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EXAMINER

NGUYEN, DINH

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JANI PETTERI VARE and PEKKA TALMOLA

Appeal 2015-006339
Application 12/262,996
Technology Center 2600

Before ALLEN R. MacDONALD, HUNG H. BUI, and SHARON FENICK,
Administrative Patent Judges.

MacDONALD, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 28, 30, and 32. Final Act. 1. The remaining claims have been deemed allowable. *Id.* We have jurisdiction under 35 U.S.C. § 6(b).

Exemplary Claim

Exemplary claim 32 under appeal reads as follows (emphasis and brackets added):

32. A method comprising:

[(A)] sending ***first reference coordinates*** for a first reference cell and ***second reference coordinates*** for a second reference cell of a broadcast system over a wireless channel;

[(B)] sending ***an indicator*** that indicates a selected reference cell from among the first reference cell and the second reference cell and

[(C)] sending ***current displacement coordinates*** of a current cell and ***first neighbor displacement coordinates*** for a first neighbor cell of the broadcast system over the wireless channel, wherein the current displacement coordinates include a latitudinal and longitudinal coordinate difference, or a distance and angle, between the current cell and the selected reference cell, and wherein the first neighbor displacement coordinates indicate a latitudinal and longitudinal coordinate difference, or a distance and angle, between the first neighbor cell and the selected reference cell.

Rejection

The Examiner rejected claims 28, 30, and 32 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Dent (US 5,404,376; issued Apr. 4, 1995), Fujiwara et al. (US 2007/0217379 A1; published Sept. 20, 2007), and Korneluk et al. (US 2004/0224696 A1; published Nov. 11, 2004).¹

*Appellants' Contentions*²

1. Appellants contend that the Examiner erred in rejecting claim 32 under 35 U.S.C. § 103(a) because:

Dent does not disclose B0 transmitting over the wireless channel distance and bearing from alleged reference cells B1, B2, or B3 to one of the other neighboring cells B4, B5, or B6 as [Appellants contend] would be required under the Office's construction to disclose the admittedly missing claim feature.

App. Br. 6.

2. Appellants contend that the Examiner erred in rejecting claim 32 under 35 U.S.C. § 103(a) because:

A person of ordinary skill in the art would not modify Dent to include the Fujiwara reference station because the Fujiwara reference station, which is specifically selected to perform the retransmission function, would have no applicability to the Dent system.

App. Br. 10.

¹ Separate patentability is not argued for claims 28 and 32. Except for our ultimate decision, these claims are not discussed further herein.

² We reproduce only those contentions highlighted in the analysis below. Appellants' remaining contentions are found at pages 4–15 of the Appeal Brief and pages 2–9 of the Reply Brief.

3. Appellants also contend that the Examiner erred in rejecting claim 32 under 35 U.S.C. § 103(a) because:

[T]he claimed “selected reference cell” must be one of cells B1, B2, and B3 of Dent under the Office’s construction. The Office then changes this assertion in the Advisory Action to contend that the “selected reference cell” is cell B0 of Dent rather than one of cells B1, B2, and B3 as previously asserted. *See* Advisory Action at p. 2, ll. 5-6.

As in initial matter, the Office, in the Advisory Action, did not show what cells of the cited references are being interpreted as the claim 28, 30, and 32 feature of “a second reference cell,” “a current cell,” and “a first neighbor cell” for the Office’s new interpretation of Dent as discussed above. As a result, Applicant is left guessing which cells described in the cited references are being used to teach these other claimed cells.

App. Br. 11.

Issues on Appeal

Did the Examiner err in rejecting claim 32 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 1, we disagree. Claim 32 is directed to sending information in the form of "first reference coordinates," "second reference coordinates," "an indicator," "current displacement coordinates," and "first neighbor displacement coordinates." Contrary to Appellants' argument, the claim does not specify any particular cell performs the sending. Rather, claim 32 merely recites the each piece of information represents particular data:

- "first reference coordinates" for a first reference cell;
- "second reference coordinates" for a second reference cell;
- "an indicator" that indicates a selected reference cell;
- "current displacement coordinates" of a current cell include a latitudinal and longitudinal coordinate difference, or a distance and angle, between the current cell and the selected reference cell; and

"first neighbor displacement coordinates" for a first neighbor cell indicating a latitudinal and longitudinal coordinate difference, or a distance and angle, between the first neighbor cell and the selected reference cell. As the Examiner finds, the combination of prior art discloses the transmission of data corresponding to these pieces of information. Final Act. 3–5.

As to Appellants' above contention 2, we disagree. Appellants' argument is not commensurate with the claim language as claim 32 only sends the information and recites no applicability of the information.

As to Appellants' above contention 3, we disagree. Although unstated, it is clear that the foundation of Appellants' contention is an argument that the Examiner erred because the claimed "selected reference cell," "a second reference cell," "a current cell," and "a first neighbor cell" are functionally different than the prior art cells relied on by the Examiner.

Even if we accept Appellants' argument, we are not persuaded the Examiner erred. As noted above, claim 32 is directed to sending information, and that information being largely position and distance related characteristics (known in the art as shown by the Examiner) that are independent of the function of the object in question. As to the remaining data ("indicator" information), the Examiner correctly points out that the prior art also teaches it is known in the art (Fujiwara) to select a reference. In contrast to Appellants' allowable claim 1 (Final Act. 1), claim 28 does not recite using its claimed information to perform claim functions which are novel and unobvious over the prior art. Rather, claim 28 merely sends known or obvious information (without the information being received or used).

CONCLUSIONS

- (1) The Examiner has not erred in rejecting claims 28, 30, and 32 as being unpatentable under 35 U.S.C. § 103(a).
- (2) Claims 28, 30, and 32 are not patentable.

DECISION

The Examiner's rejection of claims 28, 30, and 32 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)(iv).

AFFIRMED