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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EDWARD K.Y. JUNG, ERIC C. LEUTHARDT,
ROYCE A. LEVIEN, ROBERT W. LORD, MARK A. MALAMUD,
JOHN D. RINALDO, JR., and LOWELL L. WOOD, JR.

Appeal 2015-007417
Application 12/215,192
Technology Center 2400

Before CAROLYN D. THOMAS, IRVIN E. BRANCH, and
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ seek our review under 35 U.S.C. § 134(a) of the
Examiner’s final rejection of claims 51–54, 57, 58, 60–66, 69, 70, and 72.²
We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.³

¹ The Appeal Brief identifies Searete, LLC, which is wholly owned by
Intellectual Ventures Management LLC, as the real party in interest. App.
Br. 4.

² Claims 1–50, 55, 56, 59, 67, 68, and 71 have been canceled. *See* App. Br.
24–27.

³ Our Decision refers to Appellants’ Appeal Brief, filed October 27, 2014
 (“App. Br.”); Appellants’ Reply Brief, filed August 3, 2015 (“Reply Br.”);

STATEMENT OF THE CASE

Claims on Appeal

Claim 51 is the sole independent claim and is reproduced below:

51. A system, comprising:

a population cohort data module configured to receive population cohort data associated with one or more members of a population cohort;

a physiologic activity measurement unit configured to measure physiological activity of at least one member of the population cohort;

a device configured to:

specify at least one attribute of an avatar at least partly based on both the population cohort data and on physiologic activity data associated with at least one member of the population cohort; and

present an avatar having the at least one attribute based on both the population cohort data and on the physiologic activity data associated with at least one member of the population cohort.

References

Hull et al.	US 2005/0171955 A1	Aug. 4, 2005
Cordelli	US 2005/0206610 A1	Sept. 22, 2005
Reiman	US 2005/0283054 A1	Dec. 22, 2005
Robinson et al.	US 2008/0222295 A1	Sept. 11, 2008

Examiner's Answer, mailed February 27, 2015 ("Ans."); Final Office Action, mailed February 12, 2014 ("Final Act."); and Appellants' original Specification, filed June 24, 2008 ("Spec").

Examiner's Rejections

Claims 51–54, 57, 58, and 61–66 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson and Cordelli. Final Act. 2–7.⁴

Claim 60 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson, Cordelli, and Hull. Final Act. 7.

Claims 69, 70, and 72 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson, Cordelli, and Reiman. Final Act. 7–8.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments the Examiner erred (App. Br. 8–23; Reply Br. 1–13). We are not persuaded by Appellants' arguments. We highlight and address specific arguments and findings for emphasis as follows.

Claim 51

Appellants contend the Examiner erred in finding Robinson teaches “a population cohort data module configured to receive population cohort data associated with one or more members of a population cohort,” as recited in independent claim 51. App. Br. 8–11. We disagree.

The Examiner found the disclosure of the collection of data and metadata relating to users in Robinson's system teaches such “population cohort data.” Final Act. 3 (citing Robinson ¶ 25); Ans. 3–4 (citing Robinson ¶ 27). Robinson discloses:

The ADDnCLICK system utilizes the world-wide web, or internet, to permit such models to be shared by other users in an

⁴ Although the Examiner includes claim 67 in the rejection (Final Act. 2; Ans. 2), Appellants' Claims Appendix identifies claim 67 as canceled (App. Br. 26). As such, we do not consider claim 67 to be at issue in this appeal.

interactive, online environment in which the metadata of the content are used to link users to social networking with other users. “Metadata” is information about data and/or other information. Metadata is typically structured, encoded data that describes one or more characteristics of information-bearing content to aid in identifying, locating, discovering, assessing, linking, and managing content bearing one or more metadata tags. Metadata described herein can be associated with content and provide a basis for identifying same and/or similar content, and linking users of same/similar content via live social networks.

Robinson ¶ 25. Robinson further discloses:

The invention thus couples users (viewers and/or listeners) of content with others by the association of common interests they have that is determined through an analysis of the metadata of the Content each is viewing or listening to, (or that they have defined e.g., in a search, defined through an invitation, etc.) in a social network that enables communication, sharing, e-commerce, anonymous communications, financial gain, etc.

Robinson ¶ 27.

The Examiner found that information regarding user activities, such as content users are viewing or listening to, teaches “population cohort data associated with one or more members of a population cohort.” Ans. 3–4. We agree. Appellants’ Specification supports the Examiner’s finding, as it describes “population cohort data” as including the very data Robinson discloses. *See* Spec. ¶ 481 (“In yet another embodiment, internet usage data module 2254 can receive collected population cohort data in the form of internet usage data, for example, advertisements clicked, webpages visited, games played, or the like.”).

Appellants further contend:

[T]he Patent Office has not demonstrated that Robinson expressly recites the “specify at least one attribute of an avatar at

least partly based on ... the population cohort data” of Claim 51. Further, the Patent Office has provided no further explanation (supported by objective evidence) demonstrating why the cited language of Robinson (e.g. an “avatar ... selected by the user or otherwise provided (e.g., automatically, randomly, or otherwise generated by software, designated by another user, etc.”) could be reasonably *interpreted* as being the same as the “specify at least one attribute of an avatar at least partly based on ... the population cohort data” of Claim 51.

App. Br. 15–16.

Claim 51 broadly recites “population cohort data associated with one or more members of a population cohort.” As Appellants acknowledge, Robinson teaches that an avatar can be selected by a user. App. Br. 13, 15–16; Robinson ¶ 46. Thus, Robinson’s disclosure of user selection of an avatar, having an appearance as selected by the user, teaches “specify[ing] at least one attribute of an avatar at least partly based on” selection data received from the user. Appellants do not direct us to persuasive evidence, such as a definition of “population cohort data” in Appellants’ Specification, that demonstrates such user selection data is not within the broadest reasonable interpretation of “population cohort data associated with one or more members of a population cohort.”

Appellants further argue claim 51 requires that “each instance of an ‘attribute of an avatar’ is ‘based on both the population cohort data and on physiologic activity data associated with at least one member of the population cohort.”” Reply Br. 2. We disagree with Appellants’ interpretation. During examination, claims are to be given their broadest reasonable interpretation. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Claim 51 does not recite specifying “each instance of an attribute” but rather recites “specify[ing] at least one attribute of an avatar

at least partly based on both the population cohort data and on physiologic activity data associated with at least one member of the population cohort.” The plain language “at least one attribute” encompasses within its scope multiple attributes, a point recognized by Appellants. *See* Reply Br. 2–3. Thus, the scope of the disputed language includes specifying plural attributes of an avatar at least partly based on both the population cohort data and on physiologic activity data associated with at least one member of the population cohort. Using both types of data (“population cohort data” and “physiologic activity data”) to specify multiple attributes satisfies the limitation.

Appellants further argue:

[T]he Patent Office may not selectively interpret the Claim to include less than the entire scope of the claim. Specifically, proper interpretation of Claim 51 necessarily includes the instance of *one* “attribute of an avatar based on both the population cohort data and on physiologic activity data associated with at least one member of the population cohort.” Such an instance clearly indicates that such a single “attribute of an avatar based on both the population cohort data and on physiologic activity data associated with at least one member of the population cohort” and the remaining instances of Claim 51 must necessarily be interpreted accordingly.

Reply Br. 3. Claim 51 encompasses using both types of data to specify multiple attributes, as explained above. Although the claim also covers specifying only one attribute based on both types of data, it is not limited only to that. Appellants’ interpretation is not the broadest reasonable interpretation.

Furthermore, Appellants do not direct us to, nor do we find, a definition of “attribute of an avatar” in Appellants’ Specification. In concluding the subject matter of claim 1 would have been obvious over

Robinson and Cordelli, the Examiner relied, in part, on paragraph 46 of Robinson, which discloses:

[A]n avatar can be any depiction (even symbolic or textual) representing a user, whether selected by the user or otherwise provided (e.g., automatically, randomly, or otherwise generated by software, designated by another user, etc.). Indeed, the avatar can be animated and can even adopt the physical characteristics and gestures of the user.

Robinson ¶ 46 (cited at Final Act. 3). A broad but reasonable interpretation of “attribute of an avatar” includes the appearance of the avatar. The above-quoted portion of Robinson teaches that the appearance of an avatar can be based on both (1) user selection of an avatar, which we explain above is within the broadest reasonable interpretation of “population cohort data associated with one or more members of a population cohort,” and (2) “gestures of the user,” which the Examiner found teaches “physiological activity of at least one member of the population cohort.” *See* Final Act. 3–4 (citing Robinson ¶ 46). Therefore, Robinson teaches “specify[ing] at least one attribute of an avatar at least partly based on both the population cohort data and on physiologic activity data associated with at least one member of the population cohort” under Appellants’ interpretation of the claim.

We are not persuaded the Examiner erred in rejecting claim 51 as obvious over Robinson and Cordelli, and, therefore, we sustain the rejection of claim 51 under 35 U.S.C. § 103(a).

Claim 53

Claim 53 recites: “The system of claim 51 wherein the collected population cohort data module is configured to receive population cohort data including internet usage data associated with internet use by at least one member of the population cohort.” Appellants contend that an attribute of

an avatar in claim 51 must be specified in some way at least partly based on the population cohort data including internet usage data of claim 53. App. Br. 19. We are not persuaded. Rather, we agree with the Examiner that, although claim 53 requires collecting internet usage data, it does not require that such internet usage data be used to specify an attribute. Ans. 6–7. The Examiner correctly determined that “different data from the collected population cohort data could be used to specify the attribute.” Ans. 7.

We further note that Robinson teaches using internet usage data to specify the location of an avatar relative to other avatars. *See* Robinson ¶ 238, Figs. 14A–D. Robinson teaches:

FIGS. 14A-14D depict an ontological visual mapping method a user can use to view relationships between content viewers based on, for example, relatedness of content. The user can select avatars in the visual mapping which represent the user and/or content being viewed by the user, with those located closer to the center being more closely related to the user’s content than those located toward the periphery.

Robinson ¶ 238; *see also* Robinson Fig. 14B (“Search (manually and/or by software) results within the Visual Navigation Tool could be visualized by having users connected in clusters or by some other means of visual display. The closer an avatar is to center, the more similar that person’s content is to the individual selected.”). Thus, Robinson teaches specifying an attribute of avatars—relative location—at least partly based on viewed content—“internet usage data.”

We are not persuaded the Examiner erred in rejecting claim 53 as obvious over Robinson and Cordelli, and, therefore, we sustain the rejection of claim 53 under 35 U.S.C. § 103(a).

Claim 57

Claim 57 recites: “The system of claim 51 wherein the population cohort data module is configured to receive purchase data pertaining to at least one product purchase by at least one member of the population cohort.” Similar to their argument for claim 53, Appellants contend that an attribute of an avatar in claim 51 must be specified in some way at least partly based on the e-commerce data of Robinson, which the Examiner found teaches purchase data. App. Br. 21. However, as the Examiner correctly pointed out, “‘the population cohort data’ of claim 51 need not even include the claimed ‘purchase data’ because claim 57 does not recite it.” Ans. 8. We agree. Claim 57 does not recite “population cohort data including purchase data,” as Appellants’ argument suggests. See App. Br. 21. As such, Appellants’ argument is not commensurate with the scope of claim 57 and, therefore, is unpersuasive of error.

We are not persuaded the Examiner erred in rejecting claim 57 as obvious over Robinson and Cordelli, and, therefore, we sustain the rejection of claim 57 under 35 U.S.C. § 103(a).

Remaining Claims

Appellants do not present additional persuasive arguments for patentability of claims 52, 54, 58, 60–66, 69, 70, and 72. Therefore, we also sustain the rejections of these claims.

DECISION

We affirm the Examiner's decision to reject claims 51–54, 57, 58, 60–66, 69, 70, and 72.⁵

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

⁵ In the event of further prosecution, the Examiner may wish to consider whether the claims are expressed in terms of functions without reciting supporting structure and, if so, determine what, if any, structure is disclosed in the specification as corresponding to the recited functions. *See* 35 U.S.C. § 112, ¶ 6.