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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SATORU IWATA, KIYOSHI MIZUKI, and KEI URAMOTO

Appeal 2016-001215
Application 11/976,247
Technology Center 2400

Before ST. JOHN COURTENAY III, STEPHEN C. SIU, and
NORMAN BEAMER, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–22. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Invention

The disclosed and claimed invention on appeal “relates to an information processing device, an information processing system, and a storage medium storing an information processing program for reviewing various review targets.” Spec. ¶ 1.

Illustrative Claim

1. An information processing system, comprising:

a processing system including one or more processors, the processing system configured to at least:

execute, in accordance with an operation of a user, execution processing of a review target;

update and store an execution history of the review target in accordance with the execution processing of the review target;

[L] determine when the review target is reviewable by the user by comparing the stored execution history of the review target to one or more conditions;

generate, in accordance with an operation of the user, review information indicating a result of review performed by the user on the review target that has been determined as reviewable; and

accumulate the generated review information.

(Contested limitation L is emphasized.)

Rejections

- A. Claims 1–4, and 7–22 are rejected under 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of Willis et al. (US 2006/0128471 A1, published June 15, 2006), (hereinafter “Willis”) in view of Cross et al. (US 2011/0252483 A1, published Oct. 13, 2011), (hereinafter “Cross”
- B. Claims 5 and 6 are rejected under 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of Willis and Official Notice.

ANALYSIS

We have considered all of Appellants' arguments and any evidence presented. We find Appellants' arguments persuasive for at least the reasons discussed *infra*. (See App. Br. 14–18; Reply Br. 2–4). We highlight and address specific findings and arguments for emphasis in our analysis below.

Rejection of Independent Claim 1 under 35 U.S.C. § 103(a)

Issue: Under 35 U.S.C. § 103(a), did the Examiner err in finding the cited combination of Willis and Cross would have taught or suggested contested limitation L (“determine *when* the review target is reviewable by the user by *comparing* the *stored execution history of the review target to one or more conditions*”), within the meaning of independent claim 1, under a broad but reasonable interpretation? ¹ (Emphasis added).

Regarding the latter portion of contested limitation L, the Examiner finds Willis (¶¶ 23, 24, and 27) teaches “comparing the stored execution history of the review target to one or more conditions.” (Claim 1). (Final Act. 3).

Regarding the first portion of contested limitation L, the Examiner finds: “Willis does not explicitly teach determining *whether or not* a review target is reviewable by user.” (Final Act. 4) (Emphasis added). The Examiner looks to the secondary Cross reference for teaching determining *whether or not* a review target is reviewable by user, relying on paragraphs 16, 17, and 27). (Final Act. 4).

¹ We give the contested claim limitations the broadest reasonable interpretation consistent with the Specification. See *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

Regarding independent claim 1, Appellants contend, inter alia, that neither Cross nor Willis determine whether a target is reviewable by comparing an execution history of a target to one or more conditions (App. Br. 13). Regarding the primary Willis reference, Appellants contend:

Willis does not determine *when* a review target becomes reviewable because Willis is constantly "reviewing" the user's activity to determine when to update the feedback record. Furthermore, Willis is not determining *when* a user can perform a review of a target, but instead monitors a user's progress in order to record the gaming activity of the user and determines when to update the feedback record.

(App. Br. 15)(Emphasis added).

Appellant urges that "Cross is likewise deficient." (*Id.*):

Cross does not determine when a target is reviewable based on the execution history of the target. In fact, Cross describes a concept where a person who generates a reputation value for an operation provides reputation data of the operation based on the experiences of the operation in the past. See e.g. paragraph [0016] and [0017] of Cross. Thus, Cross at best reviews all targets and is not determining when a target is reviewable, let alone when a target is reviewable by comparing the execution history to one or more conditions.

(App. Br. 16).

In the Answer (3), the Examiner further explains the basis for the rejection:

Will[i]s discloses storing data in a gamer history record, the data relating to the achievement of certain predetermined objectives such as historical game play progression, or reaching a particular level within a predetermined period of time experienced by the gamer. In addition, the history records to show a length of time in which a gamer has spent playing the video game to go from achieving a first predetermined objective to achieving a second predetermined objective. Thus, Will[i]s teaches *when* such metrics or statistics are achieved

then the target (i.e., the game software) review/feedback may be provided or uploaded to a server (see par. 0023, 0027 and page. 6).

...

In addition, Cross further clarifies the issue of *when* a review target becomes reviewable by disclosing reputation-based authorization decisions system wherein an authorization engine on a client device automatically makes an authorization decision pertaining whether to grant permission to perform certain operations (i.e., review or send reputation metadata) on certain software when certain conditions are met (see par. 0016-0017, 0027).

(Ans. 3–4) (Emphasis added).

At the outset, we note the pertinent functional language of claim 1 is directed to a *temporal* limitation: i.e., “determine *when* the review target is *reviewable by the user . . .*” Claim 1 is silent regarding “determining *whether or not* a review target is reviewable by user,” as broadly interpreted by the Examiner in the Final Action (4), in applying the teachings of Cross.

The Examiner reads the claimed “review target” on feedback record 201 in Willis (¶ 27). (Final Act. 3). The Examiner cites to Willis (¶¶ 23, 24, and 27) for teaching or suggesting the *comparison* of limitation L. (Final Act. 3). In reviewing the record, we find no *comparison* as claimed is taught, suggested, or otherwise described in Willis in paragraphs 23, 24, and 27. (*Id.*).

Willis describes (in reference to Figure 2), “[A]s the gamer achieves predetermined objectives, the feedback record 201 is *updated* 203.” (¶ 27). However, we find no teaching of determining *when* the claimed “review target” (i.e., feedback record as mapped by the Examiner to Willis) “is

reviewable by the user by *comparing* the *stored execution history* of the *review target*” (feedback record of the gamer) “*to one or more conditions,*” as recited in claim 1.

To the extent Willis (¶ 27) may compare the feedback record (i.e., stored execution history) to the achievement of predetermined objectives by the gamer (i.e., one or more conditions) before *updating* the feedback record (i.e., review target), we find the Examiner has not fully developed the record to show how this teaches or suggests the contested *temporal limitation* of determining *when* the “review target” (mapped to the feedback record in Willis ¶ 27) is “reviewable by the user,” within the meaning of claim 1.

Nor do we find Cross remedies the deficiency of Willis regarding the claimed “comparison” of contested limitation L. Although the Examiner (Ans. 3–4) points to the reputation-based authorization decision system in Cross (¶¶ 16, 17, and 27), we find Cross (¶ 25) performs a *comparison* between *reputation values* (e.g., an actor’s reputation) and *rules or policies* to make an authorization decision, and does not make a *comparison* between a “*stored execution history* of the review target” and “one or more conditions” to determine *when* a “review target” is reviewable by the user, as required by the contested language of claim 1.

Simply put, we find an *actor’s reputation* as taught by Cross (¶ 16–17, 27) does not reasonably suggest that a “*stored execution history*” (e.g., of an *executable* program) is *compared* with one or more conditions, as claimed, under a broad but reasonable interpretation, even if the recited “one or more conditions” is read on the *rules or policies* described in Cross (¶

25).² (Emphasis added). In any event, the Examiner maps the claimed *comparison* of contested limitation L to Willis, not Cross. (Final Act. 3). As discussed above, claim 1 is silent regarding “determining *whether or not* a review target is reviewable by user,” as broadly interpreted by the Examiner in the Final Action (4), in combining the teachings of Cross with the teachings of Willis.

In trying to understand the Examiner’s rejection (as based on the *combined* teachings and suggestions of Willis and Cross), we find a lack of clarity in the rejection. (Final Act. 3–4). Therefore, we are constrained on this record to find a preponderance of the evidence supports the arguments advanced by Appellants in the Briefs. (*See* App. Br. 14–18; Reply Br. 2–4).

We note the remaining independent claims 9, 13, 14, 21, and 22 recite contested limitation L using similar commensurate language. Therefore, for essentially the same reasons argued by Appellants in the Briefs (*id.*), we reverse rejection A of each independent claim. Because we have reversed rejection A of each independent claim, we also reverse rejection A of each associated respective dependent claim.

² According to one disclosed embodiment, Cross describes (¶ 25) : (“reputation metadata 116 may be provided to reputation value builder 208, which may *output a reputation value to authorization input builder 130 . . .* Authorization module 132 may receive the authorization input from authorization input builder 130 and *compare the authorization input against one or more rules in the rules module*. Depending upon the authorization input value as well as the configuration of the rules module, the authorization module may permit or deny the actor's request to perform a particular operation on a particular object requested.”) (Emphasis added).

Rejection B

Regarding remaining dependent claims 5 and 6, we reverse rejection B of these claims for the same reasons discussed above regarding rejection A. In particular, the Examiner has not shown how taking “Official Notice” to support the rejection of claims 5 and 6 overcomes the aforementioned deficiencies regarding the Willis reference, as discussed above regarding rejection A of independent claim 1, from which claims 5 and 6 depend.

CONCLUSION

For at least the aforementioned reasons, on this record, we are persuaded by Appellants’ arguments the Examiner erred regarding rejections A and B of all contested claims before us on appeal. (*See* App. Br. 14–18; Reply Br. 2–4).

DECISION

We reverse the Examiner’s decision rejecting claims 1–22.

REVERSED