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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BENJAMIN J. STERN, MAZIN GILBERT, and
NARENDRA GUPTA

Appeal 2016-001737
Application 11/601,993
Technology Center 2400

Before ST. JOHN COURTENAY III, NATHAN A. ENGELS, and
CARL L. SILVERMAN, *Administrative Patent Judges*.

ENGELS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 41–47 and 49–55. Claims 48 and 56 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

ILLUSTRATIVE CLAIM

Appellants' claimed invention relates to techniques for "selecting advertisements for placement in video content," including "analyzing the content of a program segment to associate the program content with commercial advertisement placement." App. Br. 2. Claim 41, reproduced below, is illustrative of the claimed subject matter:

41. A non transitory computer readable medium having recorded thereon a computer program comprising code means for, when executed on a computer, instructing the computer to control steps in a method for analyzing the content of a program segment to associate the program content with commercial advertisement placement comprising:

storing a plurality of predefined advertising categories;

receiving a training segment comprising actual historical channel programming having video and audio program content and video and audio advertising content, the advertising content having been placed within the channel programming using manual placement, the placement having been proven effective;

extracting one or more advertising feature set values from the advertising content for an advertising feature set wherein each advertising feature set value characterizes an aspect of the training segment advertising content;

classifying the one or more advertising feature set values from the training segment as one or more advertising-content-correlated advertising categories using a correlation model wherein the correlation model weights each feature set value and applies adaptable rules that correlate the one or more feature set values with one or more of the predefined advertising categories;

storing the training segment advertising content with its one or more advertising-content-correlated advertising categories;

extracting one or more program feature set values from the training segment program content for a program feature set wherein each program feature set value characterizes an aspect of the training segment program content;

classifying the one or more program feature set values from the training segment as one or more program-content-correlated advertising categories using the correlation model;
comparing the one or more training segment program-content-correlated advertising categories with the training segment advertising-content-correlated advertising categories wherein disparities between the one or more training segment program-content-correlated advertising categories and training segment advertising-content-correlated advertising categories tune the correlation model weights;
receiving a program segment having video and audio program content;
extracting one or more feature set values from the program segment program content;
classifying the one or more feature set values from the program segment as one or more correlated advertising categories using the correlation model;
based on the one or more correlated advertising categories, selecting one or more prerecorded advertisements for the program segment; and
placing the one or more selected prerecorded advertisements into the program segment.

APPELLANTS' CONTENTIONS

Appellants contend the Examiner erred in rejecting “independent claims 41 and 49, together with the corresponding dependent claims,” under 35 U.S.C. § 103(a) as being unpatentable in view of Zigmund et al. (US 6,698,020 B1; Feb. 24, 2004), Verhaegh et al. (US 2009/0150230 A1; June 11, 2009), Gutta et al. (US 2004/0073919 A1; Apr. 15, 2004), and Finseth et al. (US 7,552,458 B1; June 23, 2009). App. Br. 3.

ANALYSIS

Appellants argue the Examiner erred in the rejections of independent claims 41 and 49 because “Gutta et al. does not extract feature values from program content” (App. Br. 4) nor does Gutta describe performing “a comparison between *program*-content-correlated advertising categories and *advertising*-content-correlated advertising categories” (App. Br. 5).

According to Appellants, Gutta teaches recommending commercials based on a viewer’s behavior during prior broadcasts of commercials and “does not utilize any features of the program content in placing advertisements.” App. Br. 4; *see also* Reply Br. 1–4.

Having considered the Examiner’s rejection in light of Appellants’ arguments and the evidence of record, we disagree with Appellants. As an initial matter, the Examiner’s rejection of claim 41 relies on the combined teachings of the prior art (Final Act. 3–6), but Appellants’ arguments only address Gutta (*see* App. Br. 4–6; Reply Br. 1–4).

Notably, in addition to findings relating to Gutta, the rejection includes findings that each of Zigmond, Verhaegh, and Finseth includes teachings relating to feature values of program content. *See* Final Act 3 (citing Zigmond, Abstract as teaching “analyzing the content of a program segment to associate the program content with commercial advertisement placement”), 5 (citing Verhaegh, Abstract, ¶¶ 21, 23 as teaching “extracting one or more predefined values from the training segment program content for a feature set wherein each feature set value characterizes an aspect of the training segment program content”), and 5–6 (citing Finseth as teaching “classifying the one or more feature set values from the training segment as one or more correlated advertising categories using a correlation model . .

.[and] using a correlation model wherein the correlation model weights each feature set value”).

Appellants’ arguments addressing Gutta individually fail to substantively address the combination of prior art as cited by the Examiner (*see* Final Act. 3–6) and are, therefore, unpersuasive of error in the Examiner’s rejection. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981) (“one cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references”).

Moreover, interpreting the plain language of claims 41 and 49 in light of Appellants’ Specification, we agree with the Examiner that Gutta teaches the disputed limitations. Appellants’ Specification broadly describes a “feature set” extractor that “extracts values for a set of characteristic features from [a] segment[,]” including “the time and date that the segment is to be broadcast or transmitted” (Spec. ¶ 23), “past advertising effectiveness for ads placed in the segment, or a movie rating” (Spec. ¶ 22). *Accord* App. Br. 9 (claim 44 further defining the program segment of claim 41 to include metadata such as “past advertising effectiveness for ads placed in the segment” and “a rating”; claim 45 further defining the “feature set values” of claim 41 represent “segment release date, segment broadcast date and time,” among other things).

Indeed, interpreting the plain language of claim 41 in light of Appellants’ Specification, we agree with the Examiner (Ans. 4–5 (citing Gutta ¶¶ 40–44)) that Gutta’s teachings that “[p]rogram category information,” “temporal or contextual information,” and a program signature “associated with a particular show name and rating” teach or suggest the disputed limitations, including the claimed “feature set values.” *See* Gutta

¶¶ 40 (additional explaining “temporal or contextual information may be taken into account in the comparison process”; “[f]or example, shows for children are generally run during early morning time slots and would most likely have different commercials than an evening program such as Monday Night Football”), 41–44, 79–93 (teachings comparison of a program’s broadcast time and channel as factors in comparing potential advertisements).

Accordingly, on this record, and by a preponderance of the evidence, Appellants have not persuaded us the Examiner erred in the rejections of claims 41 and 49. We agree with and adopt as our own, the Examiner’s findings, conclusions, and reasons consistent with the above. We sustain the rejections of independent claims 41 and 49, as well as the rejections of dependent 42–47 and 50–55, which are not argued individually.

Reply Brief

To the extent Appellants advance new arguments in the Reply Brief not in response to a shift in the Examiner’s position in the Answer, we note arguments raised in a Reply Brief that were not raised in the Appeal Brief or are not responsive to arguments raised in the Examiner’s Answer will not be considered except for good cause. *See* 37 C.F.R. § 41.41(b)(2).

DECISION

For the above reasons, we affirm the Examiner’s rejections of claims 41–47 and 49–55.

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No time period for taking any subsequent action in connection with this appeal may be extended. 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED