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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN MICHAEL EVERSON, JARROD A. NICHOLS,
JASON R. DELKER, and BRADLEY ALLEN KROPF¹

Appeal 2015-005168
Application 13/609,547
Technology Center 2400

Before MICHAEL J. STRAUSS, JOHN R. KENNY, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner’s Final Rejection rejecting claims 1–20. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ According to Appellants, the real party in interest is Sprint Communications Company L.P. *See* Appeal Br. 2.

² Throughout this Opinion, we refer to: (1) Appellants’ Specification filed Sept. 11, 2012 (“Spec.”); (2) the Final Office Action (“Final Act.”) mailed Apr. 7, 2014; (3) the Appeal Brief (“Appeal Br.”) filed Nov. 26, 2014; (4) the Examiner’s Answer (“Ans.”) mailed Feb. 12, 2015; and (5) the Reply Brief (“Reply Br.”) filed Apr. 9, 2015.

BACKGROUND

Appellants' application relates to a wireless video device that operates in a video uplink system having a plurality of wireless access systems.

Spec. 2. Claims 1 and 11 are independent claims.

Claim 1 is representative and is reproduced below with disputed limitations emphasized:

1. A method of operating a wireless video device in a video uplink system having a plurality of wireless access systems, the method comprising:

in the wireless video device, displaying a geographic map and receiving user inputs indicating a geographic location and a time period;

in the wireless video device, transferring a video uplink request that indicates a wireless video device identifier, the geographic location, and the time period;

in the wireless video device, optically receiving video and generating corresponding video data; and

in the wireless video device, wirelessly transferring the video data to one of the wireless access systems serving the geographic location during the time period.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal includes:

Ikeda et al. ("Ikeda")	US 2002/0166128 A1	Nov. 7, 2002
Glaser et al. ("Glaser")	US 6,985,932 B1	Jan. 10, 2006
Yoshimine et al. ("Yoshimine")	US 7,856,468 B2	Dec. 21, 2010

REJECTION

Claims 1–20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Yoshimine, Glaser, and Ikeda. Final Act. 3–6.

Our review in this appeal is limited to the above rejection and issues raised by Appellants. We have not considered other possible issues that have not been raised by Appellants and which are, therefore, not before us. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2014).

ISSUES

1. Did the Examiner err in finding that the combination of Yoshimine, Glaser, and Ikeda teaches or suggests “in the wireless video device, wirelessly transferring the video data to one of the wireless access systems serving the geographic location during the time period,” as recited in claim 1?
2. Was the Examiner’s rationale for modifying Yoshimine based on Glaser and Ikeda erroneous?

DISCUSSION

After review of Appellants’ arguments and the Examiner’s findings and reasoning, Appellants have not persuaded us of error in the Examiner’s rejection of claims 1–20. Accordingly, we sustain the rejection for reasons set forth by the Examiner in the Final Office Action and the Answer. *See* Final Act. 3–6; Ans. 2–3. We add the following for emphasis and completeness.

Issue 1

The Examiner relies on Yoshimine, Glaser, and Ikeda to teach or suggest “in the wireless video device, wirelessly transferring the video data to one of the wireless access systems serving the geographic location during the time period,” as recited in claim 1. Final Act. 5. Specifically, the Examiner primarily relies on Ikeda’s discussion of a broadcaster operating broadcasting stations and selecting in advance whether to broadcast programs in one or more adjacent service areas and at what times. Final Act. 5; Ans. 2 (citing Ikeda ¶ 38).

In response, Appellants argue “although the broadcasting station may identify a location and time for broadcasting, ***a user of a wireless video device does not define this location and time.***” Appeal Br. 6. Appellants, thus, concede that Ikeda’s broadcasting station wirelessly transfers data according to a selected location and time but contend that Ikeda fails to suggest the broadcaster is a user of a wireless video device. Appeal Br. 6. Appellants’ contention is unpersuasive because the Examiner finds Yoshimine rather than Ikeda suggests that the broadcaster is a user of a wireless device. Ans. 2 (citing Yoshimine col. 43, ll. 40–60). Appellants fail to respond to the Examiner’s express finding and thus Appellants’ arguments are not responsive to the rejection before us.

Moreover, we note in passing and without reliance in sustaining the rejection, Ikeda’s broadcasting station 10 includes a transmitter 50 having a video encoder 52 and transmission antenna 60 for wirelessly transferring video data. *See, e.g.,* Ikeda Figs. 1 and 2. Ikeda’s broadcasting station 10, consequently, also teaches or suggests a “wireless video device,” as claimed.

Accordingly, we agree with the Examiner's finding that the combination of Yoshimine, Glaser, and Ikeda teaches or suggests "in the wireless video device, wirelessly transferring the video data to one of the wireless access systems serving the geographic location during the time period," as recited in claim 1. Final Act. 5.

Issue 2

The Examiner relies on the combination of Yoshimine, Glaser, and Ikeda to teach or suggest all of the limitations of claim 1. Final Act. 4. The Examiner finds it would have been obvious to modify the method of Yoshimine and Glaser according to Ikeda so as provide the benefit of manually specifying the geographic locations from which content is provided. Final Act. 5 (citing Ikeda ¶ 38). Appellants contend that "[n]o suggestion or motivation exists to compare a broadcaster that can broadcast from multiple broadcasting stations, as described in Ikeda, to a wireless video device that wirelessly uploads video data as described in Yoshimine." Appeal Br. 7. Appellants contend "it would not make sense to combine Yoshimine with Ikeda" because Yoshimine is concerned with *wirelessly uploading* video data from a wireless device to a server system, whereas Ikeda is concerned with the delivery process from a broadcaster to broadcast stations *prior to a wireless transmission*. Appeal Br. 6–7.

We are unpersuaded by the argument because we agree with the Examiner's finding that "Yoshimine is not limited to disclosing video uploads to a server, but further covers the steps necessary to broadcast video content once it has been uploaded." Ans. 3 (citing Yoshimine, col. 16 ll. 38–67). Moreover, Appellants' argument improperly focuses on whether

Ikeda's broadcast station can be bodily incorporated into Yoshimine's wireless device. *See In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983) (“[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review.”). The relevant inquiry is whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the combined teachings of those references. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981). “Combining the teachings of references does not involve an ability to combine their specific structures.” *In re Nievelt*, 482 F.2d 965, 968 (CCPA 1973). Rather than express obviousness as the physical incorporation of a structure from one reference into the structure of another reference, the prior art should be viewed as a combination of teachings from different sources, and the use of those teachings by one of ordinary skill in the art. *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 417–418 (2007) (“if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.”)

In the rejection rationale, the Examiner indicates that Yoshimine, Glaser, and Ikeda are analogous art and proposes “modify[ing] the method of Yoshimine and Glaser to include transferring the data to one of the wireless access systems serving the geographic location during the time period, as taught by Ikeda.” Final Act. 5–6; Ans. 2–3. Thus, the Examiner proposes improving similar devices in the same way by improving Yoshimine and Glaser with the data transferring technique of Ikeda. *KSR* at 417. Appellants' arguments do not specifically address the Examiner's stated rationale and thus fail to persuade us the Examiner's articulated

reasoning lacks some rational underpinning. *KSR* at 418 citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”).

Appellants further argue the combination of Yoshimine and Glaser is improper because the geographic locations in Glaser are used to select servers for downloading *audio content* rather than for uploading *video content* as described in Yoshimine and because “servers are not equivalent or related to wireless access systems.” Appeal Br. 7; Reply Br. 2.

Appellants’ argument is unpersuasive because it is again based on bodily incorporation of Glaser’s servers into Yoshimine’s wireless device. *See In re Sneed*, 710 F.2d at 1550. Instead, we are mindful the skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle” because the skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 421. Thus, Appellants fail to persuasively rebut the Examiner’s finding that a person of ordinary skill would have had a reason to “modify the method of Yoshimine to include displaying a geographic map and receiving user inputs indicating a geographic location, as taught by Glaser.” *See* Final Act. 5.

Accordingly, we sustain the Examiner’s 35 U.S.C. § 103(a) rejection of claim 1. Claim 11, which Appellants do not argue separately, recites a device with requirements analogous to those of claim 1 and stands rejected on the same basis. Thus, for the reasons discussed above in connection with claim 1, we also sustain the rejection of claim 11.

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Appellants do not make any other substantive argument regarding the rejection of dependent claims 2–10 and 12–20 and, accordingly, we further sustain the rejection of these claims. *See* App. Br. 7–8.

DECISION

We affirm the Examiner’s decision rejecting claims 1–20.

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