparatus 200 *dynamically combines the update kit with what is recorded on*

*the BD-ROM 100 and performs the playback of a package in a virtual version (called a “virtual package”).*

...

*The update kit includes an additional PL #3 and a replacement dynamic scenario.*

In the case where a playback order (PL #1, PL#2) shown in FIG. 51A is defined by a dynamic scenario recorded on the BD-ROM, the replacement dynamic scenario (a Java object) inserts the PL #3, which forms an unreleased scene, between the PL#1 and the PL #2. FIG. 51B shows the playback procedure with a replacement dynamic scenario. *Because of the dynamic scenario, the PLS are played back in the order of the PL #1, the PL #3, and then the PL #2.*

(Ikeda ¶¶ 101–102, 292–293, emphasis added). In other words, Ikeda describes a BD-ROM supplying a movie production, a WWW server transmitting an update kit associated with the BD-ROM movie, and playing back the movie and update kit package based on a dynamic scenario.

Thus, we agree with the Examiner’s finding that Ikeda’s BD-ROM supplied movie production describes the first AV data; Ikeda’s update kit describes the second AV data that is associated with the first AV data; and Ikeda’s dynamic scenario that causes the updated playback of the movie production with update kit describes the first management information and synchronized reproducing of the first AV data and the second AV data based on the first management information, as required by claim 37.

**Issue 2:** Did the Examiner err in finding that Ikeda describes “the second AV data being supplemental information of a type different from the first AV data,” as recited in claim 37?

Appellants contend Ikeda’s additional movie scene, even when posited as the claimed associated AV data, “is of the same type” as the first

AV data and “cannot be considered ‘associated AV data’ as defined in independent claim 37” (App. Br. 8). Appellants further contend Ikeda’s AV stream is from a different embodiment and would not be combined with the Ikeda’s play list and update kit (*see Id.*).

The Examiner finds that Ikeda “summarizes the various formats the update kit may include,” and Ikeda’s “sub-image stream (supplemental information) is then of a different type from the first AV data (main AV data)” (Ans. 8–9). We agree with the Examiner.

For example, Ikeda discloses:

*The AV stream in an update kit according to the first embodiment includes only an audio stream for a single language, which is audio in the Japanese language; however, it is acceptable to have an arrangement wherein audio streams for a plurality of languages such as Japanese, Chinese, and Korean languages are recorded as an AV stream. In such a case, the update kit includes an AV stream on which the plurality of audio streams are multiplexed.*

(Ikeda ¶ 377, emphasis added). In other words, Ikeda describes an update kit that includes an AV stream that is of a different type and associated with the movie production.

Although Ikeda discloses a first embodiment “of the recording medium according to the present invention” (Ikeda ¶ 101), and a fifth embodiment that “is related to an improvement for having a playback apparatus play back a new version of the movie production recorded on a BD-ROM with the use of a dynamic scenario being downloaded” (Ikeda ¶ 264), Ikeda is merely disclosing a standard embodiment that can be improved, i.e., the Examiner’s citations described in different embodiments is appropriate because it builds on the prior embodiment.

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For at least these reasons, we are unpersuaded the Examiner erred. Accordingly, the Examiner's § 102 rejection of independent claim 37, and commensurate independent claim 39, not separately argued (*see* App. Br. 5, 7), is sustained.

*Rejection under § 103 over Ikeda and Cheng*

Appellants fail to provide separate arguments towards patentability for claim 38 (*see* App. Br. 9). Therefore, the Examiner's § 103 rejection of claim 38 is sustained for similar reasons as noted *supra*.

DECISION

We affirm the Examiner's § 102 rejection R1.

We affirm the Examiner's § 103 rejection R2.

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