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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HUBERT B. NEWMAN and QUENTIN G. GARNIER

Appeal 2015-004938
Application 13/093,878
Technology Center 2100

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

SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 4 and 6–9, which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Representative Claim

4. A method executed by an end user device, comprising:
- receiving at the end user device an ISO (International Organization for Standardization) transport stream from an IP Multimedia Subsystem (IMS) server;
 - displaying on the end user device video from the ISO transport stream, the video having been captured by another end user device;
 - receiving content on the end user device; and
 - sending by the end user device the content to the IMS server.

Prior Art

Mockett	US 2007/0266170 A1	Nov. 15, 2007
Hsiao	US 2010/0198981 A1	Aug. 5, 2010

Examiner's Rejections

Claims 4, 6, 8, and 9 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Mockett.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Mockett and Hsiao.

ANALYSIS

We adopt the findings of fact made by the Examiner in the Final Rejection and Examiner's Answer as our own. We concur with the conclusions reached by the Examiner for the reasons given in the Examiner's Answer. We address the following points for emphasis.

Section 102 rejection of claims 4, 6, 8, and 9

Claim 4 recites “displaying on the end user device video” sent from an IP Multimedia Subsystem (IMS) server, and “sending by the end user device the content to the IMS server.” Appellants’ Specification discloses their invention allows a user watching captured video of an event to share chat text while watching the event. Spec. ¶ 9.

The Examiner finds Figure 1 of Mockett describes client 104 in bidirectional communication with server 102 over network 106, which describes “sending by the end user device the content to the IMS server.” Ans. 5. Appellants contend that data sent from client device 104 to server 102 of Mockett are commands, not content within the meaning of claim 4, because claim 6 recites the content is chat text, and claim 7 recites the content is video. Reply Br. 3–4. However, “the presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim.” *Phillips. V. AWH Corp.*, 415 F.3d 1303, 1314-15 (Fed. Cir. 2005). Here, dependent claims 6 and 7 give rise to the presumption that the scope of “the content” recited in independent claim 4 encompasses something other than the “chat text” or “video” content of dependent claims 6 and 7.

Appellants contend that the claimed content refers to actual data, not just commands to be executed by the server. Reply Br. 3–4. However, Appellants have not persuasively explained how the commands of Mockett are anything other than bits of actual data. Accepting Appellants’ definition of the claimed content as actual data, Appellants have not provided persuasive evidence or argument to distinguish the claimed content from the commands described by Mockett.

We agree with the Examiner that Mockett’s description of sending commands from the client to the server describes “sending by the end user device the content to the IMS server,” as recited in claim 4. The Examiner’s additional findings for this limitation are cumulative. We address the Examiner’s findings for Paragraphs 57 and 123 of Mockett for emphasis.

The Examiner finds Paragraphs 57 and 123 of Mockett disclose “sending by the end user device the content to the IMS server” that sent video to the end user device. Final Act. 6; Ans. 6–7. Paragraphs 57 and 123 of Mockett describe two users interacting in a video chat environment, and also describe synchronizing and coordinating rich media with the video chat, to allow the users to simultaneously observe the same rich media while interacting in the video chat environment.

Appellants contend the chat data captured by each user’s device of Mockett is sent to a third party chat server, not to the server that sends the rich media. App. Br. 4–5; Reply Br. 4–5. However, claim 1 does not require the user’s device to send chat data to the server that sends rich media. Claim 1 only requires the user’s device to send content, such as chat data, to a server that sends video, such as chat video from another user, to the end user’s device. Appellants’ contention is not commensurate with the scope of the claim. Appellants do not persuasively distinguish “sending by the end user device the content to the IMS server” that sends video as recited in claim 4 from capturing, sending, and receiving video chat content to and from the third party chat server disclosed by Mockett.

We sustain the rejection of claim 4 under 35 U.S.C. § 102. Appellants do not provide arguments for separate patentability of claims 6, 8, and 9, which fall with claim 4.

Section 103 rejection of claim 7

Claim 7 recites “capturing video on the end user device,” and “sending by the end user device the captured video” to the server. Appellants contend that the Examiner “has not disclosed a problem that needs to be addressed,” and has “simply purported to show an advantage that *may* be realized by combining the teachings of the cited references.” App. Br. 7.

Here, Paragraph 57 of Mockett describes individuals interacting in a video chat environment, which implies capturing and sending video and chat data from each individual to the other through a server. The Examiner relies on Hsaio to make explicit what is implicitly taught by Mockett’s description of video chat, namely, capturing and transmitting video from a client to a server was within the level of ordinary skill in the art. Final Act. 8. Hsaio’s teaching of capturing and sending video from a client to a server are cumulative to Mockett’s teaching of a video chat environment. Appellants have not provided persuasive evidence or argument to show capturing and sending video from a client to a server was “uniquely challenging or difficult for one of ordinary skill in the art.” *See Leapfrog Enters., Inc. v. Fisher–Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 419 (2007))).

We sustain the rejection of dependent claim 7 under 35 U.S.C. § 103.

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DECISION

The Examiner's rejections of claims 4 and 6–9 are affirmed.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED