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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMES EDWIN HAILEY

Appeal 2015-007721
Application 13/639,978
Technology Center 2400

Before JEFFREY S. SMITH, DANIEL J. GALLIGAN, and
ADAM J. PYONIN, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–20. *See* Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

Introduction

The Application is directed “to selectively including programs in a listing of programs available through a digital video recorder (DVR).” Spec. 1:7–8. Claims 1 and 15 are independent. Claim 1 is reproduced below for reference:

1. In a digital video recorder (DVR), a method comprising:
receiving a selection of a program available through the DVR;
tagging the received selected program; and
selectively including the tagged program in a listing of programs available through the DVR.

References and Rejections

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

Nakano	US 2002/0162105 A1	Oct. 31, 2002
Kamen	US 2003/0014750 A1	Jan. 16, 2003
Ellis	US 2014/0040942 A1	Feb. 6, 2014

Claims 1–9 and 13–18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kamen. Final Act. 3.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kamen and Nakano. Final Act. 8.

Claims 11, 12, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kamen and Ellis. Final Act. 9.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments. Appellant does not separately argue claims 1–9 and 13–18. *See* Br. 3–5. We select claim 1 as representative of the group. *See* 37 C.F.R. § 41.37(c)(1)(iv). We are not persuaded of Examiner error, and we adopt the Examiner's findings and conclusions as our own, adding the following primarily for emphasis.

Appellant argues the Examiner erred, because “Kamen clearly fails to disclose or suggest at least the features of: ‘tagging the received selected program’ and ‘selectively including the tagged program in a listing of programs available through the DVR’, as recited by independent claim 1.” Br. 5. Particularly, Appellant contends “[n]owhere does Kamen disclose or suggest that the listing of available recorded programs be modified or adjusted” (*id.*), as instead, “[i]n Kamen, ... all recorded program listings (which are ostensibly available for viewing by all users depending on individual access level) appear in every program listing.” *Id.* at 4.

We are not persuaded the Examiner erred in finding Kamen discloses the limitations recited by claim 1. First, we note Appellant's argument is unpersuasive for not being responsive to the Examiner's rejection. The Examiner finds Kamen discloses a “window 100[, which] meets the claimed selectively including the tagged program in a listing of programs available through the DVR.” Final Act. 4 (citing Kamen Figs. 7, 14; ¶ 28). Kamen's “window 100” can display a “personalized directory” of tagged content, such as a listing of “My Shows,” and in situations where “multiple users of the recording application may each have their own directory, the window name may be personalized, such as ‘Margaret's Shows.’” Kamen ¶ 28.

Appellant recites the specific programs listed in Kamen's Figures (*see* Br. 4, referring to Kamen Figs. 1–3, 11), but has not provided arguments or evidence to persuade us that Kamen's personalized directories are precluded by the claimed "selectively including the tagged program in a listing of programs available through the DVR." For at least this reason, we are not persuaded the rejection is in error.

Second, Appellant's arguments are unpersuasive for not being commensurate with the scope of the claim. For example, Appellant's contentions regarding Kamen displaying "all recorded program listings" do not refer to limitations appearing in claim 1. *See* Br. 4. Rather, claim 1 recites "tagging" a program, and "selectively including the tagged program in a listing of programs available through the DVR." We agree with the Examiner that Kamen discloses the limitations of claim 1 because Kamen discloses "tagging" as claimed, by selecting content to be recorded (*see* Kamen Figs. 4, 10, showing "USER SELECTS CONTENT TO BE RECORDED"); Kamen also discloses "selectively including" as claimed, by displaying a list of the selected content to be recorded (*see* Kamen Figs. 1, 3, 11, showing the listing of "RECORDINGS"). *See* Ans. 12–13; *see also* Spec. 3:14–4:2. Thus, we are not persuaded the Examiner erred in finding Kamen anticipates the limitations of independent claim 1.

CONCLUSION

We sustain the Examiner's rejection of claims 1–9 and 13–18. *See* Ans. 10–13. Appellant argues the other cited references do not remedy the deficiencies of Kamen in the rejections of dependent claims 10–12, 19, and 20; however, the Examiner relies on the findings in Kamen discussed above

for the limitations inherited by these dependent claims. *See* Br. 5–6; Ans. 13.¹ Accordingly, we sustain the Examiner’s rejection of dependent claims 10–12, 19, and 20 for the same reasons discussed above.

DECISION

The Examiner’s rejection of claims 1–20 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

¹ Separately, and not relied upon for this decision, we note Ellis also discloses the “selectively including” limitation of claim 1, as Ellis describes “niche hubs” for program listings, and hiding or showing programs. *See* Final Act. 10–11; Ellis ¶¶ 198, 209, 212; Fig. 48, hide option 594.