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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/238,430	09/21/2011	HAMID REZA MOTAHARI NEZHAD	82799838	7864
56436	7590	11/16/2016	EXAMINER	
Hewlett Packard Enterprise 3404 E. Harmony Road Mail Stop 79 Fort Collins, CO 80528			CHEUNG, HUBERT G	
			ART UNIT	PAPER NUMBER
			2157	
			NOTIFICATION DATE	DELIVERY MODE
			11/16/2016	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HAMID REZA MOTAHARI NEZHAD,
CLAUDIO BARTOLINI, and PARAG M. JOSHI

Appeal 2015-006403
Application 13/238,430
Technology Center 2100

Before JOSEPH L. DIXON, JOHN P. PINKERTON, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–6, 8, 9, 13–17, 22, and 24–29. Claims 7, 10–12, 18–21, and 23 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

¹ Appellants identify Hewlett-Packard Development Company, LP as the real party in interest. App. Br. 1.

STATEMENT OF THE CASE

Introduction

Appellants' disclosed and claimed invention generally relates to matching a particular case to further cases, where the matching is based on plural attributes contained in the particular case and in the further cases. Abstract.²

Claims 1, 2, and 13 are representative of the claims on appeal and read as follows (with the disputed limitations emphasized in italics):

1. A method comprising:

receiving, by a system having a processor, a particular case that is associated with an issue that is to be addressed by an enterprise; and

matching, by the system, the particular case to further cases that have been processed, the matching comprises matching based on plural attributes contained in the particular case and in the further cases, wherein a given one of the plural attributes relates to a flow of activities taken to address the respective case, wherein the matching based on the given attribute that relates to a flow of activities comprises comparing a flow of activities of the particular case with flows of activities of the respective further cases, and wherein the matching comprises *computing individual similarity scores for each individual attribute of the plural attributes, where the individual similarity scores of each respective one of the plural attributes indicate similarities of the further cases to the particular case according to the respective attribute.*

2. The method of claim 1, further comprising:

² Our Decision refers to the Final Office Action mailed Aug. 25, 2014 ("Final Act."); Appellants' Appeal Brief filed Jan. 20, 2015 ("App. Br."); the Examiner's Answer mailed Apr. 21, 2015 ("Ans."); Appellants' Reply Brief filed June 16, 2015 ("Reply Br."); and, the Specification filed Sept. 21, 2011 ("Spec").

building indexes for respective ones of at least some of the plural attributes,

wherein the matching uses the indexes.

13. An article comprising at least one non-transitory machine-readable storage medium storing instructions that upon execution cause a system to:

compare attributes of a particular case to attributes of further cases that have been processed, wherein the particular case and further cases relate to at least one issue that is to be addressed by an enterprise, wherein the attributes compared include an attribute relating to a flow of activities taken in the particular case, wherein comparing the attribute relating to the flow of activities taken in the particular case comprises comparing the flow of activities taken in the particular case with flows of activities taken in the respective further cases, *wherein the comparing comprises computing similarity scores for each individual one of at least some of the plural attributes, wherein the similarity scores for a given one of the at least some attributes indicate similarities of the further cases to the particular case;*

and based on the comparing, match at least one of the further cases to the particular case, wherein the matching is based on the similarity scores, and wherein the matching comprises identifying a predefined number of the further cases that are most similar to the particular case, based on the comparing.

App. Br. xiv–xvi (Claims App’x.).

Rejections on Appeal

Claims 1, 2, 5, 6, 8, 9, 13–16, 22, and 24–29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Johnson et al. (US 5,978,785; issued Nov. 2, 1999) (“Johnson”) and Sakaguchi et al. (US 2003/0195782 A1; published Oct. 16, 2003) (“Sakaguchi”). Final Act. 4–17.

Claims 3, 4, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Johnson, Sakaguchi, and Berkheimer et al. (US 7,447,713 B1; issued Nov. 4, 2008). Final Act. 18–20.

ANALYSIS

Rejection of Claim 13³ under 35 U.S.C. § 103(a)

Appellants contend the Examiner erred in finding Johnson teaches the disputed limitation of claim 13: “wherein the comparing comprises computing similarity scores for each individual one of at least some of the plural attributes, wherein the similarity scores for a given one of the at least some attributes indicate similarities of the further cases to the particular case.” App. Br. 7–10; Reply Br. 2–7. Appellants acknowledge the Examiner equates the “properties” of Johnson with the “attributes” of claim 13 and that one portion of Johnson cited by the Examiner, column 1, lines 18–38, “refers to assigning weights ‘to different properties of each case.’” App. Br. 7–8. According to Appellants, however, claim 13 recites “**multiple** similarity scores are computed for an individual attribute” and “it is clear that Johnson clearly does not provide any teaching or hint of computing multiple similarity scores for each individual property in Johnson.” *Id.* at 8; Reply Br. 4–5. Appellants also argue, although Johnson refers to weighting assigned to specified properties (citing Johnson 24:9–19), “[d]eriving a weighted property value for a specific property still results in only one score per property” and “[i]n contrast, claim 13 recites multiple similarity scores computed for each individual attribute.” Reply Br. 5.

³ We decide the rejection of claims 1, 5, 6, 8, 9, 13–15, and 24–29, which are rejected under the first-stated ground of rejection, on the basis of representative claim 13. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We are not persuaded by Appellants' arguments that the Examiner has erred. First, Appellants' arguments regarding claim 13 are premised on an incorrect construction of the disputed limitation. Appellants' argue the disputed limitation recites "multiple similarity scores are computed for each individual attribute of at least some of the multiple attributes of the case." *See* App. Br. 10. The Examiner finds, however, and we agree, that in claim 13, "there is no mention of computing multiple similarity scores for each individual property as argued by the applicant." Ans. 2. Although the disputed limitation uses the plural term "scores" in the phrase "computing similarity scores for each individual one of at least some of the plural attributes," the plural case is necessary in the context of the entire phrase because a similarity score is computed for each individual attribute of multiple attributes—"of at least some of the plural attributes." Appellants' argument that the disputed limitation means that multiple similarity scores are computed for an individual attribute is conclusory and not supported by persuasive reasoning or any disclosure in the Specification. Thus, we conclude a person of ordinary skill in the art would understand the language of the disputed limitation to mean that a similarity score is computed for each individual attribute of at least some of the attributes of a particular case. Accordingly, we are not persuaded by Appellants' arguments regarding Johnson failing to teach the disputed limitation because they are not commensurate with the scope of claim 13. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) ("[A]ppellant's arguments fail from the outset because . . . they are not based on limitations appearing in the claims.").

Second, we agree with the Examiner that Johnson teaches or suggests the properly construed disputed limitation of claim 13. *See* Ans. 2–3. In

that regard, the Examiner finds Johnson teaches “weights [are] assigned to different properties of each case to score past cases for similarity to the current case.” *Id.* at 2 (citing Johnson 1:18–38). The Examiner also finds Johnson teaches “retrieving case history instances with property values that match the property values of the current problem.” *Id.* (citing Johnson 23:11–22). The Examiner further finds Johnson teaches “assigning weights to specific case properties.” *Id.* at 3 (citing Johnson 24:9–19). Appellants have not provided persuasive evidence or argument to rebut these findings, but instead argue the Examiner has failed to show Johnson teaches computing multiple similarity scores for each individual property or attribute as recited in claim 13. *See* Reply Br. 4–6. Thus, based on the proper construction of the disputed limitation as discussed *supra* and for the reasons stated by the Examiner, we agree with the Examiner’s findings and adopt them as our own.

Based on this record, we do not find error (1) in the Examiner’s findings that Johnson teaches or suggests the disputed limitations of claim 13 or (2) in the Examiner’s conclusion that the combination of Johnson and Sakaguchi renders the subject matter of claim 13 obvious under 35 U.S.C. § 103(a). Accordingly, we sustain the Examiner’s rejection of claim 13, as well as the rejection of claims 1 and 24, which contain similar limitations to the disputed limitation of claim 13. For the same reasons, we sustain the Examiner’s rejection of claims 2, 5, 6, 8, 9, 14, 15, 22, and 24–29, which depend variously from claims 1, 13, and 24 and are not argued separately. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejection of Claims 2 and 16 under 35 U.S.C. § 103(a)

Appellants contends Johnson does not teach or suggest “building indexes for respective ones of at least some of the plural attributes,” as recited in claims 2 and 16. App. Br. 11–12. The Examiner finds Johnson teaches the limitation of these claims because Johnson teaches “entering and updating values and weights for each property associated with a case instance and storing the case instances in a case base. A data file can be used to store multiple case instances, where the data file comprises the multiple case instances as well as indexes, which are used to retrieve the data, where the data are the values and weights for each property in the case instances (i.e., thus, creating indexes for the various properties). Ans. 4 (citing Johnson 21:61–22:6). In response, Appellants argue, and we agree, “the Examiner has misconstrued Johnson when asserting that indexes are created for various properties” because “Johnson is clear in stating that the indexes refer to cases.” Reply Br. 8 (*see* Johnson 22:2–4 (“the case instances can be loaded in their entirety. The data file, comprising multiple case instance objects or indexes can be retrieved”)). Thus, the Examiner’s finding that Johnson teaches or suggests the disputed limitation of claims 2 and 16 is in error because it is not supported by a preponderance of the evidence. *See In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) (Examiner’s burden of proving non-patentability is by a preponderance of the evidence); *see also In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) (“The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to

supply deficiencies in its factual basis.”). Accordingly, on this record, we do not sustain the Examiner’s rejection of claims 2 and 16.

Rejection of Claims 3, 4, and 17 under 35 U.S.C. § 103(a)

Regarding claims 3, 4, and 17, Appellants argue in view of the allowability of base claims 1 and 13 over Johnson and Sakaguchi, “the obviousness rejection of dependent claims 3, 4, and 17 over Johnson, Sakaguchi, and Berkheimer has been overcome.” App. Br. 12. Because we agree with the Examiner’s conclusion that the combination of Johnson and Sakaguchi renders the subject matter of base claims 1 and 13 obvious under 35 U.S.C. § 103(a), for the reasons discussed *supra*, we are not persuaded by Appellants’ argument the rejection of claims 3, 4, and 17 has been overcome. Thus, we sustain the Examiner’s rejection of claims 3, 4, and 17.

DECISION

We affirm the Examiner’s decision rejecting claims 1, 3–6, 8, 9, 13–15, 17, 22, and 24–29 under 35 U.S.C. § 103(a).

We reverse the Examiner’s decision rejecting claims 2 and 16 under 35 U.S.C. § 103(a).

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-IN-PART