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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JUAN VASQUEZ and PRASHANT DESAI

Appeal 2015-005793
Application 12/881,615
Technology Center 2400

Before ALLEN R. MacDONALD, DAVID J. CUTITTA II, and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–25. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

Exemplary Claim

Exemplary claim 1 under appeal reads as follows (bracketing and emphases added):

1. A computer-implemented method comprising:

[(A)] receiving, from a **first user device** and in response to the **first user device** receiving a request from a user to initiate a session, one or more session control protocol messages to establish the session between a workstation and a *second user device* different than the **first user device**, wherein the one or more session control protocol messages include context information indicating a context for establishing the session and an identifier of the *second user device*;

[(B)] forwarding information regarding the context for establishing the session to the workstation;

[(C)] displaying the information regarding the context for establishing the session on a display for an operator of the workstation;

[(D)] establishing a unidirectional session between the workstation and the **first user device**;

[(E)] receiving, from the **first user device** and based on the unidirectional session, a message to transfer the workstation to the *second user device*, wherein the message includes the identifier of the *second user device*; and

[(F)] establishing, based on receiving the message, the session between the workstation and the *second user device*, wherein media in the session does not pass through the **first user device**.

Rejections

The Examiner rejected claims 1–3, 5, 7, 8, 11, 13–18, 20, 22, and 23 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lorenz et al. (US 2005/0039214 A1) and Bruce et al. (US 2008/0104630 A1).¹

The Examiner rejected claims 4, 6, 9, 10, 12, 19, 21, 24, and 25 under 35 U.S.C. § 103(a) as being unpatentable over various combinations of Lorenz, Bruce, and other references.²

Appellants' Contentions

1. Appellants contend that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) because:

LORENZ and BRUCE do not disclose receiving, from a first user device and based on a unidirectional session between a workstation and the first user device, a message to transfer the workstation to a second user device, wherein the message includes an identifier of the second user device.

App. Br. 9.

¹ Claims 1, 7, 8, and 20 are separately argued. Separate patentability is not argued for claims 2, 3, 5, 11, 13–18, 22, and 23. As to claims (11 and 16), 22, and 23, Appellants respectively reference the arguments of claims 1, 7, and 8. This fails to constitute arguments for separate patentability. Except for our ultimate decision, claims 2, 3, 5, 11, 13–18, 22, and 23 are not discussed further herein.

² Separate patentability is not argued for claims 4, 6, 9, 10, 12, 19, 21, 24, and 25. Thus, the rejections of these claims turn on our decision as to claim 1. Except for our ultimate decision, these claims are not discussed further herein.

2. Appellants also contend that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) because:

BRUCE cannot correspond to the unidirectional session of claim 1, as alleged in the final Office Action, because claim 1 recites that the unidirectional session is between the workstation and the first user device. In contrast, the call of BRUCE is between the contact (which the final Office Action alleges corresponds to the workstation) and the communication server. BRUCE does not disclose or suggest that the call is between the contact and the set-top box, as would be required by BRUCE based on the final Office Action's interpretation. Therefore, these sections of BRUCE cannot disclose or suggest receiving, from the first user device and based on a unidirectional session between a workstation and a first user device, a message to transfer the workstation to a second user device, wherein the message includes the identifier of the second user device, as recited in claim 1.

App. Br. 10.

3. Appellants also contend that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) because:

Even if the call to the contact center of BRUCE could be construed as corresponding to the unidirectional session of claim 1 (a point with which Appellants do not agree for at least the reasons given above), the selection of the user's phone in BRUCE cannot correspond to the message to transfer the workstation to the second user device of claim 1, as further alleged by the final Office Action.

App. Br. 10–11.

4. Appellants contend that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) because:

BRUCE does not disclose that the selection of the user phone includes a message to transfer a workstation to a second user device. Instead, the selection of BRUCE merely includes the identifier of a user phone and does not include a message to

transfer the call. Therefore, these sections of BRUCE do not disclose or suggest receiving, from the first user device and based on a unidirectional session between a workstation and a first user device, a message to transfer the workstation to a second user device, wherein the message includes the identifier of the second user device, as recited in claim 1.

Further with regard to the above feature of claim 1, at page 2, the Advisory Action alleges that “when a communication is sent from the workstation to a second user device, it satisfies the claimed language.” Appellants disagree with this allegation.

Claim 1 recites “establishing a unidirectional session between the workstation and the first user device; [and] receiving, from the first user device and based on the unidirectional session, a message to transfer the workstation to the second user device, wherein the message includes the identifier of the second user device.” Therefore, the message to transfer the work station to the second user device is received based on the unidirectional session between the workstation and the first user device. Any communication will not satisfy the claim language, as alleged by the Advisory Action. Instead, the communication must be established based on receiving a message to transfer a workstation to a second user device and the message must be received based on establishing a unidirectional session between a workstation and a first user device, as recited in claim 1.

App. Br. 11–12, emphasis omitted.

5. Appellants also contend that the Examiner erred in rejecting claim 7 under 35 U.S.C. § 103(a) because:

These [cited] sections of LORENZ disclose a two-way video session and do not disclose or suggest a unidirectional video session to the first user device. Instead, these sections specifically disclose that both the support center and the set-top box simultaneously send and receive signals. Therefore, these sections of LORENZ do not disclose that the unidirectional session includes a unidirectional video session to the first user device, as recited in claim 7. Accordingly, LORENZ actually *teaches away* from the above feature of claim 7. Therefore,

because the disclosure of LORENZ *teaches away* from the invention of claim 7, LORENZ (like BRUCE) does not even suggest the above-recited feature of the claim.

App. Br. 13, Appellants' emphasis omitted, Panel emphasis added.

6. Appellants also contend that the Examiner erred in rejecting claim 8 under 35 U.S.C. § 103(a):

Because LORENZ discloses a two-way communication channel, LORENZ cannot disclose a unidirectional audio voice session to the first user device. Accordingly, LORENZ actually *teaches away* from the above feature of claim 8. Therefore, because the disclosure of LORENZ *teaches away* from the invention of claim 8, LORENZ does not even suggest the above-recited feature of the claim.

App. Br. 15, Appellants' emphasis omitted, Panel emphasis added.

7. Appellants also contend that the Examiner erred in rejecting claim 20 under 35 U.S.C. § 103(a) because:

Although LORENZ discloses that the STB identifies the support center, LORENZ does not disclose or suggest that the STB selects one of a plurality of workstations corresponding to the support technicians at the support center, as would be required by claim 20. Identifying a support center in no way corresponds to selecting one of a plurality of workstations. Therefore, the STB of LORENZ cannot correspond to the automatic call distributor of claim 20, as alleged by the final Office Action. As such, LORENZ does not disclose the above feature of claim 20. LORENZ *further does not suggest this feature*.

App. Br. 17–18, Appellants' emphasis omitted, Panel emphasis added.

Issues on Appeal

Did the Examiner err in rejecting claims 1, 7, 8, and 20 as being obvious?

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments (Appeal Brief and Reply Brief) that the Examiner has erred. We disagree with Appellants' conclusions. Except as noted below, we adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. We concur with the conclusions reached by the Examiner. We highlight the following additional points.

As to Appellants' above contention 4, we disagree. We do not find where Appellants actually explain the cited claim language and why that limitation is not disclosed or suggested by the cited prior art.³ Rather, Appellants merely recite the language of claim 1 and assert the cited prior art reference does not disclose or suggest the claim limitations. Without more, this fails to constitute a sufficient argument on the merits. *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011).

³ In addition, we have reviewed Appellants' Specification and are unable to discern any disclosure which aids in construing the particular recited sequence of claim 1 "establishing," "receiving," and "establishing" steps as now argued. That is, Appellants' Specification does not assist in converting Appellants' assertion into a particularized argument.

As to Appellants' above contentions 5 and 6, we disagree. Appellants assert that the two-way (bidirectional) session of Lorenz teaches away from the unidirectional session of the claimed invention. App. Br. 12–15. As the United States Court of Appeals for the Federal Circuit has counseled:

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. . . . [I]n general, a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant.

In re Gurley, 27 F.3d 551, 553 (Fed. Cir. 1994). Appellants have not attempted to persuade us, as to the argued limitation (unidirectional session), that any of the references suggest that the line of development flowing from the references' disclosure is unlikely to be productive of the result sought by the Appellants. “A reference does not teach away, however, if it merely expresses a general preference for an alternative invention but does not criticize, discredit, or otherwise discourage investigation into the invention claimed.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1327 (Fed. Cir. 2009) (quotation omitted). Here, Appellants at most have merely stated what the prior art discloses (App. Br. 12–15), but have not identified any way in which that criticizes, discredits, or otherwise discourages the claimed limitation. At most, Appellants have simply argued that Lorenz does not teach the limitation. Even if we agree, that is not sufficient to “teach away” from using the limitation.⁴

⁴ Although not necessary for our decision and even in light of contrary statements in Appellants' Specification (¶ 54), we note that an artisan seeing the two-way (bidirectional) session taught by Lorenz would immediately

As to Appellants' above contention 7, Appellants acknowledge, "LORENZ discloses that, upon receiving a control signal, the STB identifies a support center associated with content being displayed." App. Br. 17. Further, we agree with the Examiner that "identifying" an appropriate support center out of a plurality of support centers equates to "selecting" a support center. *Id.*; Lorenz ¶¶ 37–38, FIG. 1. Appellants contend that this does not in turn render obvious selecting one of a plurality of workstations at the support center. App. Br. 17, line 1. We disagree. As the Examiner points out, "identifying a support center . . . is equivalent to say[ing] that a group of a plurality of workstations corresponding to the support technicians are selected." Ans. 33. We agree. Appellants also argue the Examiner errs because the prior art does not show selecting a "particular" workstation. We disagree as the claim does not recite "particular" or any other similarly limiting term. Moreover, Lorenz does connect the user with *one* technician at the selected support center. Lorenz ¶¶ 40, 37. Whether the selection of a specific technician is based on additional factors (e.g., availability) does not change the fact that the selection of the technician is based at least in part on the context information (i.e., because the range of technicians is limited to those within the selected support center). The broadest reasonable interpretation of "based on the context information" is not "*solely and exclusively* based on the context information."

recognize that in the prior art such a session is implemented in one of two forms, either full duplex or half duplex. Half-duplex is two unidirectional sessions in opposite directions where only one direction can be used at a time. On this basis alone, Lorenz provides more than a sufficient suggestion of the claim limitation.

CONCLUSIONS

- (1) The Examiner has not erred in rejecting claims 1–25 as being unpatentable under 35 U.S.C. § 103(a).
- (2) Claims 1–25 are not patentable.

DECISION

The Examiner’s rejections of claims 1–25 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).

AFFIRMED