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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DREW LANHAM, MARSAL GAVALDA,
JOHN WILLCUTTS, and GORDON EDWARDS

Appeal 2015-006082
Application 12/429,218
Technology Center 2100

Before JEREMY J. CURCURI, DANIEL N. FISHMAN, and
NABEEL U. KHAN, *Administrative Patent Judges*.

CURCURI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–27, 42–50, and 52–62. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

Claims 1–27 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Final Act. 2–3.

Claims 1–27 are rejected under 35 U.S.C. § 103(a) as obvious over Deyo (US 2009/0132918 A1; published May 21, 2009) and Chipman (US 2010/0161580 A1; published June 24, 2010). Final Act. 3–14.

Claims 42–45 are rejected under 35 U.S.C. § 103(a) as obvious over Deyo and Denoue (US 2004/0021685 A1; published Feb. 5, 2004). Final Act. 15–17.

Claims 46, 47, 49, and 50 are rejected under 35 U.S.C. § 103(a) as obvious over Chipman and Hounsell (US 2010/0161441 A1; published June 24, 2010). Final Act. 17–21.

Claim 48 is rejected under 35 U.S.C. § 103(a) as obvious over Chipman, Hounsell, and Lax (US 2009/0006375 A1; published Jan. 1, 2009). Final Act. 21–22.

Claims 52–62 are rejected under 35 U.S.C. § 103(a) as obvious over Chipman and Denoue. Final Act. 22–30.

We affirm.

STATEMENT OF THE CASE

Appellants’ invention relates to “providing access to multimedia.”

Spec. ¶ 1. Claim 1 is illustrative and reproduced below:

1. A computer-implemented method for providing access to multimedia content, the method comprising:
 - accepting audio signals associated with a plurality of units of multimedia content, each unit of multimedia content including one of the audio signals;
 - accepting text content selected according to but not derived from a unit of the multimedia content;
 - analyzing the text content independently of the multimedia content to identify a candidate set of key words or phrases;
 - searching for presence of key words or phrases of interest in the audio signal of the unit of multimedia content, the key words or phrases of interest including the candidate set of key words or phrases; and
 - forming metadata representing the presence of the key words or phrases of interest in the audio signal of the unit of multimedia content.

ANALYSIS

THE INDEFINITENESS REJECTION OF CLAIMS 1–27

The Examiner concludes claims 1–27 are indefinite. Final Act. 2–3; *see also* Ans. 14–16.

The Examiner reasons:

[O]ne skilled in the art could not determine the scope of [claim 1] because it is unclear how text content can be ‘selected according to’ multimedia content while at the same time not ‘derived from’ said content. This renders the claim vague and indefinite. Claim 1’s dependent claims are rejected for the same reason.

Final Act. 3.

Appellants present the following principal argument: [W]hen read in light of the specification (e.g., Specification, Paragraph [0071]), the feature in question is clear and definite.” App. Br. 17; *see also* App. Br. 3 (“Another inventive feature of Appellant[s]’ claim 1 includes accepting text content (e.g., 140) selected according to but not derived from a unit of the multimedia content (Specification, Paragraph [089]).”).

We agree with Appellants’ principal argument, and we conclude that claims 1–27 meet the requirements of 35 U.S.C. § 112, second paragraph. That is, we conclude that “selected according to” multimedia content is broader than “derived from” the multimedia content.

Spec. ¶ 89 discloses a user providing tentative keywords. Spec. ¶ 90 (emphasis added) further discloses:

In some examples, the tentative keywords are not explicitly provided by a user. Rather, they are determined in an automated manner by the system. One example of such automated processing involves first automatically identifying *text material associated with the multimedia content (e.g., based on forward or reverse hyperlinks, index information, file structures, naming*

conventions, etc.), and then extracting tentative keywords from that content.

Thus, the Specification discloses examples of text material selected according to a unit of the multimedia content, but not derived from the unit of the multimedia content.

Therefore, we conclude that an ordinarily skilled artisan would have understood what is claimed when the claims are read in light of the Specification. We, therefore, do not sustain the Examiner's indefiniteness rejection of claims 1–27.

THE OBVIOUSNESS REJECTION OF CLAIMS 1–27 OVER DEYO AND CHIPMAN

The Examiner finds Deyo and Chipman teach all limitations of claim 1. Final Act. 3–6; *see also* Ans. 2–9.

Appellants present the following principal arguments:

i.

[B]oth *Deyo* and *Ch[i]pman* individually address a selection of keywords or a keyword-based query for a multimedia item: *Deyo* based on manually or automatically determined tags, and *Ch[i]pman* based on a subject determination and using an ontology. Neither alone or in a proper combination discloses or suggests the further step of searching for the keywords in the audio of the multimedia item and forming metadata for the item using presence determined by the searching as the Examine[r] contends as the basis of the rejection of claim 1.

App. Br. 10.

ii.

Chipman never describes or suggests that an audio signal associated with the media segment from which the enhanced search string is derived is searched for presence of the terms in the enhanced search string. Indeed, *Chipman* may at best describe “automated searching for related content to a media

item being consumed by a viewer” (*Chipman*, Paragraph [0087]). This is very different from “*searching for presence of key words or phrases of interest in the audio signal*” where the keywords of interest include a predetermined “*candidate set of key words or phrases.*”

App. Br. 10–11; *see also* Reply Br. 1–4.

iii. “[I]t seems that nothing would be gained by searching the audio tracks of *Deyo*’s multimedia files for *Deyo*’s index terms.” App. Br. 11.

We do not see any error in the contested Examiner’s findings. Nor do we see any error in the Examiner’s legal conclusion of obviousness.

Regarding Appellants’ arguments (i), (ii), and (iii),

[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

In re Keller, 642 F.2d 413, 425 (CCPA 1981) (citations omitted).

Here, the Examiner finds *Deyo* teaches the recited accepting audio signals, accepting text content, and analyzing the text content to identify a candidate set of key words or phrases. Final Act. 3–4. We agree with and adopt these findings as our own.

The Examiner finds *Chipman* teaches the recited searching for presence of key words or phrases, and the recited forming metadata. Final Act. 5–6 (citing *Chipman* ¶¶ 20, 57, 58, 79, 87). The Examiner reasons:

[I]t would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of *Deyo* to include the feature of *Chipman*. One would have been motivated to make this modification because it provides desired functionality for finding media content relevant to a

particular interest of the consumer, particularly at the sub-asset level as taught by Chipman[.]

Final Act. 6 (citing Chipman ¶ 14).

In particular, Chipman (¶ 57) discloses:

For instance, software **206** is now available that can capture the closed caption stream within a media asset and analyze it for subject matter. Further, software **207** is available that can analyze the audio portion of a multimedia stream and detect speech within the audio stream and convert the speech to text (which can further be analyzed for subject matter, just like the closed caption stream).

Chipman (¶ 79) discloses: “[T]he system will identify keywords derived from the subject matter of the media content[.]”

Thus, we find Chipman teaches (claim 1) “searching for presence of key words or phrases of interest in the audio signal of the unit of multimedia content”; and (claim 1) “forming metadata representing the presence of the key words or phrases of interest in the audio signal of the unit of multimedia content.”

Regarding (claim 1) “the key words or phrases of interest including the candidate set of key words or phrases,” when Chipman’s technique of searching an audio signal and forming metadata is combined with Deyo’s audio signal and Deyo’s candidate set of key words or phrases, modifying Deyo to search the audio signal for the candidate set of key words or phrases to confirm relevance of the key words or phrases (*see* Chipman ¶14) would have been a predictable use of prior art elements according to their established functions—an obvious improvement. As the U.S. Supreme Court has explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it,

either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, 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. *Sakraida* [v. *Ag Pro, Inc.*, 425 U.S. 273 (1976)] and *Anderson's-Black Rock[, Inc. v. Pavement Salvage Co.*, 396 U.S. 57 (1969)] are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398, 417 (2007).

We, therefore, sustain the Examiner's rejection of claim 1, as well as claims 2–27, which are not separately argued with particularity.

THE OBVIOUSNESS REJECTION OF CLAIMS 42–45 OVER DEYO AND DENOUE

The Examiner finds Deyo and Denoue teach all limitations of claim 42. Final Act. 15–16; *see also* Ans. 9–10.

Appellants present the following principal arguments:

i. “*Denoue's* tags associate a user's identity with an annotation created by the user. This is clearly not the same as ‘*creating a tag associating the user-supplied **annotation to the multimedia source.***’” App.

Br. 13.

ii.

Denoue's user identification tag 250 is not “*created based on a result of the detection*” where the Examiner seems to construe “*the detection*” as corresponding to *Denoue's* textual similarity comparison which does not meet the limitations of the claim as a whole. Indeed, it appears that *Denoue's* user identification tag 250 is simply created and associated with an annotation at the time of creation of the annotation by a user.

App. Br. 13.

We do not see any error in the contested Examiner’s findings. Nor do we see any error in the Examiner’s conclusion of obviousness.

Regarding Appellants’ arguments (i) and (ii), the Examiner finds Denoue (¶¶ 64, 65) teaches the recited “detecting whether the text source contains a representation of one or more of the identified components of the user-supplied annotation”; and Denoue (¶ 97) teaches the recited “based on a result of the detection, creating a tag associating the user-supplied annotation to the multimedia source.” Final Act. 15–16 (citing Denoue ¶¶ 64, 97); *see also* Ans. 10 (citing Denoue ¶¶ 65, 97). We adopt these findings as our own.

Denoue (¶ 64) discloses comparing annotations. Denoue (¶ 65) discloses determining high value annotations by comparing annotations. Denoue (¶ 97) discloses: “The user interface **200** [(Figure 8)] includes one or more annotation display boxes **215** in which annotation icons **220** are displayed. Each annotation display box **215** includes a user identification tag **250** that identifies the user that created the annotations.”

Denoue’s annotation icon 220 is a tag associating a user-supplied annotation to the multimedia source. A skilled artisan would have understood that Denoue (¶¶ 64, 65, 97) teaches the annotation icon 220 for a high value annotation is created based on the result of Denoue’s (¶ 65) comparison of annotations, which the Examiner maps to the recited detecting.

We, therefore, sustain the Examiner’s rejection of claim 42, as well as claims 43–45, which are not separately argued with particularity.

THE OBVIOUSNESS REJECTION OF CLAIMS 46, 47, 49, AND 50 OVER CHIPMAN
AND HOUNSELL

The Examiner finds Chipman and Hounsell teach all limitations of claim 46. Final Act. 17–20; *see also* Ans. 11.

Appellants present the following principal argument:

Hounsell may at best describe a conventional method of presenting advertisements to viewers wherein advertisements are presented between segments of a media item. In particular, *Hounsell*'s paragraph [0052] clearly describes that the invention may be applied to situations where “a provide of media content offers space or time within that content.” Nowhere does *Hounsell* describe or suggest “synchronizing the presentation of the selected advertisement with the presentation of the multimedia source such that the presentation of the selected advertisement occurs at the temporal position in the multimedia source which corresponds to the search term which is mapped to the selected advertisement.”

App. Br. 14.

We do not see any error in the contested Examiner's findings. Nor do we see any error in the Examiner's conclusion of obviousness.

The Examiner finds Hounsell teaches the recited (claim 46) “synchronizing the presentation of the selected advertisement with the presentation of the multimedia source such that the presentation of the selected advertisement occurs at the temporal position in the multimedia source which corresponds to the search term which is mapped to the selected advertisement.” Final Act. 19–20 (citing Hounsell ¶ 55). We adopt this finding as our own.

Hounsell (¶ 55) discloses:

In step **311**, the subject matter information about the advertisement is run through the media segment database to locate media sub-segments with subject matter similar to the

subject matter of the advertisement. In step **313**, the operator provides the advertiser with a list of recommended media segments within which the advertiser may wish to run its advertisement.

Contrary to Appellants' principal argument, Hounsell recommends media segments (temporal positions in the media source) within which to run an advertisement. *See* Hounsell ¶55; *see also* Ans. 11 (citing Hounsell ¶¶ 43, 44, 55) (“The subject matter (multimedia source) and ad are synchronized based on said search terms (keywords).”). Hounsell (¶¶ 43–44) discloses utilizing keywords for synchronization.

We, therefore, sustain the Examiner's rejection of claim 46, as well as claims 47, 49, and 50, which are not separately argued with particularity.

THE OBVIOUSNESS REJECTION OF CLAIM 48 OVER CHIPMAN, HOUNSELL, AND
LAX

The Examiner finds Chipman, Hounsell, and Lax teach all limitations of claim 48. Final Act. 21–22.

Appellants do not present separate arguments for claim 48. *See* App. Br. 8–17, Reply Br. 1–4.

We, therefore, sustain the Examiner's rejection of claim 48 for reasons discussed above with respect to claim 46, from which claim 48 depends.

THE OBVIOUSNESS REJECTION OF CLAIMS 52–62 OVER CHIPMAN AND
DENOUE
Claims 52–61

The Examiner finds Chipman and Denoue teach all limitations of claim 52. Final Act. 22–24; *see also* Ans. 12–14.

Appellants present the following principal arguments:

Denoue may at best describe comparing two or more annotations to determine a similarity between the annotations. In particular, *Denoue* describes that “annotations can be compared based on their textual similarity to other annotations. Where annotations include text, such as notes taken by the user regarding the multimedia or video stream, a comparison of the text strings of the annotations can be performed to determine the similarity between the two or more annotations[.]”

App. Br. 15 (citing *Denoue* ¶ 64).

Denoue never describes or suggests “*searching an audio signal*” as part of determining the similarity between two or more annotations. Indeed, *Denoue* only describes comparing annotations (i.e., text). This is very different than “*searching the audio signal of the unit of multimedia content for presence of the key words or phrases included in the candidate set of key words or phrases*” as is required by independent claim 52.

App. Br. 16; *see also* Reply Br. 4.

We do not see any error in the contested Examiner’s findings. Nor do we see any error in the Examiner’s conclusion of obviousness.

The Examiner finds *Denoue* teaches the recited (claim 52)

forming a validated set of key words or phrases for the unit of multimedia content including searching the audio signal of the unit of multimedia content for presence of the key words or phrases included in the candidate set of key words or phrases associated with the unit of multimedia content[.]

Final Act. 24 (citing *Denoue* ¶ 64). We adopt this finding as our own.

Denoue (§ 64) discloses

[A]nnotations can be compared relative to the frames with which those annotations are associated. For example, annotations that are made with respect to frames in the multimedia or video stream can be compared in terms of the similarity of the frames against which the annotations are made. Annotations that are associated with the same cluster are more similar than annotations associated with different clusters.

Denoue (§ 65) discloses determining high value annotations by comparing annotations.

Thus, Denoue discloses the recited (claim 52) “forming a validated set of key words or phrases for the unit of multimedia content” (Denoue’s high value annotations) “including searching the audio signal of the unit of multimedia content for presence of the key words or phrases included in the candidate set of key words or phrases associated with the unit of multimedia content” (Denoue’s comparing annotations).

In reaching our decision, we adopt as our own the Examiner’s additional reasoning: “Examiner interprets ‘searching the audio signal’ as broadly including any searching technique that can be used to search audio content. Denoue teaches searching a multimedia stream by searching annotations related to the media stream.” Ans. 13.

In adopting the Examiner’s reasoning, and disagreeing with Appellants’ reasoning, we emphasize that in order for Appellants’ to search the audio signal for key words, the audio signal must be in some searchable form.

Thus, contrary to Appellants’ arguments, Denoue’s comparing annotations (i.e., text) is within the broad scope of the recited (claim 52) “searching the audio signal of the unit of multimedia content for presence of

the key words or phrases included in the candidate set of key words or phrases[.]”

We, therefore, sustain the Examiner’s rejection of claim 52, as well as claims 53–61, which are not separately argued with particularity.

Claim 62

The Examiner finds Chipman and Denoue teach all limitations of claim 62. Final Act. 28–30; *see also* Ans. 14.

Regarding claim 62, Appellants present the same principal arguments as presented for claim 52. *See* App. Br. 16, Reply Br. 4.

For the same reasons as discussed above with respect to claim 52, we sustain the Examiner’s rejection of claim 62.

DECISION

The Examiner’s decision rejecting claims 1–27, 42–50, and 52–62 is 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).

AFFIRMED