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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HONG XIAO, DONGCHEN WANG, FANG ZHU,
ANDRE R. TURNER, and AZIM NASIR

Appeal 2016-001373
Application 13/688,882
Technology Center 2400

Before CAROLYN D. THOMAS, DENISE M. POTHIER, and
NABEEL U. KHAN, *Administrative Patent Judges*.

POTHIER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–5, 7–15, and 17–22. App. Br. 4.² Claims 6 and 16 have been canceled. *Id.* at 16, 18 (Claims App'x). We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

Invention

Appellants' invention relates to enabling a user to adapt content usage by an application running on a device, including video steaming, content streaming, and social networking applications. Spec. ¶ 2; *see also id.* ¶¶ 1, 11, 13–14. An adaption platform (e.g., 103) interacts with such devices and enables a user to manage and adapt content usage for prolonged use. *See id.* ¶ 14, Fig. 1.

Claim 1 is reproduced below with emphases:

1. A method comprising:

determining usage of content by an application satisfies a predetermined bandwidth threshold;

determining, based on the usage, a bandwidth configuration setting specified by a device that is configured to execute the application;

initiating an adaptation of the usage of the content by the application based on the bandwidth configuration setting; and

determining a context condition to associate with the bandwidth configuration setting, wherein the context condition

¹ The real party in interest is listed as Verizon Communications Inc. App. Br. 1.

² Throughout this opinion, we refer to (1) the Final Action (Final Act.) mailed January 29, 2015, (2) the Advisory Action (Adv. Act.) mailed April 7, 2015, (3) the Appeal Brief (App. Br.) filed June 29, 2015, (4) the Examiner's Answer (Ans.) mailed September 11, 2015, and (5) the Reply Brief (Reply Br.) filed November 11, 2015.

Liu ¶¶ 15, 17, 18, 23, 24, 27); Ans. 3–4 (citing Liu ¶¶ 15, 17, 20, 21, 23, 24, 28, 30, 31, Fig. 2).

Appellants argue Liu’s monitoring of bandwidth use over a time period “is not related to [the] claimed ‘bandwidth configuration setting[,]” and that any adjustments to bandwidth or bandwidth settings do not relate to each other. App. Br. 9. As such, Appellants contend Liu fails to teach “determining . . . a bandwidth configuration setting” based on application usage or “initiating an adaptation of the usage of the content by the application based on the bandwidth configuration setting” as recited in independent claim 1. *Id.* at 9–10. Appellants further assert that the context condition in Liu is set by the user “with no regard to the usage of the application” and thus further fails to teach “determining a context condition to associate with the bandwidth configuration setting.” *Id.* at 9–10. Moreover, Appellants contend Liu’s billing cycle does not relate to the claimed “context condition,” which includes “a time range.” *Id.* at 10.

ISSUES

Under § 102, has the Examiner erred in rejecting claim 1 by finding that Liu discloses

(I) “determining, based on the usage, a bandwidth configuration setting specified by a device” and

(II) “determining a context condition to associate with the bandwidth configuration setting, wherein the context condition includes a number of other devices associated with a user of the device, a device type, a location, a time range, an identifier value associated with the device or the number of other devices, or a combination thereof”?

ANALYSIS

I.

Based on the record before us, we find no error in the Examiner’s rejection of independent claim 1. Claim 1 separately recites both “a predetermined bandwidth threshold” and “a bandwidth configuration setting.” App. Br. 15 (Claims App’x). We disagree that Liu fails to teach these recited features. *See id.* at 10; *see also* Reply Br. 5.

Turning to the disclosure, the Specification provides examples of a threshold, which may represent “a percentage of the usage of content, including a percentage of the rate or amount of data consumed.” Spec. ¶ 19. The disclosure further indicates “the threshold may be specified” when the user establishes profile 107 with adaptation platform 103. *Id.* ¶ 19, Fig. 1. Liu similarly discloses examples of setting a bandwidth threshold by a user, including the bandwidth adjustment’s first settings 216’ that includes “THROTTLE (%)” setting (e.g., from zero to 100) that limits the bandwidth used by application 208 (e.g., 50 % for “3G(Lmt)” email application in Figure 2). Liu ¶¶ 17, 22, 27, 31, Fig. 2. Thus, Liu sets “a predetermined bandwidth threshold” related to an application’s usage as recited. Liu further determines a current, total bandwidth being used 220 for an application (e.g., 500K content usage for “3G(Lmt)” email application 208) and whether the usage meets the throttle percentage (*see* Liu ¶¶ 20–21, 31, Fig. 2 (discussing agent 322 enforcing policies established by settings 216 through monitoring)), thus determining that an application’s content usage “satisfies a predetermined bandwidth threshold” as recited. *See id.*

Distinct from this threshold determination (e.g., 216’ in Figure 2), Liu further discusses bandwidth configuration settings 216’ shown as

“CUTOFF.” Liu, Fig. 2. Liu explains user interface 212 allows a user to input a setting that an application (e.g., YouTube in Figure 2) will not operate above or “a ‘cutoff’ setting” that enables or disables application 208. *Id.* ¶ 22–23; *see also id.* ¶¶ 17–18, 27, Fig. 2 and Ans. 4 (discussing cutting off YouTube application’s use). This is similar to the Specification, which provides an example of a “bandwidth configuration setting . . . may include a disabling and/or enabling of a video streaming feature of an application 104” or “specific applications” (Spec. ¶ 22).

Thus, contrary to Appellants’ assertions (App. Br. 9–10; Reply Br. 2–3), Liu’s bandwidth monitoring is related to a “bandwidth configuration setting,” and Liu discloses both the recited “predetermined bandwidth threshold” (e.g., a throttle percentage) and the recited “bandwidth configuration setting” (e.g., cut off point for an application based on its use). Also, despite Appellants’ arguments (*id.* at 9–10), Liu teaches adapting the content usage of an application (e.g., cutting off YouTube application) based on the bandwidth configuration setting as previously explained.

II.

Regarding the recitation “determining a context condition to associate with the bandwidth configuration setting” in claim 1, Appellants argue the context condition in Liu is set by the user “with no regard to the usage of the application.” *Id.* Notably, claim 1 broadly recites “determining a context condition *to associate* with the bandwidth configuration setting.” *Id.* at 15 (Claims App’x) (emphasis added). *See also* Ans. 3 (stating “the ‘context condition’ is merely “a ‘time range’ associated with the bandwidth configuration settings”). This recitation does not recite positively associating the context condition with an application’s usage as argued

(App. Br. 9) but rather requires the ability to associate the context condition with the bandwidth configuration setting, which in turn is based on the content's usage. Thus, Appellants' argument does not specifically address claim 1's recitation.

Appellants also contend Liu's billing cycle is not "an equivalent teaching," does not relate to the claimed "context condition," which includes "a time range," and "is not the contextual aspect that actually results in a throttling." *Id.* at 10. Claim 1 does not require the context condition to result in throttling. At best, as noted above, the recited "context condition" has the ability to associate with "the bandwidth configuration setting." *Id.* at 15 (Claims App'x).

As mapped by the Examiner, Liu discloses such an ability. The Examiner explains Liu discloses the "period of time . . . monitored by the monitoring agents . . . (for example, You[T]ube app used 300MB in the last hour)," and this time period relates to the monitoring period. Ans. 4 (citing Liu, Fig. 2, where the cutoff box is ticked for the YouTube application); *see also* Final Act. 4 (citing Liu ¶¶ 15, 17). As an example, Liu discusses "[t]he total bandwidth used 220 may be for a single session (i.e.,] *a given time period*)." Liu ¶ 17 (*italics added*). This given time period is "a time range" as recited. Moreover, as addressed above, based on this total bandwidth used for an application in this given time period, Liu discloses determining a bandwidth configuration setting (e.g., cut off point for an application that is associated with the given time period) and adapting its usage (e.g., cutting off the application's (e.g., YouTube) use).

The Examiner also finds Liu discloses "a context condition" that includes "an identifier value associated with the device." Final Act. 4

(discussing “a subscriber . . . is known to be associated with a device/user ID or type”) (italics omitted). Appellants do not rebut this finding in the briefs. We thus disagree Liu fails to disclose “determining a context condition to associate with the bandwidth configuration setting . . . [that] includes . . . a time range [or] an identifier value associated with the device” as recited in claim 1.

For the foregoing reasons, Appellants have not persuaded us of error in the rejection of independent claim 1 and claims 5, 7, 9–11, 15, 17, and 19–22, which are not separately argued.

THE OBVIOUSNESS REJECTION OVER LIU AND OFFICIAL NOTICE

Claims 2–4, 8, 12–14, and 18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Liu and Official Notice. Final Act. 6–8. For the rejection of these claims, Appellants argue the Official Notice does not remedy the alleged deficiencies of Liu. App. Br. 12. This argument is unavailing for the above reasons concerning Liu.

Claim 3 depends from claim 2, and claim 13 depends from claim 12. Appellants separately group claims 3 and 13 (*id.* at 12–13), which both recite, in pertinent part, “determining context information associated with the device or the other device.” *Id.* at 15. We select claim 3 as representative. Appellants assert Liu and Official Notice “are silent as to a description of the claimed ‘context information’ as described in the Specification.” *Id.*

We are not persuaded. First, the Examiner need not define the recited “context information” as argued. App. Br. 13. That is, “[t]here has never been a requirement for an examiner to make an on-the-record claim

construction of every term in every rejected claim” *In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011).

Second, to the extent Appellants contend Liu does not teach or suggest the claimed “context information,” we disagree. Although the Specification does not define “context information,” it does describe “context information” as being “captured by sensors 105a-105n of respective user devices 101” (Spec. ¶ 28) and as including “location information, orientation information, temporal information or activity information pertaining to a user” as well as “internet protocol (IP) address information, application usage information, and other data” (*id.* ¶ 29). Similarly, the Examiner maps this limitation to Liu’s teachings, which describe capturing a variety of information using various sensors. *See* Final Act. 7 (citing Liu ¶¶ 17–18, 23–24, 27, Fig. 2). For example, Liu suggests a sensor is used to capture time, so that Liu can determine the bandwidth used for “a given time period” or “a single session.” *See* Liu ¶ 17, Fig. 2. As another example, Liu further discusses capturing “network data plan information” (e.g., data bytes remaining in a data plan, current billing period’s end time, and how much time remains until a new billing cycle), which is used to implement an application’s operations of applications (e.g., cutting off or throttling an application’s use). Liu ¶ 28.

For the foregoing reasons, Appellants have not persuaded us of error in the rejection of claims 2–4, 8, 12–14, and 18.

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DECISION

We affirm the Examiner's rejection of (1) claims 1, 5, 7, 9–11, 15, 17, and 19–22 under 35 U.S.C. § 102 and (2) claims 2–4, 8, 12–14, and 18 under 35 U.S.C. § 103(a).

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