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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOSEPH B. EARLEY, TEDD CHARLES ROSENFELD, and
STEVEN EDWARD SIMONIAN

Appeal 2016-001867
Application 12/875,954
Technology Center 2400

Before HUNG H. BUI, KEVIN C. TROCK, and MICHAEL J. ENGLE,
Administrative Patent Judges.

BUI, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants¹ seek our review under 35 U.S.C. § 134(a) of the Examiner’s Final Office Action rejecting claims 1–4, 6–12, 14–20, and 22–26, all of which are pending on appeal. Claims 5, 13 and 21 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ According to Appellants, the real party in interest is Fox Broadcasting Company. App. Br. 2.

² Our Decision refers to Appellants’ Appeal Brief filed July 22, 2015 (“App. Br.”); Reply Brief filed November 30, 2015 (“Reply Br.”); Examiner’s Answer mailed September 28, 2015 (“Ans.”); Final Office Action mailed February 25, 2015 (“Final Act.”); and original Specification filed September 3, 2010 (“Spec.”).

STATEMENT OF THE CASE

Appellants' invention relates to "systems and methods for providing media programs to viewers, and . . . augmenting provided media programs with qualified answers to questions from viewers live and in near real time." Spec. 1:12–15, Abstract.

Claims 1, 9, and 17 are independent. Claim 1 is illustrative of Appellants' invention, as reproduced below:

1. A method of presenting a media program concurrently with live commentary about the media program, comprising the steps of:

broadcasting a signal comprising the media program;

accepting first messages from a first group having a plurality of first group members, each viewing the broadcast of the media program;

filtering the first messages from each of the members of the first group to identify suitable messages of interest to substantially all the members the first group, comprising the steps of:

keyword searching the first messages to identify message keywords;

further identifying message keywords present in a number of first messages exceeding a threshold number of first messages;

defining a plurality of categories of messages according to the further identified message keywords; and

selecting at least one representative message from at least one of the plurality of categories;

accepting second messages from a second group having a plurality of second group members, each viewing the broadcast of the media program; and

adding at least one of the identified suitable message from the first group and at least one of the messages from the second group to the broadcasted signal in real time to concurrently present the media program, the at least one identified suitable

message from the first group and the at least one messages from the second group;

wherein the second group consists of individuals designated to have knowledge of the production of the media program and the messages from the second group comprise the responses to the identified suitable messages of interest.

App. Br. 28 (Claims App.) (disputed limitations in italics).

Examiner's Rejections

(1) Claims 1, 2, 4, 6–10, 12, 14–18, 20, and 22–26 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Shusman (US Publication 2006/0179454 A1; published Aug. 10, 2006). Final Act. 6–19.

(2) Claims 3, 11, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shusman and Joao (US Publication 2002/0108125 A1; published Aug. 8, 2002). Final Act. 19–21.

ANALYSIS

§ 102(b) Rejection of Claims 1, 2, 4, 6–10, 12, 14–18, 20, and 22–25

With respect to independent claim 1 and similarly independent claims 9 and 17, the Examiner finds Shusman teaches a method of presenting a media program concurrently with live commentary about the media program between viewers (i.e., member of first group) and a broadcaster or moderator (i.e., member of second group) provided with a specific “filter” process of messages to identify suitable messages of interest, including the disputed limitations:

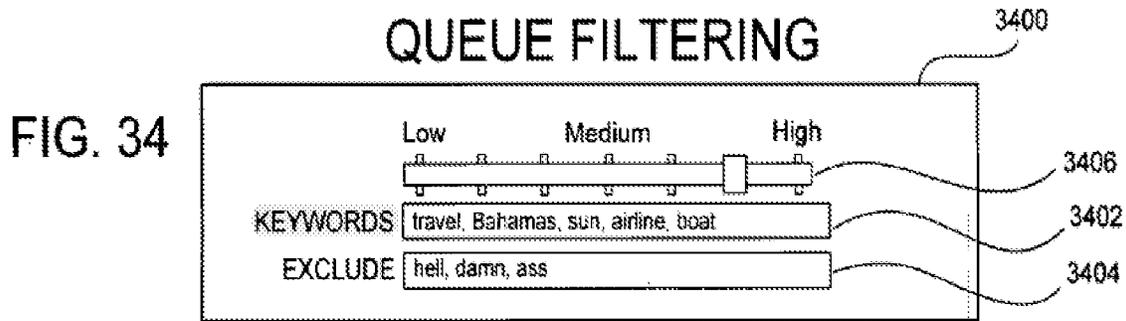
(1) “keyword searching the first messages to identify message keywords” in the form of keyword entry field 3402 of filtering interface 3400 for entry of keywords as described in paragraph 88 and shown in Shusman’s Figure 34;

(2) “further identifying message keywords present in a number of first messages exceeding a threshold number of first messages” in the form of participant filtering process as described in paragraphs 89–94, and shown in Shusman’s Figures 35–36; and

(3) “defining a plurality of categories of messages according to the further identified message keywords” in the form of categories used to create hubs of viewer interactions as described in paragraphs 157–62, and shown in Shusman’s Figure 18.

Final Act. 7 (citing Shusman ¶¶ 88–94, 157–162, Figs. 18, 34–36).

Appellants dispute the Examiner’s factual findings regarding these disputed limitations from Shusman. First, Appellants acknowledge Shusman teaches “how keywords are used to identify messages of interest from a large number of messages” and “[i]ncoming messages are ‘filtered’ . . . to identify messages of interest” by way of a queue filtering shown in Figure 34. App. Br. 11–12 (citing Shusman ¶¶ 88–89, Fig. 34). Shusman’s Figure 34 is reproduced below:



As shown in Shusman’s Figure 34 above, participant question filtering interface 3400 includes (1) keyword entry field 3402 to allow input of “keywords” that the moderator would like to have included by viewers in questions sent to the moderator, and (2) “exclude” entry field 3404 to allow

input of words that the moderator does not want to see in questions, such as expletives or vulgarities. Shusman ¶ 88.

Appellants also acknowledge Shusman teaches the use of a “relevance threshold facility . . . by the moderator to ‘establish a threshold relevance value that a question should have before the question will be added to the question queue.’” App. Br. 13 (citing Shusman ¶¶ 90–94, Fig. 36).

However, Appellants argue Shusman does not (1) “compare the number of messages having a keyword to a threshold to identify what keywords are of interest,” (2) “disclose how the ‘relevance threshold’ filters incoming messages,” or (3) even “indicate precisely *how* the thresholding facility determines relevance.” *Id.* at 12–14. As such, Appellants argue Shusman does not teach (1) “keyword searching . . . to identify message keywords” and (2) “further identifying message keywords present in a number of first messages exceeding a threshold number of first message” as recited in claims 1, 9, and 17. App. Br. 16; Reply Br. 3. According to Appellants, “the ‘relevance threshold’ of Shusman refers to a threshold imposed on a relevance value determined according to the *number* of keywords present in each message” — a concept that is different from Appellants’ identifying keywords present in a threshold number of messages. App. Br. 17.

Second, Appellants acknowledge Shusman’s Figure 18 shows the use of categories and category information to create hubs of viewer actions. App. Br. 20–21 (citing Shusman ¶¶ 157–62, Fig. 18). However, Appellants argue (1) Shusman does not teach how those categories are defined or identified, and (2) the use of Shusman’s categories is not the same as “defining a plurality of categories of messages according to the further

identified message keywords” as recited in claims 1, 9, and 17. App. Br. 22–23; Reply Br. 5–6.

The Examiner responds that (1) “the claims do not associate the threshold with a particular quantity of messages containing a *particular* keyword, but more broadly a number of messages generally containing keywords”; (2) the term “a threshold number of first messages” can be broadly interpreted to encompass any number of messages from participants that the moderator answers; and (3) “the claims do not explicitly require *identification* of categories, but more broadly *defining* [of] categories according to keywords.” Ans. 3–4.

We agree with the Examiner. At the outset, we note Appellants’ arguments are not commensurate in scope with claims 1, 9, and 17. Contrary to Appellants’ arguments, Appellants’ filtering process of claims 1, 9, and 17 simply requires (1) “keyword searching the first messages [i.e., incoming messages or questions from participants] to identify message keywords” and (2) “further identifying message keywords present in a number of first messages exceeding a threshold number of first message.” As described by Appellants’ Specification in connection with Figure 3:

For example, block 302 may identify the word “stunt” as a keyword, and block 304 may further identify that the keyword “stunt” shows up in a threshold number or percentage (i.e., [20%]) of the currently received first messages.

Spec. 10:23–25, Fig. 3.

In other words, the word “stunt” may be input and identified as a keyword and may further be identified if the input keyword “stunt” shows up in a threshold number or a percentage (i.e., 20%) of all the incoming messages or questions from participants.

As correctly recognized by the Examiner and even acknowledged by Appellants, when a keyword such as “travel” is input via keyword entry field 3402 of filtering interface 3400, shown in Shusman’s Figure 34, Shusman’s filtering interface 3400 searches for incoming messages or questions from participants that contain the word “travel” and, as such, performs “keyword searching the first messages [i.e., incoming messages or questions from participants] to identify message keywords” in the manner recited in Appellants’ claims 1, 9, and 17. Shusman ¶ 88, Fig. 34. We agree with the Examiner that “to identify message keywords” as currently claimed is broad enough to encompass both automatically identifying new keywords (as Appellants suggest) as well as keyword searching for a previously established list of keywords (as the Examiner suggests). *See* App. Br. 16–17.

Likewise, as noted by the Examiner, when Shusman’s relevance threshold value is set by the moderator to determine which participant questions to answer, Shusman’s filtering interface 3400 further filters incoming messages or questions that are considered relevant and “a relevance threshold number for each message is established based on identified keywords.” Ans. 3 (citing Shusman ¶¶ 88–94, Figs. 35–36).

During prosecution, claim terms are given their broadest reasonable interpretation consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). According to Appellants’ Specification, the term “threshold number of first messages” is not explicitly defined, but is rather described as a number of incoming messages that contain an input keyword or a percentage (i.e., 20%) of all received messages from participants. Spec. 10:23–25. The Examiner, however, has

interpreted the term “threshold number of first messages” as encompassing a relevant number of incoming messages containing an input keyword that the moderator has decided, via a relevance value, to respond thereto. Ans. 3 (citing Shusman ¶¶ 88–94, Figs. 35–36). Because the number of messages containing keywords exceeds the number of messages responded to, Shusman teaches or suggests “message keywords present in a number of first messages exceeding a threshold number.” We find the Examiner’s interpretation to be reasonable and consistent with Appellants’ Specification.

We also agree with the Examiner that Shusman’s disclosure of “using categories to organize messages into groups based on the categories” is also sufficient to support the Examiner’s finding that Shusman teaches “defining a plurality of categories of messages according to the further identified message keywords” in the manner recited in Appellants’ claims 1, 9, and 17. Ans. 4 (citing Shusman ¶¶ 157–62). For example, Shusman teaches:

Keywords 1826 are stored in the moderator database so that viewers can search for categories 1802 Category keywords 1828 are associated with a plurality of categories. In operation, a viewer enters a category keyword into a previously described search facility and a set of categories for use by the viewer are generated that are associated with the category keyword.

Shusman ¶ 161. Thus, contrary to Appellants’ assertions, Shusman does teach or suggest how categories are “defined or identified” (e.g., by keywords). App. Br. 23.

For the reasons set forth above, Appellants have not persuaded us of Examiner error. Accordingly, we sustain the Examiner’s anticipation rejection of claims 1, 9, 17, and their respective dependent claims 2, 4, 6–8, 10, 12, 14–16, 18, 20, and 22–25, which Appellants do not argue separately.

§ 102(b) Rejection of Claim 26

Claim 26 depends from independent claim 1, and further recites: “wherein the identified suitable message from the first group is a question about the production of the media program and the at least one of the messages from the second group is an answer to the question.”

Appellants acknowledge Shusman discloses “a moderator answering questions” but argues that Shusman “does not disclose a moderator posting messages to respond to questions.” App. Br. 23–26 (citing Shusman ¶¶ 99, 102).

We disagree with Appellants. As correctly recognized by the Examiner, Shusman teaches: (1) a first group having a plurality of first group members, each viewing the broadcast of the media program by way of viewers summiting comments or questions, and (2) a second group having a plurality of second group members, each viewing the broadcast of the media program by way of a moderator providing commentary. Ans. 4–5 (citing Shusman ¶¶ 54–57, 62, 76, 78, 81, 83, 99, 101–103, 167; Fig. 8); *see also* Shusman Fig. 3 (showing interactions between viewers and moderator).

For the reasons set forth above, we also sustain the Examiner’s anticipation rejection of claim 26.

§ 103(a) Rejection of Claims 3, 11, and 19

With respect to dependent claims 3, 11, and 19, Appellants present no separate patentability arguments. App. Br. 26. For the same reasons discussed above, we also sustain the Examiner’s rejection of claims 3, 11, and 19.

CONCLUSION

On the record before us, we conclude Appellants have not demonstrated the Examiner erred in rejecting claims 1–4, 6–12, 14–20, and 22–26 under 35 U.S.C. §§ 102(b) and 103(a).

DECISION

As such, we AFFIRM the Examiner’s final rejection of claims 1–4, 6–12, 14–20, and 22–26.

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