UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/487,368	07/12/2004	Kimmo Loytana	P2444US00	6726

11764 7590 10/27/2016
Ditthavong & Steiner, P.C.
44 Canal Center Plaza
Suite 322
Alexandria, VA 22314

EXAMINER
ANDRAMUNO, FRANKLIN S

ART UNIT	PAPER NUMBER
2424	

NOTIFICATION DATE	DELIVERY MODE
10/27/2016	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@dcpatent.com
Nokia.IPR@nokia.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KIMMO LOYTANA and JUHA UOLA

Appeal 2015-006873
Application 10/487,368
Technology Center 2400

Before DEBRA K. STEPHENS, KARA L. SZPONDOWSKI, and AARON W. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants[1] appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 31–69, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

"The present invention relates to the selection of content, particularly, although not exclusively delivered over a digital broadband broadcast network." (Spec. 1:3–4.) Claim 31, reproduced below, is illustrative:

> 31. An apparatus comprising:
>
> at least one processor; and
>
> at least one memory including computer program code,
>
> the at least one memory and the computer program code configured to, with the at least one processor, cause the apparatus to perform at least the following,
>
> extract metadata from a digital broadband transmission received by the apparatus, said metadata identifying content delivered in said transmission and including electronic program guide data, the apparatus as a profiling or filtering device being separated from a mobile terminal and a server sending the digital broadband transmission,
>
> filter said metadata in accordance with a pre-determined set of user preferences to obtain personalized metadata,
>
> deliver said personalized metadata to the mobile terminal,
>
> refine the user preferences at the apparatus, by observing at the mobile terminal, selection of previous content, usage pattern of previously delivered personalized metadata, usage of the delivered personalized metadata, user interactions with the

---

[1] Appellants identify Nokia Corporation as the real party in interest. (*See* App. Br. 1.)

previously delivered personalized metadata, the delivered personalized metadata, or a combination thereof,

receive a selection request from the mobile terminal comprising information identifying said content, and

display said content based, at least in part, upon the selection request and the refined user preferences.

THE REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Lemmons	US 2002/0059626 A1	May 16, 2002
Marcus	US 2002/0092019 A1	July 11, 2002
Arai et al.	US 2002/0104092 A1	Aug. 1, 2002
Lee et al.	US 6,463,428 B1	Oct. 8, 2002
Levitt	US 2002/0151327 A1	Oct. 17, 2002
Axelsson et al.	US 2003/0005440 A1	Jan. 2, 2003
Pierre et al.	US 6,970,641 B1	Nov. 29, 2005
Hoftberg et al.	US 7,006,881 B1	Feb. 28, 2006
Paik et al.	US 7,634,794 B1	Dec. 15, 2009

THE REJECTIONS

1. Claims 31, 32, 38–47, 49–50, 54–66, and 68 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Axelsson, Levitt, and Paik. (*See* Final Act. 3–9.)

2. Claim 69 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Axelsson, Levitt, Paik, and Lemmons. (*See* Final Act. 9–10.)

3. Claims 36 and 67 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Axelsson, Levitt, Paik, and Arai. (*See* Final Act. 10–11.)

4. Claims 51 and 52 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Axelsson, Levitt, Paik, and Lee. (*See* Final Act. 11–12.)

5. Claims 33 and 34 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Axelsson, Levitt, Paik, and Marcus. (*See* Final Act. 12–13.)

6. Claims 35, 37, and 48 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Axelsson, Levitt, Paik, and Hoffberg. (*See* Final Act. 13–15.)

7. Claim 53 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Axelsson, Levitt, Paik, and Pierre. (*See* Final Act. 15.)

APPELLANTS' CONTENTIONS

Appellants argue that the rejections are in error for the following reasons:

1. "Appellant respectively disagrees with the Examiner's assertions that the secondary reference to *Levitt* cures the deficiency of *Axelsson* with respect to the claimed subject matter 'refine the user preferences at the apparatus, by observing at the mobile terminal, selection of previous content, usage pattern of previously delivered personalized metadata, usage of the delivered personalized metadata, user interactions with the previously delivered personalized metadata, the delivered personalized metadata, or a combination thereof,' as recited in independent claim 31, and as similarly recited in independent claims 39, 40, 43, 46, 47, 61, and 65 in varying scope. " (App. Br. 12–13.)

2. Regarding dependent claim 32, [a] "the 'EPG data' disclosed in Axelsson . . . is not the claimed . . . 'service information'" and [b] "since the claimed subject matter 'the extract metadata from a digital broadband transmission received by the apparatus' (emphasis added) of independent claim 31 is not disclosed by Levitt and therefore the claimed subject matter 'metadata is filtered based, at least in part, on the refined preferences supplied by a profiler operatively connected to a filter' of dependent claim 32 [cannot] be taught by Levitt." (App. Br. 19–20, emphasis omitted.)

3. "Lemmons does not teach the claimed subject matter of claim 69, as [Lemmons ¶ 9] relates to a 'data service channel.'" (App. Br. 21.)

4. Regarding claim 52, "the ability of viewers 'locking' recorded programs 'for future viewing in order to prevent deletion' is contrary to the purported ability of *Lee's* MbTV to meet the claimed subject matter, *inter alia*, 'refining by the terminal the user preferences.'" (App. Br. 24.)[2]

ANALYSIS

"refine the user preferences at the apparatus . . ."

The Examiner found "Axelsson is silent in teaching refine the user preferences at the apparatus by observing at the mobile terminal selection of previous content" but that "Levitt teaches on (page 3 paragraph (0023)) the system (whether locally in the handheld unit or via a remote server) can

---

[2] Appellants also assert that certain claims (36 and 67; 33 and 34; 35, 37, and 48; 51; and 53) are patentable due to their dependencies "as well as for the additional features these claims recite" (*see* App. Br. 22–23, 24, 25, 26, and 27, respectively). The latter assertion fails to constitute an argument on the merits and such arguments will not be further considered. *See* 37 C.F.R. ¶ 41.37(c)(1)(iv) ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.").

track users' behavior, including the time/frequency of program selection as well as explicit user feedback." (Ans. 3–4, emphasis omitted.) Appellants argue "the Examiner fails to establish a prima facie case of obviousness, at least because, for example, the Examiner fails to clearly articulate why one of ordinary skill in the art would specifically modify the set-top box (the alleged "apparatus") in Axelsson to include tracking users' behavior taught by Levitt." (App. Br. 13, emphasis omitted.)

We find Appellants' argument unpersuasive because the combination does not include "modify[ing] the set-top box . . . in Axelsson to include tracking users' behavior taught by Levitt." Instead, Axelsson teaches a set top box that receives guide data that may be transferred to a mobile terminal for editing, after which the edited data may be retransmitted to the set-top box (*e.g.*, Axelsson ¶¶ 26–30); Levitt teaches tracking behavior on the mobile terminal (*e.g.*, Levitt ¶¶ 23, 73); and, in the Examiner's combination, the tracking at the mobile terminal is used to refine the preferences at the set top box, just as Axelsson used the editing at the mobile terminal to modify the guide data used at the set-top box.

We conclude that the claim limitation "refine the user preferences at the apparatus, by observing at the mobile terminal, [a] selection of previous content, [b] usage pattern of previously delivered personalized metadata, [c] usage of the delivered personalized metadata, [d] user interactions with the previously delivered personalized metadata, [e] the delivered personalized metadata, *or* [f] a combination thereof" is satisfied by showing that the cited references, alone or in proper combination, teach or suggest any one of steps [a]-[f] at the mobile terminal.

We agree with the Examiner that Axelsson describes "refin[ing] the user preferences at the apparatus, by observing at the mobile terminal . . . [c] usage of the delivered personalized metadata," a finding Appellants do not dispute. (*See* Final Act. 4 ("Axelsson further teaches refining by the terminal the user preference by observing at the mobile terminal usage of the delivered personalized metadata").) While Axelsson's teaching alone is sufficient to satisfy the claim limitation as interpreted above, we also agree that Levitt's similar teachings regarding activities at its mobile terminal include observing "selection of previous content." (*See, e.g.,* Final Act. 4 (finding that "Levitt teaches receiving a selection request from the mobile terminal comprising information identifying said content," and, specifically, that "Levitt teaches on (page 7 paragraph (0081)) the user might, for the first time, indicate an explicit preference for the movie, Rain Man, on the handheld device (e.g. by entering its title manually or selecting it upon finding it in the current EPG).").) We do not agree with Appellants' "impermissible hindsight" argument because we find the combination adequately supported by an articulated reasoning with a rational underpinning. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Nor are we swayed by Appellants' "teaching away" argument, because merely teaching a different way is not teaching away. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) ("[M]ere disclosure of alternative designs does not teach away.").

We accordingly sustain (a) the rejection of claim 31, (b) the rejections of independent claims 39, 40, 43, 46, 47, 61, and 65, which are argued on the same basis, and (c) the rejections of dependent claims 33–38, 41, 42, 44,

45, 48–50, 53–60, 62–64, and 66–68, for which no additional arguments are offered.

Claim 32

Appellants argue the rejection of claim 32 should not stand because "the 'EPG data' disclosed in Axelsson, for example, at paragraph [0020], is not the claimed subject matter 'service information.'" (App. Br. 19.) This bare argument is not consistent with the Specification, which explains that the "metadata that describes the . . . content is referred to as service information." (Spec. 1:21–22; *see also id.* 1:25–27 ("The service information is typically used in a digital broadband broadcast receiver for providing electronic programme guides (EPG) to the user on her display.").) The EPG data disclosed in Axelsson describes the content and, thus, is "service information."

Appellants also argue that "since the claimed subject matter 'the extract metadata from a digital broadband transmission received by **the apparatus**' of independent claim 31 is not disclosed by *Levitt* and therefore the claimed subject matter 'metadata is filtered based, at least in part, on the refined preferences supplied by a profiler operatively connected to a filter' of dependent claim 32 [cannot] be taught by *Levitt*." (App. Br. 19–20.) This argument is not persuasive because "the metadata . . . received by the apparatus" in the Examiner's combination is found in Axelsson, not Levitt. (*See* Final Act. 3 ("Axelsson discloses an apparatus comprising . . . at least one memory including computer program code . . . configured to . . . extract metadata from a digital broadband transmission received by the apparatus (page 2 paragraph (0020) also retrieve EPG data in figure 1)").)

For these reasons, we sustain the rejection of claim 32.

Claim 69

Appellants argue Lemmons does not teach that "the metadata includes reallocation of one or more frequencies, one or more channels, or a combination thereof by a broadcaster" because the cited portion of the reference "relates to a 'data service channel.'" (App. Br. 21.) The Examiner responds that, in light of Lemmons' teachings that channels may be reallocated, it would have been obvious to one of skill in the art to reallocate a frequency to be "able to distribute bandwidth according to demand and save resources in a network." (Final Act. 10.) We agree, as the skilled artisan is "a person of ordinary creativity, not an automaton" who would "be able to fit the teachings of multiple patents together like pieces of a puzzle." *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 420–421 (2007).

The rejection of claim 69 is accordingly sustained.

Claim 52

Appellants argue Lee does not teach "refining by the terminal the user preferences by observing at a recording device playback of selected and recorded content data," as recited in claim 52. (App. Br. 24.) The Examiner responds that Lee's "storage management engine . . . involves tracking which recorded programs have been viewed (completely or partially) and which ignored" and "[t]he ways in which viewers handle program suggestions or recorded content provides additional feedback to MbTV's preference engine which uses this information to refine future decisions." (Ans. 20–21, citing Lee 3:35–37.) We agree that this disclosure teaches or suggests "refining by the terminal the user preferences by observing at a recording device playback of selected and recorded content data," as claimed.

We thus sustain the rejection of claim 52, as well as the rejection of claim 51, which is argued on the same basis.

DECISION

The rejections of claims 31–69 are 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