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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/965,546	12/10/2010	Glenn A. Reitmeier	248413-2/YOD (NBCU:0023)	7023
12640	7590	11/25/2016	EXAMINER	
NBCUniversal Media, LLC c/o Fletcher Yoder, P.C. PO Box 692289 Houston, TX 77269-2289			TRAN, HAI V	
			ART UNIT	PAPER NUMBER
			2423	
			MAIL DATE	DELIVERY MODE
			11/25/2016	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GLENN A. REITMEIER, DANIEL BERKOWITZ,
CHRISTOPHER J. FALKNER, and SHEAU BAO NG

Appeal 2015-006123
Application 12/965,546¹
Technology Center 2400

Before MICHAEL J. STRAUSS, DANIEL N. FISHMAN, and
JAMES W. DEJMEK, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 2, 4, 5, 7–19, and 21–23. Claims 3, 6, and 20 have been cancelled. Adv. Act. 2. We have jurisdiction over the remaining pending claims under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify “NBCUniversal Media, LLC” as the real party in interest. App. Br. 2.

STATEMENT OF THE CASE

Introduction

Appellants' invention is directed to coordinating playback content with time-adapted content. Abstract. "Such time-adapted content may include advertisement, product and service offerings, complimentary information, audio and/or video content." Abstract.

Claim 1 is representative of the subject matter on appeal and is reproduced below with the disputed limitation emphasized in *italics*:

1. A system for delivery of digital content, comprising:

a content identification component that identifies basic digital content played back in a manner that is time shifted from a regular transmission schedule and identifies a frame within the basic digital content;

a content delivery component that transmits time-adapted content at a different time relative to the regular transmission schedule of the basic digital content being played back, based upon the identified basic digital content and based upon when the basic digital content is played back;

wherein frames of the transmitted time-adapted content are matched to corresponding successive frames of the time-shifted basic digital content based on the identified frame within the basic digital content.

The Examiner's References and Rejections

Claims 1, 2, 4, 5, 9–13, 15–19, and 21–23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Plotnick et al. (US 2002/0144262 A1; Oct. 3, 2002) ("Plotnick"), Agarwal et al. (US 2010/0251278 A1; Sept. 30, 2010 (filed Mar. 24, 2009)) ("Agarwal"), and Peters (US 2009/0222849 A1; Sept. 3, 2009). Final Act. 9–22.

Claims 7 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Plotnick, Agarwal, Peters, and Levy (US 2009/0158318 A1; June 18, 2009). Final Act. 22–24.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Plotnick, Agarwal, Peters, and Maetz et al. (US 2006/0168617 A1; July 27, 2006) (“Maetz”). Final Act. 24–25.²

ANALYSIS³

We have reviewed the Examiner’s rejections in light of Appellants’ arguments the Examiner has erred. App. Br. 5–19; Reply Br. 2–5. We disagree with Appellants’ conclusions. We 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. 2–25), and (2) the reasons set forth by the Examiner in the Answer in response to arguments made in Appellants’ Appeal Brief (Ans. 3–15). We highlight and address specific findings and arguments below.

Appellants contend the Examiner erred in finding Peters teaches or suggests the disputed limitation of claim 1. App. Br. 14–15; Reply Br. 2–3. In particular, Appellants assert Peters teaches a user identifying start and end

² In the header for the rejection of claim 8, the Examiner mistakenly omits Plotnick, which is relied upon in rejecting the base claims. Final Act. 24–25. Appellants respond to the rejections as including Plotnick. App. Br. 18–19. Thus, for purposes of our review, we include Plotnick in the rejection and treat the Examiner’s typographical error as harmless.

³ In this Opinion, we refer to Appellants’ Appeal Brief (“App. Br.,” filed February 2, 2015); Appellants’ Reply Brief (“Reply Br.,” filed June 3, 2015); the Final Office Action (“Final Act.,” mailed August 29, 2014); the Advisory Action (“Adv. Act.,” mailed Nov. 18, 2014); and the Examiner’s Answer (“Ans.,” mailed on April 3, 2015).

points of recorded program content, such as by frame number, to censor the recorded program content. App. Br. 9 (citing Peters ¶¶ 20, 27, and 31). Appellants further assert Peters teaches “display[ing] substitute content in place of the [recorded] program content (i.e., the content between the start and end points).” *Id.* Appellants argue Peters does not teach or suggest that the frames of the substitute content are *matched* to corresponding successive frames of the recorded program content because the recorded program content is replaced with the substitute content “without using any information relating to frames of the substitute content in any way.” *Id.* at 11 (citing Peters ¶¶ 26, 27) (emphasis omitted); *see also* Reply Br. 4.

We are unpersuaded of Examiner error. The Examiner interprets *matching* “as a correspondence between two sections of video and/or audio [content].” Ans. 6 (citing Merriam-Webster’s online dictionary). Under the Examiner’s interpretation, the Examiner finds Peters teaches frames of the substitute content are *matched* to frames of the recorded program content that are to be censored. Final Act. 12–13 (citing Peters ¶¶ 22, 31); *see also* Ans. 4–7 (citing Peters ¶¶ 26, 45-49, 51-53). As the Examiner explains, “the substitute content is displayed in lieu of the content that is replaced and therefore the substitute content is ‘matched’ with the content that is replaced.” Ans. 7. We agree with the Examiner’s findings and adopt them as our own.

When construing claim terminology during prosecution before the Office, claims are to be given their broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

In this case, Appellants' Specification is devoid of any limiting definition of *matching*. Given the lack of a relevant limiting definition in Appellants' Specification, the Examiner broadly but reasonably construes *matching*, consistent with the Specification, to encompass replacing the frames of the recorded program content that are to be censored with the substitute content, as taught by Peters.

In the Reply Brief, Appellants direct attention to another definition of *matching* from Merriam-Webster's online dictionary and "assert that one of ordinary skill in the art, given the present claims, specification, and dictionary definitions, would interpret the recited *matching* to mean a relationship between frames of the time-adapted content and frames of the time-shifted basic digital content that is determined." Reply Br. 3. However, "[a]bsent an express definition in their specification, the fact that appellants can point to definitions or usages that conform to their interpretation does not make the PTO's definition unreasonable when the PTO can point to other sources that support its interpretation." *In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997). Accordingly, for reasons discussed *supra*, we remain unpersuaded of Examiner error.

Appellants further argue Peters does not teach or suggest the frames of the substitute content are matched to *corresponding* successive frames of the recorded program content because "it is inherent that the frames of the time-adapted content and the frames of the time-shifted content be analyzed in some manner in order to match the frames of the time-adapted content to corresponding successive frames of the time-shifted content." App. Br. 12. Next, Appellants argue Peters does not teach or suggest that the frames of the substitute content are matched to corresponding *successive* frames of the

recorded program content because Peters is silent with regard to the frames of the censored program content between the start and end points. *Id.* at 13. In particular, Appellants argue the start and end frames of the substitute content are not *successive* frames because Peters teaches the start and end frames “are boundaries for the substitute content and thus, there are frames between the start and end frames.” *Id.* (citing Peters ¶ 20). In support of these contentions, Appellants provide an example, without directing attention to a section of Appellants’ Specification, involving “frames A, B, and C” as time adapted content and “frames 1, 2, and 3” as time-shifted content, to teach characteristics of matching corresponding successive frames. *Id.*; Reply Br. 2.

We do not find Appellants’ arguments persuasive of Examiner error. At the outset, we note it is well settled that mere attorney arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984). Attorney argument is not evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Nor can such argument take the place of evidence lacking in the record. *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977). Accordingly, we are not persuaded by Appellants’ example to teach characteristics of matching corresponding successive frames.

Peters is directed to “selectively censoring recorded program content while displaying a program.” Peters, Abstract. Peters teaches input identifying a first and second boundary (i.e., start and end points; *see id.* at ¶ 22) within the recorded program content “to form a boundary pair defining censored content *there between.*” *Id.* at ¶ 6 (emphasis added); *see also id.* at

¶¶ 56, 60. Additionally, Peters teaches “displaying the substitute content in place of the censored program content *between* the first boundary and the second boundary.” *Id.* at ¶ 26 (emphasis added). Peters discloses “[t]he start point and end point identifiers may comprise frame numbers.” *Id.* at ¶ 31. As the Examiner explains, “[t]he successive video frames of the substitution content are displayed in lieu of the successive frames of the content to be substituted and therefore the frames of the substitution content are matched to the successive frames of the content to be substituted.” Ans. 9, 10; *see also id.* at 7, 12, and 13. We agree.

Peters, in disclosing displaying substitute content in place of the recorded program content between first and second frame numbers, teaches or suggests displaying substitute content for the frames *between* the first and second frame numbers of the recorded program content. We find the frames *between* the first and second frames of the recorded program content suggests corresponding successive frames of the recorded program content. Accordingly, we find Peters teaches or suggests displaying substitute content in place of the recorded program content *between* the first and second frame numbers of the recorded program content teaches or suggests frames of the substitute content (the claimed “transmitted time-adapted content”) are matched to corresponding successive frames of the recorded program content (the claimed “time-shifted basic digital content”).

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner’s rejection of independent claim 1 and, for similar reasons, the rejection of independent claims 12 and 19, which recite similar limitations and were not argued separately. *See* App. Br. 15–17. Additionally, we sustain the Examiner’s rejections of

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dependent claims 2, 4, 5, 7–11, 13–18, and 21–23, which were not argued separately. *See* App. Br. 15–19.

DECISION

We affirm the Examiner’s decision to reject claims 1, 2, 4, 5, 7–19, and 21–23.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED