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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WEI YEN, PRAMILA SRINIVASAN,
JOHN PRINCEN, RAYMOND LO, and WILSON HO

Appeal 2015-006521
Application 12/281,977
Technology Center 2400

Before JOHN A. EVANS, CARL L. SILVERMAN, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

AMUNDSON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ seek our review under 35 U.S.C. § 134(a) from a final rejection of claims 2–16, i.e., all pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is Acer Cloud Technology (formerly iGware, Inc.). App. Br. 2.

STATEMENT OF THE CASE

The Invention

According to Appellants, the invention involves content management for a playback device. Abstract; *see* Spec. 2:3–19.² A system implementing the invention “may include a state server that receives runtime state of content from a playback device, and provides the runtime state to that or another playback device upon request.” Abstract.

Representative Claim

Independent claim 2 exemplifies the subject matter of the claims under consideration and reads as follows:

2. A system comprising:

a network;

a license server, wherein in operation, the license server provides an E-ticket to a playback device coupled to the network;

a content server coupled to the license server, wherein in operation, the content server provides content to the playback device;

a state server coupled to the content server, wherein in operation, the state server:

receives from the playback device application save data corresponding to a state of the content,

verifies a cryptographic signature of the application save data to authenticate the application save data, and

² This decision uses the following abbreviations: “Spec.” for the Specification, filed July 13, 2009; “Final Act.” for the Final Office Action, mailed May 20, 2014; “Adv. Act.” for the Advisory Action, mailed August 28, 2014; “App. Br.” for the Appeal Brief, filed November 21, 2014; “Ans.” for the Examiner’s Answer, mailed April 24, 2015; and “Reply Br.” for the Reply Brief, filed June 18, 2015.

provides, in response to a request from the playback device, verified application save data to the playback device, thereby managing storage and retrieval of the state of the content;

wherein the playback device has permission to execute the content in accordance with the state of the content provided in the application save data.

App. Br. 24 (Claims App.).

The Prior Art Supporting the Rejection on Appeal

Friend	WO 2004/053720 A1	June 24, 2004
Liu et al. (“Liu”)	US 2007/0219917 A1	Sept. 20, 2007
Futagawa	US 7,814,081 B2	Oct. 12, 2010 (filed Aug. 25, 2005)

The Rejection on Appeal

Claims 2–16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Liu, Friend, and Futagawa. Final Act. 5–13; App. Br. 2.

ANALYSIS

We have reviewed the rejection of claims 2–16 in light of Appellants’ arguments that the Examiner erred. For the reasons explained below, we disagree with Appellants’ assertions regarding error by the Examiner.

The Rejection of Claim 2 Under 35 U.S.C. § 103(a)

A STATE SERVER THAT RECEIVES DATA FROM “A PLAYBACK DEVICE”
AND PROVIDES VERIFIED DATA TO “THE PLAYBACK DEVICE”

The Examiner finds that Friend and Futagawa teach a state server as recited in claim 2. Final Act. 6–7; Ans. 3–4, 11–12. In particular, the Examiner finds that Futagawa teaches the claimed “application save data” by disclosing “save data such as a list of acquired items, status of progress and a score a user has in a game” and “the ability of a user to continue a

game on a different terminal” based on the “save data.” Ans. 11 (citing Futagawa 1:50–56, 6:36–38). In addition, the Examiner finds that Friend teaches (1) transferring content from one user to “other users via a secure intermediary location, where the other users are able to download the content for playback” and (2) “a playback device in order for the content associated with applications, such as a movie, video game, song, to be played back” *Id.* at 11–12 (citing Friend pp. 20–21).

According to the Examiner, “the combination of Friend and Futagawa does in fact teach the limitation” concerning a state server that receives “application save data” from “a playback device” and provides upon request “verified application save data” to “the playback device” as recited in claim 2. Ans. 12; *see* Final Act. 6–7; Ans. 3–4.

Appellants argue that a state server according to claim 2 receives “application save data” from “a playback device” and provides upon request “verified application save data” to “the [same] playback device.” App. Br. 13; *see* Reply Br. 2. Appellants seek to distinguish claim 2 from Friend by asserting that (1) “[t]here is not a single ‘playback device’ in Friend that sends data to and receives data from the secure intermediary system” corresponding to the state server and (2) the user devices that download content from the secure intermediary system “are distinct” from the user device that uploads content to the secure intermediary system. App. Br. 13; *see* Reply Br. 2–3.

We discern no error in the Examiner’s application of the claim language to the prior art. The “indefinite article ‘a’ or ‘an’ in patent parlance carries the meaning of ‘one or more’ in open-ended claims containing the transitional phrase ‘comprising.’” *KCJ Corp. v. Kinetic Concepts, Inc.*,

223 F.3d 1351, 1356 (Fed. Cir. 2000). “Unless the claim is specific as to the number of elements, the article ‘a’ receives a singular interpretation only in rare circumstances when the patentee evinces a clear intent to so limit the article.” *Id.* “The subsequent use of definite articles ‘the’ or ‘said’ in a claim to refer back to the same claim term does not change the general plural rule, but simply reinvokes that non-singular meaning.” *Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342 (Fed. Cir. 2008). Moreover, “during examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification.” *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000).

Under these general principles, Futagawa discloses a state server that receives “application save data” from “a playback device” and provides upon request “verified application save data” to “the playback device” as recited in claim 2. *See* Futagawa Abstract, 1:50–63, 3:6–21, 6:36–38, Fig. 7. Appellants point to nothing in the claim language, the Specification, or the prosecution history that evinces a clear intent to impart a singular interpretation to the article “a.” App. Br. 11–14; Reply Br. 2–4.

But even if claim 2 requires that a single playback device send “application save data” to a state server and receive “verified application save data” from the state server, Appellants arguments have not persuaded us of Examiner error. The Examiner relies on “the combination of Friend and Futagawa” to teach a state server according to claim 2 that receives data from and provides data to the claimed playback device. Ans. 12; *see* Final Act. 6–7; Ans. 3–4. “[T]he test for combining references is not what the individual references themselves suggest but rather what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the

art.” *In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971); *see In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Appellants do not address what the Friend-Futagawa combination “taken as a whole would suggest to one of ordinary skill in the art” and, therefore, have not established Examiner error. App. Br. 11–14; Reply Br. 2–4.

In the Appeal Brief, Appellants imply that the Examiner relies on official notice to support the obviousness rejection, saying, “To the extent the Examiner is relying of [sic] Official Notice to assert the multiple user devices of Friend are analogous to a single ‘playback device’ as claimed, Appellant [sic] respectfully requests documentary evidence (such as a declaration entered during prosecution) to that effect.” App. Br. 13. In the Reply Brief, Appellants go further and assert that “the Examiner has improperly taken official notice that the multiple user devices of Friend are analogous to a single playback device with the claimed characteristics.” Reply Br. 4. But Appellants cite no paper in which the Examiner took official notice of any fact. App. Br. 13; Reply Br. 4.

Additionally, the Final Office Action, the Advisory Action, and the Answer do not mention official notice when discussing the rejection of claim 2 (or any other claim). Final Act. 2–13; Adv. Act. 2–3; Ans. 2–14.

A STATE SERVER THAT PROVIDES VERIFIED APPLICATION SAVE DATA

Claim 2 requires that the state server “verif[y] a cryptographic signature of the application save data to authenticate the application save data” and upon request “provide[] . . . verified application save data to the playback device.” App. Br. 24 (Claims App.). The Examiner finds that Friend discloses “an authentication process that that verifies the digital signature of the user, so that the content may be transferred and ultimately

played back.” Ans. 12–13; *see* Adv. Act. 3; Final Act. 6; Ans. 3. The Examiner determines that in Friend “the content is verified by verifying the digital signature of the content.” Ans. 13.

Appellants seek to distinguish claim 2 from Friend by asserting that Friend’s authentication process “verifies a user signature” but does not “verify data or provide verified data to a playback device.” App. Br. 16; Reply Br. 5. Appellants also assert that “[p]rocessing of a ‘first party user digital signature’ [according to Friend] means to determine that the ‘first party user digital signature’ is what it says it is.” App. Br. 16; Reply Br. 5. In addition, Appellants contend that the Examiner “conflates verification of a digital signature of a user with verifying ‘application save data.’” Reply Br. 5.

Appellants’ arguments are not commensurate in scope with claim 2. Claim 2 requires verifying “a cryptographic signature of the application save data” rather than verifying the “application save data” itself. App. Br. 24 (Claims App.). Thus, we agree with the Examiner that “the content is verified by verifying the digital signature of the content.” Ans. 13.

Claims 10 and 14 comport with this analysis. Each claim recites “verified application save data.” App. Br. 25–26 (Claims App.). Claim 10 merely requires that the “verified application save data” have “a cryptographic signature verified by the state server.” *Id.* at 25. Similarly, claim 14 merely requires that the “verified application save data” have “a verified cryptographic signature.” *Id.* at 25. “[T]he same terms appearing in different claims in the same patent . . . should have the same meaning ‘unless it is clear from the specification and prosecution history that the terms have different meanings at different portions of the claims.’” *Wilson*

Sporting Goods Co. v. Hillerich & Bradsby Co., 442 F.3d 1322, 1328 (Fed. Cir. 2006) (quoting *Fin Control Sys. Pty, Ltd. v. OAM, Inc.*, 265 F.3d 1311, 1318 (Fed.Cir.2001)). Here, Appellants articulate no reason why the term “verified application save data” should have a different meaning in claims 10 and 14 than in claim 2. App. Br. 15–18; Reply Br. 4–6.

“THE PLAYBACK DEVICE HAS PERMISSION TO EXECUTE THE CONTENT”

Claim 2 specifies that “the playback device has permission to execute the content in accordance with the state of the content provided in the application save data.” App. Br. 24 (Claims App.). The Examiner “interprets the limitation to merely mean the playback device is able to play/execute the content from its saved state” and “if a movie or game is stopped, a user has permission (i.e. is able) to pick up where the movie or game stopped.” Ans. 14. The Examiner finds that Futagawa teaches the limitation by disclosing “save data from when the user previously terminated the application program” and downloading the save data to “restor[e] a game from where the user had left off. . . .” Final Act. 7; Ans. 4. The Examiner also finds that “Futagawa teaches this by disclosing the ability of a user to **continue (emphasis added)** a game on a different terminal.” Ans. 14.

Appellants assert that permissions according to Futagawa “are not based on the state of content” but instead relate to program identification numbers that “are not affected by changes to the predetermined application programs.” App. Br. 20; Reply Br. 7. Appellants do not address the Examiner’s interpretation of the “permission to execute” limitation. App. Br. 18–21; Reply Br. 6–7.

As discussed above, “during examination proceedings, claims are given their broadest reasonable interpretation consistent with the

specification.” *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000). Accordingly, we discern no error in the Examiner’s interpretation of the “permission to execute” limitation. Further, Appellants’ assertions regarding permissions according to Futagawa do not respond to the Examiner’s finding that Futagawa teaches the limitation by disclosing the uploading of save data and the subsequent downloading of save data to execute the content from its saved state. App. Br. 18–21; Reply Br. 6–7. Thus, Appellants’ assertions have not persuaded us of error relating to the “permission to execute” limitation.

SUMMARY FOR CLAIM 2

For the reasons discussed above, Appellants’ arguments have not persuaded us that the Examiner erred in rejecting claim 1 for obviousness based on Liu, Friend, and Futagawa. Hence, we sustain the obviousness rejection.

The Rejection of Claims 10 and 14 Under 35 U.S.C. § 103(a)

Appellants do not articulate any patentability arguments for independent claims 10 and 14 beyond the arguments regarding independent claim 2. App. Br. 14–15, 17–18, 21; Reply Br. 2–7. Because Appellants do not argue the claims separately, they stand or fall together. *See* 37 C.F.R. § 41.37(c)(1)(iv). Hence, we sustain the obviousness rejection.

The Rejection of Claims 2–5 Under 35 U.S.C. § 103(a)

Claims 3–9 depend from claim 2; claims 11–13 depend from claim 10; and claims 15–16 depend from claim 14. App. Br. 24–27 (Claims App.). Appellants do not present any separate patentability arguments for any dependent claims. App. Br. 14–15, 17–18, 21; Reply Br. 1–5. Because Appellants do not argue the dependent claims separately, we sustain the

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obviousness rejection of the dependent claims for the reasons applicable to the independent claims. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We affirm the Examiner's decision to reject claims 2–16.

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. § 1.136(a)(1)(iv).

AFFIRMED