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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MANAS RANJAN JAGADEV,
ELI DYLAN LORIMER, BRET PETERSON,
VIJAY RAMAN, and MARK WHEELER

Appeal 2015-005643
Application 13/592,256
Technology Center 2600

Before JOSEPH L. DIXON, JAMES R. HUGHES, and
JOHNNY A. KUMAR, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–21, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

CLAIMED SUBJECT MATTER

The claims are directed to a portable globe creation for a geographical information system. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for providing a portable globe for a geographical information system (GIS), comprising:

receiving at least one selected region corresponding to a geographical region covering a portion of a master globe, the master globe having geospatial data, including imagery data, terrain data, and vector data, for the geographical region of the master globe;

organizing geospatial data from the master globe based on the at least one selected region;

creating the portable globe based on the organized geospatial data from the master globe, wherein the portable globe is smaller in data size than the master globe, navigable over the same geographical region as the master globe, and comprises data files that include geospatial data having a higher resolution for the at least one selected region than for the remainder of the portable globe; and

transmitting the entire portable globe to a local device configured to render the portable globe in the GIS, wherein the at least one selected region is capable of being rendered at a higher resolution than the remainder of the portable globe.

REFERENCES

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

Poor et al.	US 2006/0208927 A1	Sept. 21, 2006
Hayon et al.	US 2008/0002894 A1	Jan. 3, 2008
Johnson et al.	US 2008/0307498 A1	Dec. 11, 2008
Opala et al.	US 2009/0262133 A1	Oct. 22, 2009
Balogh et al.	US 2009/0303251 A1	Dec. 10, 2009
Bethune et al.	US 2010/0007669 A1	Jan. 14, 2010

REJECTIONS

The Examiner made the following rejections:

Claims 1–6, 8, 9, 14, and 15 stand provisionally rejected on the ground of non-statutory double patenting as being unpatentable over claims 1, 4–7, 13, and 14 of copending Application No. 12/711,044. Although the claims at issue are not identical, they are not patentably distinct from each other because the pending claims are an obvious variation of each other. (Final Act. 3).

Claims 1–9, 14, and 15 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Balogh in view of Bethune in view of Johnson and further in view of Poor. (Final Act. 7).

Claim[s] 10 [11–13 and 16–18, 20, and 21]¹ stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Balogh in view of Bethune in view of Opala in view of Johnson and further in view of Poor.

¹ The Examiner's statement of rejection (Final Act. 13 only lists claim 10; however, claims 11–13, 16–18, 20, and 21 are also addressed (Final Act. 17). Thus, we find the omission to be harmless error and include these claims in the statement of rejection for clarity and consistency of the record.

(Final Act. 13).

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Balogh in view of Bethune in view of Opala in view of Johnson in view of Poor and further in view of Hayon. (Final Act. 19).

ANALYSIS

Obviousness-Type Double Patenting

Appellants' request that the rejection be held in abeyance until claimed subject matter is otherwise deemed allowable. (App. Br. 5). While Appellants has not submitted any responsive argument to the Examiner's rejection, we note that related application 12/711,044 has gone abandoned, dated March 11, 2015. As a result, there is no double patenting in fact possible at this time. Consequently, the Examiner's rejection is moot.

35 U.S.C. § 103

Claims 1 and 14

With respect to independent claims 1 and 14, Appellants address the claims together. (App. Br. 6–11). Appellants contend that the portable globe recited in the claim solves several problems of conventional GIS tools. (App. Br. 6). Appellants maintain that there is a difficulty with the enormous amount of geospatial data and claim 1 and 14 recite “is smaller in a data size than the master globe, [and] navigable over the same geographical regions as the master globe.” (App. Br. 6).

Appellants further identify that at least one selected region “having a higher resolution for the at least one selected region than the remainder of the portable globe.” (App. Br. 6). While we acknowledge Appellants' proffered advances over the general prior art, Appellants' arguments are

directed to characteristics of the data rather than how the system functions. Consequently, Appellants' arguments directed to the non-functional descriptive material aspects of the data do not functionally distinguish the claimed invention.

Specifically, Appellants identify four deficiencies in the Examiner's rejection. (App. Br. 7). Appellants contend that the cited references fail to teach or suggest "organizing geospatial data" as provided in claims 1 and 14. (App. Br. 7). Appellants contend that the Examiner has relied upon the Balogh reference for this teaching in para. 54. (App. Br. 7). Appellants generally repeat the language of claim 1 and maintain that the Balogh reference assembles tiles at the client side and thus fails to realize the benefit provided by the system and method of the portable globe of claims 1 and 14. (App. Br. 7-8).

The Examiner further discusses the application of the Balogh reference and finds that the Balogh reference "disclose the very same steps." (Ans. 22).

Appellants contend the combination of the Balogh and Bethune references would lose the benefit of the assembling the data at the client in the Balogh versus the combination of data at the data store in the Bethune reference (rather than at the client). (App. Br. 7).

The Examiner further maintains:

it is noted that Bethune (Paragraph 0026) discloses a data store of tiles where the tiles represent geographic region portions and associated information of a complete geographic data set that can include imagery, terrain, and vector data. Bethune (Paragraph 0042) also discloses the data store can be hosted on a server. As discussed above, Balogh (Paragraph 0054) discloses that image tiles can be retrieved from a server for rendering and display of

an area. One of ordinary skill in the art would have recognized that the tile data of a geographic data set that includes imagery, terrain, and vector data stored on a server of Bethune could have been retrieved by the image tile retrieval process from a server of Balogh for rendering to achieve the predictable result of retrieving tile data that includes imagery, terrain, and vector data, from a server for rendering and display. Therefore, the combination of at least Balogh and Bethune would not result in one or the other being inoperable since both are directed towards retrieving tiles from a server for display.

(Ans. 23).

Appellants additionally contend that the references fail to teach or suggest transmitting the entire portable globe to the local device. (App. Br. 9–10). The Examiner maintains that the teachings of the Balogh and Bethune references disclose transmitting the entire portable globe to the local device. (Ans. 24). We disagree with the Examiner and find that the Balogh reference transmits portions for reconstruction at the client. Consequently, the entire portable globe is not transmitted, but the parts are transmitted and reconstructed as taught and suggested by the Balogh reference. The Examiner generally maintains that the imagery data of the Bethune reference could be used in the system of the Balogh reference. (Ans. 23). Consequently, we cannot agree with the Examiner that the proffered combination teaches or fairly suggests “transmitting the entire portable globe to a local device.” As a result, we cannot sustain the rejection of independent claims 1 and 14 which contain similar limitations.

Appellants further contend that the Examiner has relied upon hindsight reasoning. (App. Br. 10–11). Because we find error in the Examiner’s proffered showing regarding “transmitting the entire portable globe to a local device,” we do not reach the hindsight argument.

With respect to dependent claims 2–9 and 15, Appellants rely upon the arguments advanced with respect to independent claims 1 and 14. (App. Br. 11). With respect to dependent claim 21, Appellants rely upon the arguments advanced with respect to independent claim 14. (App. Br. 14). As a result, we group these claims as standing with their respective independent claims.

Claims 10 and 16

With respect to claims 10–13, 16–18, 20, and 21², Appellants present arguments to claims 10 and 16 as a group. (App. Br. 12). Specifically, Appellants contend that the Opala reference does not remedy the deficiency noted in the base combination and the Opala reference does not teach or suggest “generating a plurality of packet requests,” and “comparing the updated geospatial data with the old portable globe . . . without redundant globe data.” (App. Br. 12). Appellants additionally maintains that the Examiner has relied upon impermissible hindsight in combining the references. (App. Br. 12).

We concur with the conclusions reached by the Examiner, and adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 13–16; Ans. 10–18), and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellants’ Appeal Brief (Ans. 26–28). We highlight and amplify certain teachings and suggestions of the references, as well as certain ones of Appellants’ arguments as follows.

² We note that dependent claim 21 stands with independent claim 14. (App. Br. 14).

The Examiner identifies the respective teachings from each of the five prior art references and explains how the combined teachings are no more than a “predictable results.” (Ans. 15, 16, 17, and 26). The Examiner finds:

Opala's technique of communicating only necessary tiles using packet based communication over a network would have been recognized by one of ordinary skill in the art to be applicable to the communication of tiles between the client device and sever over the internet of Balogh in view of Bethune and the results would have been predictable in the communication of only necessary tiles from the server to the client device using packet based communication over the internet.

(Ans. 16). We agree with the Examiner.

Appellants contend that the Opala reference teaches the use of a single packet and a single network request for efficiency purposes rather than the claimed “generating a plurality of packet requests for each layer of at least one selected region.” (App. Br. 12–13). Appellants further contend that the Opala reference is a teaching away from generating a plurality of packet requests. (App. Br. 13). We disagree with Appellants.

The Examiner finds the Opala reference does not discourage skilled artisans from using more than a single request nor have Appellants identified that skilled artisans would be led in a direction divergent from the path taken by Appellants. (Ans. 26–27). As a result, we agree with the Examiner’s findings and conclusion. Consequently Appellants’ argument does not show error in the Examiner’s conclusion of obviousness of representative independent claim 10.

Appellants further contend that the Opala reference fails to teach or suggest the claimed “comparing the updated geospatial data with an old portable globe . . . without redundant globe data.” (App. Br. 13–14).

Appellants repeat the language of claim 10 and quote para. 91 of the Opala reference and generally contend that providing data for local tile regions that are not resident on the client tile cache does not equate to the claimed step of “creating”. (App. Br. 13–14).

On this record, we find Appellants have failed to present substantive arguments and supporting evidence persuasive of Examiner error regarding claims 10–13 and 16–20. *See In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011)(“we hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.”).

Furthermore, the Examiner clarifies the rejection and identifies the combination of the Balogh and Opala references to teach and fairly suggest the claimed limitation. (Ans. 27–28). We agree with the Examiner’s line of reasoning and find that the rejection is based upon the combined teachings rather than merely the individual teaching of the Opala reference as addressed by Appellants. As a result, Appellants’ argument does not show error in the Examiner’s reasoned conclusion of obviousness of representative independent claim 10.

Finally, Appellants contend that the Examiner relies upon impermissible hindsight and generally refer to the arguments advanced with respect to independent claim 1. (App. Br. 14). We find that independent claim 1 was rejected based upon a different combination of teachings and different argued limitations. Additionally, we find Appellants’ hindsight argument regarding claim 1 to be a general disagreement with the Examiner’s stated line of reasoning set forth with respect to independent

claim 1. Moreover, Appellants provide no explanation why the Examiner's reliance upon "predictable results" is insufficient.

We agree with the Examiner and also find that it would have been well within the skill of one skilled in the art to combine such known techniques to utilize the general teachings of processing and presenting GIS data to a user as set forth by the Balogh, Bethune, Opala, Johnson, and Poor references. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) ("[I]f 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" (citations omitted)). We are not persuaded that combining the respective familiar elements of the cited references in the manner proffered by the Examiner would have been "uniquely challenging or difficult for one of ordinary skill in the art" at the time of Appellants' invention. *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418).

As a result, we find Appellants' general arguments do not show error in the Examiner's findings of fact and ultimate conclusion of obviousness of representative claim. (App. Br. 15). We note that Appellants elected not to file a Reply Brief to further respond to the Examiner's additional findings and clarifications.

Dependent claims 11–13, 17, 18, and 20

Appellants contend that the rejection should be reversed based on their dependence on their independent claims and additionally contend that the dependent claims do not hinge on the patentability of independent claims. We find Appellants' separate contentions to be contradictory. In

this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). Furthermore, Appellants have not set forth separate arguments for patentability of these claims. As a result, we group these claims as falling with representative independent claim 10.

Dependent claim 19

Appellants present a general statement regarding the Hayon reference and rely upon the arguments advanced with respect independent claim 16. Since we found Appellants' arguments to be unpersuasive with regards to independent claim 16 as it is grouped with independent claim 10, we find Appellants' argument to be unpersuasive of error and sustain the Examiner's rejection of dependent claim 19.

CONCLUSIONS

The Examiner erred in rejecting 1–9, 14, 15, and 21, but the Examiner did not err in rejecting claims 10–13 and 16–20.

DECISION

For the above reasons, we sustain the Examiner's rejection of claims 10–13 and 16–20, but we reverse the Examiner's rejection of claims 1–9, 14, 15, and 21.

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).

Appeal 2015-005643
Application 13/592,256

AFFIRMED-IN-PART