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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK SAUNDERS

Appeal 2015-008243
Application 13/690,902
Technology Center 2600

Before JOSEPH L. DIXON, JAMES R. HUGHES, and ERIC S. FRAHM,
Administrative Patent Judges.

HUGHES, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–20 and 49. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

The invention relates to “enabling the generation of a location record at a device based on a location not associated with a pre-stored location record” (Spec. ¶ 23). Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method comprising facilitating a processing of and/or processing (1) data and/or (2) information and/or (3) at least one signal, the (1) data and/or (2) information and/or (3) at least one signal based, at least in part, on the following:

at least one determination that at least one location is not included in one or more pre-stored location records at at least one device, wherein the at least one location is present geo-position information associated with the at least one device;

a generation of at least one location record for the at least one location, wherein the at least one location record includes at least in part a location code and the present geo-position information; and

a transmission of the at least one location record to the at least one device for storage with the one or more pre-stored location records.

REFERENCES

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

Shutter	US 2005/0259606 A1	Nov. 24, 2005
Painter	US 2010/0198505 A1	Aug. 5, 2010

REJECTIONS

The Examiner made the following rejections¹:

Claim 49 stands rejected under 35 U.S.C. § 112 second paragraph as being indefinite.

Claims 1, 3, 7, 8, 10, 11, 13, 17, 18, and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Painter.

Claims 9 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Painter.

Claims 2, 4–6, 12, and 14–16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Painter and Shutter.

ANALYSIS

The Indefiniteness Rejection

The Examiner finds claim 49 to be indefinite because the language “the user input” lacks proper antecedent basis (Final Act. 2). Indeed, there is no mention of a user input in claim 49 or claim 1, from which claim 49 depends, prior to the recitation of “the user input.” Appellants present no specific arguments regarding the indefiniteness rejection. Accordingly, we affirm the Examiner’s rejection of claim 49.

¹ Although the Examiner has not made a rejection under 35 U.S.C. § 112, second paragraph, regarding independent claim 1, upon further prosecution the Examiner may consider whether such rejection is warranted. Specifically, claim 1 is directed to a “method comprising facilitating a processing of and/or processing,” but the claim body does not recite any positive steps for performing this method. Rather, the claim body merely recites data upon which the method operates. Absent positively recited steps, the scope of the “facilitating a processing of and/or processing” of the recited data is unclear.

The Anticipation Rejection

The Examiner finds Painter discloses every limitation of claim 1, including “at least one determination that at least one location is not included in one or more pre-stored location records at least one device, wherein the at least one location is present geo-position information associated with the at least one device” (Final Act. 2–3). Specifically, the Examiner finds Painter’s content store 110 meets the limitation of the claimed “device” (Ans. 4). Appellants contend the Examiner’s reliance on Painter’s content store 110 for the claimed “device” is in error (Reply Br. 4–5). We agree with Appellants.

Painter discloses a location-based system 100 that associates content with a location and allows a content receiver 106—e.g., an end-user device—to access the content (Painter, ¶¶22–25). In order to link content with the location associated with the content, Painter’s location referencing system 112 assigns a location identifier to the location and stores the location identifier in the content store 110 (Painter, ¶31). Before a location identifier is assigned to a location, e.g., a “linear feature,” Painter discloses the location referencing system 112 may determine whether there is already a location identifier for the “linear feature” (Painter, ¶ 37). However, the Examiner has not shown that Painter’s “linear feature” is the geo-position of the content store 110. Claim 1 requires the location for which it is determined that there is no location record in the pre-stored location records to be the geo-position of the “device.” Accordingly, even if we were to find Painter’s disclosure of determining whether a location identifier has already been associated with the linear feature meets the claim 1 limitation of a “determination that at least one location is not included in one or more pre-stored location records,” the Examiner has not shown that Painter discloses

“the at least one location is present geo-position information associated with the at least one device.”

We are, therefore, constrained by the record to find the Examiner erred in rejecting independent claim 1, independent claim 11 which recites commensurate limitations, and dependent claims 3, 7, 8, 10, 13, 17, 18, and 20 for similar reasons.

The Obviousness Rejections

The Examiner has not shown the claim 1 limitation of “the at least one location is present geo-position information associated with the at least one device” would have been obvious over Painter. Nor has the Examiner shown the addition of the Shutter reference cures the deficiency of Painter with respect to this limitation. We are, therefore, constrained by the record to find the Examiner erred in rejecting dependent claims 2, 4–6, 9, 12, 14–16, and 19.

CONCLUSIONS

Under 35 U.S.C. § 112, second paragraph, the Examiner did not err in rejecting claim 49.

Under 35 U.S.C. § 102(b), the Examiner erred in rejecting claims 1, 3, 7, 8, 10, 11, 13, 17, 18, and 20.

Under 35 U.S.C. § 103(a), the Examiner erred in rejecting claims 2, 4–6, 9, 12, 14–16, and 19.

DECISION

For the above reasons, the Examiner’s rejection of claim 49 is affirmed, and the Examiner’s rejections of claims 1–20 are reversed.

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).

Appeal 2015-008243
Application 13/690,902

AFFIRMED-IN-PART