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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/123,761	05/20/2008	Hannu Mettala	P3413US00	1438
11764	7590	11/02/2016	EXAMINER	
Ditthavong & Steiner, P.C. 44 Canal Center Plaza Suite 322 Alexandria, VA 22314			JAKOVAC, RYAN J	
			ART UNIT	PAPER NUMBER
			2445	
			NOTIFICATION DATE	DELIVERY MODE
			11/02/2016	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HANNU METTÄLÄ, TONI STRANDELL, and
BRENDA CASTRO¹

Appeal 2015-006149
Application 12/123,761
Technology Center 2400

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

DEJMEK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–35. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify Nokia Corporation as the real party in interest. App. Br. 1.

STATEMENT OF THE CASE

Introduction

Appellants' claimed invention is directed to publishing content to be shared. Spec. ¶ 1. In a disclosed embodiment, a user may upload content (e.g., a photo or video) to be shared using a first online service. Spec. ¶ 9. According to the Specification, exemplary embodiments "receive the content item and distribute the content item to other online services." Spec. ¶ 9. In addition to uploading the content item, a user may also include tags, such as metadata, associated with the content item that include publishing preferences or rules indicating how the content item is to be published. Spec. ¶ 48.

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

1. A method comprising:

receiving, by a processor, a content item from an online service, wherein the content item is published to the online service;

receiving, by the processor, a selection of user contact entries, wherein the selection of user contact entries provides user contacts associated with the selected user contact entries with a notification that the content item has been published;

identifying, by the processor, one or more online services associated with the selected user contact entries; and

determining to publish, by the processor, the content item on the one or more identified online services,

wherein receiving the content item includes receiving one or more tags associated with the content item, the one or more tags include publishing preferences or rules.

The Examiner's Rejections²

1. Claims 1, 2, 7, 9–12, 17, 19–22, 27, 29–31, and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lisiecki et al. (US 2002/0143888 A1; Oct. 3, 2002) (“Lisiecki”); Young (US 8,341,219 B1; Dec. 25, 2012); Aarabi et al. (US 2008/0069480 A1; Mar. 20, 2008) (“Aarabi”); and Singh (US 2008/0103906 A1; May 1, 2008). Final Act. 6–12.

2. Claims 8, 18, and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lisiecki, Young, Aarabi, Singh, and McIntyre et al. (US 2004/0201709 A1; Oct. 14, 2004) (“McIntyre”). Final Act. 13.

3. Claims 3, 5, 13, 15, 23, 25, 32, and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lisiecki, Young, Aarabi, Singh, and Huck (US 2009/0182745 A1; July 16, 2009). Final Act. 14–15.

4. Claims 4, 14, 24, and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lisiecki, Young, Aarabi, Singh, Huck, and Trauth (US 2008/0235592 A1; Sept. 25, 2008). Final Act. 16–17.

5. Claims 6, 16, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lisiecki, Young, Aarabi, Singh, and Trauth. Final Act. 18.

² In the headers for the rejections of claims 3–6, 13–16, 23–26, 32, 33, and 35, the Examiner mistakenly omits Singh, which is relied upon in rejecting the base claims. *See* Final Act. 6–18. Appellants respond to the rejections as including Singh. App. Br. 22–23. Thus, for purposes of our review we include Singh in the rejection and treat the Examiner’s typographical error as harmless.

6. Claims 1, 7, 9–11, 17, 19–21, 27, 29–31, and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh and Aarabi. Final Act. 19–21.

7. Claims 2, 12, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh, Aarabi, and Reshef et al. (US 2008/0178081 A1; July 24, 2008) (“Reshef”). Final Act. 22.

8. Claims 3, 5, 13, 15, 23, 25, 32, and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh, Aarabi, and Huck. Final Act. 23–24.³

9. Claims 4, 14, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh, Aarabi, Huck, and Trauth. Final Act. 25.

10. Claims 6, 16, 26, and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh, Aarabi, and Trauth. Final Act. 26–27.

11. Claims 8, 18, and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Singh, Aarabi, Young, and McIntyre. Final Act. 28.

Issue on Appeal

Did the Examiner err in finding the combination of Singh and Aarabi teaches or suggests “wherein receiving the content item includes receiving one or more tags associated with the content item, the one or more tags include publishing preferences or rules,” as recited in claim 1?

³ Claim 32 is mistakenly omitted from the header for this rejection, but otherwise appears in the body of the rejection. Final Act. 23–24. We find the Examiner’s typographical error to be harmless.

ANALYSIS⁴

In rejecting claim 1, under either alternative rejection (i.e., the rejection in view of the combination of Lisiecki, Young, Aarabi, and Singh, or the rejection in view of the combination of Singh and Aarabi), the Examiner finds, *inter alia*, Aarabi teaches receiving a content item includes receiving one or more tags and Singh teaches one or more tags including publishing preferences or rules. *See* Final Act. 7–8 (citing Aarabi, Fig. 1; Singh ¶¶ 18, 23–24, Abstract); Final Act. 20 (citing Aarabi, Fig. 1; Singh ¶¶ 18, 23–24, Abstract). Thus for the limitation “wherein receiving the content item includes receiving one or more tags associated with the content item, the one or more tags include publishing preferences or rules,” the Examiner relies on the combined teachings of Singh and Aarabi.

Appellants assert Aarabi “does not disclose or suggest that the tags associated with the content item include[] publishing preferences or rules.” App. Br. 18. Appellants additionally assert Singh “does not disclose or suggest that receiving a content item includes receiving one or more tags associated with the content item, wherein the one or more tags include publishing preferences or rules.” App. Br. 18; *see also* Reply Br. 3–5.

Non-obviousness cannot be established by attacking references individually where, as here, the ground of unpatentability is based upon the teachings of a combination of references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). Rather, the test for obviousness is whether the combination

⁴ Throughout this Decision, we have considered the Appeal Brief, filed December 23, 2014 (“App. Br.”); the Reply Brief, filed June 1, 2015 (“Reply Br.”); the Examiner’s Answer, mailed on April 1, 2015 (“Ans.”); and the Final Office Action (“Final Act.”), mailed on August 5, 2014, from which this Appeal is taken.

of references, taken as a whole, would have suggested the patentee's invention to a person having ordinary skill in the art. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

We are not persuaded of Examiner error because Appellants' arguments are not responsive to the Examiner's rejection and attack the references separately, whereas the Examiner's rejection relies on the combined teachings of Aarabi and Singh. As discussed above, the Examiner relies upon Aarabi in the proposed combination, not Singh, to teach wherein receiving a content item includes receiving one or more tags associated with the content item. Final Act. 7–8 (citing Aarabi Fig. 1); *see also* Ans. 5. The Examiner relies on Singh to teach one or more tags including publishing preferences or rules. Final Act. 8 (citing Singh Abstract; ¶¶ 18, 23, and 24); *see also* Ans. 5–6. Accordingly, the Examiner finds, and we agree, the combination of Aarabi and Singh teaches wherein receiving a content item includes receiving one or more tags associated with the content item, the one or more tags include publishing preferences or rules.

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 11, 21, 31, and 34, which recite similar limitations and which were not argued separately. *See* App. Br. 16–21, 24. Additionally, we sustain the Examiner's rejections of dependent claims 2–10, 12–20, 22–30, 32, 33, and 35, which were not argued separately. *See* App. Br. 21–27.

DECISION

We affirm the Examiner's decision to reject claims 1–35.

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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