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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ERCAN SOZERI

Appeal 2016-001784
Application 11/813,096¹
Technology Center 2400

Before KRISTEN L. DROESCH, KAMRAN JIVANI, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–11, which are all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellant, the real party in interest is Arcelik A.S. App. Br. 2.

STATEMENT OF THE CASE

Introduction

Appellant's application relates to using a remote control to update software of target devices, such as media devices. Abstract. Claim 1 is illustrative of the appealed subject matter and reads as follows:

1. A method comprising the steps of:
 - storing a new software inside the memory of a remote control device;
 - sending the new software to a target device as a remote control code;
 - writing the new software inside a temporary memory of the target device;
 - the target device controlling whether the new software is correct or not;
 - if the software is new and correct, writing the new software inside a permanent memory of the target device, which are applied to target devices having features of software updating by means of a remote control device.

The Examiner's Rejections

Claims 1, 3–6, 8, 9, and 11 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Lim (US 2002/0013819 A1; Jan. 31, 2002) and Frazer (US 2005/0055595 A1; Mar. 10, 2005). Final Act. 8–12.

Claims 2 and 7 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Lim, Frazer, and Liwerant (US 2002/0056123 A1; May 9, 2002). Final Act. 13–14.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Lim, Frazer, and Fawcett (US 5,845,077; Dec. 1, 1998). Final Act. 14.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's contentions that the Examiner has erred. We disagree with Appellant's contentions. Except as noted below, we adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellant's Appeal Brief. We concur with the conclusions reached by the Examiner. We highlight the following additional points.

Claim 1

Appellant argues the Examiner erred in rejecting claim 1 as unpatentable over Lim and Frazer. App. Br. 11–17; Reply Br. 5. In particular, Appellant argues Frazer does not teach or suggest verification of the software as “new and correct,” instead teaching verification of the software as “correct or not.” App. Br. 12. Appellant argues the Examiner “clearly uses ‘new’ in a manner contra[r]y to its plain meaning in that it includes replacement software which is not necessarily ‘new.’” Reply Br. 5.

Appellant has not persuaded us of Examiner error. The Examiner finds, and we agree, Frazer teaches a subscriber station 28 (“target device”) comprising volatile random access memory (“temporary memory”) and a non-volatile rewritable storage unit (“permanent memory”). Ans. 4 (citing Frazer, Figs. 4A-4C, ¶¶ 43, 48). Frazer further teaches “[o]nce a complete correct copy of the update/replacement core firmware, i.e.—the ‘new’ core firmware, is received . . . the update process continues by writing the new core firmware over all or part of the portion of the RSU 86” Frazer

¶ 61. The Examiner finds, and we agree, Frazer’s teaching that a “complete correct copy of the update/replacement core firmware, i.e.—the ‘new’ core firmware, is received” teaches or suggests verification of the software as “new and correct.” *See* Ans. 4–5. Appellant’s argument that the Examiner’s finding is “contrary” to the “plain meaning” (Reply Br. 5) is unpersuasive because Appellant has neither identified a “plain meaning” nor explained how the Examiner’s finding is contrary to the plain meaning of the term “new.”

Appellant also argues Frazer does not teach or suggest verifying the software is “new and correct” before writing the software to permanent memory, instead teaching verifying the software after it is written to permanent memory. App. Br. 13. We disagree. The Examiner finds, and we agree, Frazer teaches copying new core firmware from RAM 82 to RSU 86. Ans. 5 (citing Frazer ¶ 61). Frazer teaches verifying the new core firmware in RSU 86 by comparing to the previously verified copy of the new core firmware in RAM 82. *Id.* Accordingly, Frazer teaches the copy of the software in RAM 82 (the “temporary memory”) is verified prior to verification of the software in the permanent memory. *Id.*

Appellant also presents several conclusory arguments, including that Frazer teaches away from the present invention (App. Br. 13, 14), Lim “conflicts and teaches away from the Frazer reference” (App. Br. 15), Frazer “teaches away” from Lim’s teaching of a user (App. Br. 15), the combination uses hindsight reasoning (App. Br. 16), and Lim teaches away from conventional transmission devices (App. Br. 17). These arguments are conclusory and unpersuasive, and we adopt the findings and conclusions of the Examiner in response to these arguments.

Appellant also argues the Examiner admits neither Lim nor Frazer teaches sending the new software as a remote control code. App. Br. 16 (citing Final Act. 5). We disagree. Appellant cites the page 5 of the Final Action in support of this argument, but the Final Action notes that a prior Action incorrectly stated that Lim does not teach this element, and intervening office actions and the Final Action correct this mistake. Final Act. 5.

For the reasons identified above, Appellant has failed to persuade us of Examiner error, and we sustain the rejection of claim 1. We also sustain the rejection of dependent claim 10, which relies on the arguments addressing claim 1 (*see* App. Br. 18), and dependent claims 3–6, 8, 9, and independent claim 11, which Appellant does not argue separately (*see* App. Br. 17).

Claim 2

Appellant argues the Examiner erred in rejecting dependent claim 2 as unpatentable over Lim, Frazer, and Liwerant. App. Br. 18. In particular, Appellant argues Liwerant teaches Video Share Producer 20 is software for a computer, not a target device. *Id.* Appellant argues it would be improper to combine this software with Frazer and Lim. *Id.*

Appellant has not persuaded us of Examiner error. The Examiner finds, and we agree, an ordinarily skilled artisan would have combined Liwerant’s teaching of notifying a user that software has been found and asking his or her approval before the download of the software with Lim’s teaching of a target device. Ans. 9–10 (citing Lim ¶ 36, Liwerant ¶ 95). Appellant has not identified persuasive evidence in the record before us that

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the Examiner's combination would have been "uniquely challenging or difficult for one of ordinary skill in the art." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). Moreover, "[a] person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007). Accordingly, we are not persuaded of Examiner error. We, therefore, sustain the rejection of claim 2 and also dependent claim 7, which Appellant does not argue separately. App. Br. 17–18.

DECISION

We affirm the decision of the Examiner to reject claims 1–11.

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