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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MATTHEW VROOM

Appeal 2016-002803
Application 13/633,687[1]
Technology Center 2600

Before JEAN R. HOMERE, ADAM J. PYONIN, and AMBER L. HAGY, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's Non-Final Rejection of claims 1–10 and 12–15, which constitute all of the claims pending in this appeal. Claim 11 has been canceled. App. Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

[1] Appellant identifies the real party in interest as himself. App. Br. 2.

Appellant's Invention

Appellant invented a method and system of using a portable computing device to capture ambient speech, to extract keywords therefrom, to continuously research the extracted keywords, and to deliver the result of researched content to the user of the portable device. Spec. ¶ 3.

Illustrative Claim

Independent claim 1 is illustrative, and reads as follows:

> 1. A computer-readable-recordable storage medium storing processor-executable instructions that when executed by a processor perform:
>
> continuously capturing, through a microphone operatively coupled to a mobile computing device, substantially all human speech in range of said microphone;
>
> converting said speech to text using automatic speech recognition;
>
> continuously extracting subsets of words from said text;
>
> delivering content to a user of said mobile computing device based at least in part on at least one said subset of words; and
>
> continuously updating said content based at least in part on changes in said subsets of words, wherein said continuously updating occurs without the user requesting the updating, further wherein said continuously updating continues until the user instructs the mobile electronic device to cease updating content.

Prior Art Relied Upon

Cross et al.	US 2007/0294084 A1	Dec. 20, 2007
Eggen et al.	US 2008/0235018 A1	Sept. 25, 2008

SHAZAM (SERVICE), https://web.archive.org/web/20100423052124/http://en.wikipedia.org/wiki/Shazam_(service) (last visited Month, Day, Year) (hereinafter "Shazam")

WINDOWS SPEECH RECOGNITION COMMAND LIST, http://www.ngtvoice.com/cgi-bin/search/search.pl?p=10&lang=en&include=&exclude=&penalty=&mode=&q=technical (last visited Month, Day, Year) ("Next Generation Technologies")

Rejections on Appeal

Claims 1–5, 7–10, and 12–14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Eggen and Next Generation Technologies ("NGT" hereinafter).

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Eggen, NGT, and Cross.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Eggen, NGT, and Shazam.

ANALYSIS

We consider Appellant's arguments *seriatim*, as they are presented in the Appeal Brief, pages 6–12 and the Reply Brief, pages 1–3.[2]

We have reviewed the Examiner's rejections in light of Appellant's arguments. We are unpersuaded by Appellant's contentions. Except as otherwise indicated herein below, we adopt as our own the findings and

[2] Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed March 30, 2015), the Reply Brief (filed January 7, 2016), and the Answer (mailed November 10, 2015) for their respective details. We have considered in this Decision only those arguments Appellant actually raised in the Briefs. Any other arguments Appellant could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2012).

reasons set forth in the Examiner's Answer in response to Appellant's Appeal Brief. Ans. 3–8; Non-Final Act. 2–11. However, we highlight and address specific arguments and findings for emphasis as follows.

Regarding the rejection of claim 1, Appellant argues that the combination of Eggen and NGT does not teach or suggest a mobile device continuously updating content, without the user's request, based on changes in subset of words extracted from captured speech until the user instructs the mobile device to cease updating. App. Br. 7. In particular, Appellant argues Eggen discloses a system that, when operating in the active mode, interrupts the user to deliver content to the user, and alternatively, delivers content to the user at a selected time or on-demand when operating in the passive mode. *Id.* (citing Eggen ¶¶ 25, 38). According to Appellant, Eggen does not disclose continuously updating without user's request. *Id.* These arguments are not persuasive.

Eggen discloses a mobile device that captures an *ongoing conversation* between two parties, extracts keywords from the transcribed conversation, and looks up the extracted keywords as a way to ascertain the content and context of the conversation, as well as to locate supplemental content for delivery to a user of the mobile device. Abstract. We agree with the Examiner that because the keyword extraction process is performed during an ongoing conversation, one of ordinary skill in the art would readily appreciate that Eggen teaches or suggests continuously performing the cited process without the user's request, in order to locate supplemental information pertaining to additional keywords extracted throughout the conversation. Ans. 3. Likewise, we agree with the Examiner Eggen teaches or suggests the continuous information update without the user's request to

keep track with the keyword extraction process until the conversation ceases or a user instructs the computing device to stop listening to the conversation. Accordingly, we find unavailing Appellant's argument that continuously updating teaches away or would change the principle of operation of the Eggen reference. App. Br. 8–9.

Further, Appellant argues that NGT's disclosure of a user instructing a user device to stop listening does not teach or suggest the cease updating instruction recited in the claims. *Id.* at 8. This argument is not persuasive. As discussed above, the listening step is disclosed in Eggen as a prerequisite step for updating (i.e., listen to extract keywords which are used to retrieve supplemental information/update). Therefore, we agree with the Examiner that NGT's disclosure of the stop listening instruction gives rise to stop updating because the former instruction ceases the supply of additional keywords usable to retrieve supplemental information or perform additional updates.

Additionally, we find unavailing Appellant's allegation that the copyright date of the NGT document cannot serve as a valid prior art date. *Id.* at 10. As correctly noted by the Examiner, the copyright date of 1999–2010 printed on the document proves that the content of the document was widely available to the public at the time of the present invention. Ans. 5. Accordingly, it qualifies as prior art. Therefore, we are not persuaded the Examiner erred in rejecting claim 1.

Regarding the rejection of claim 3, Appellant argues that the combination of Eggen and NGT does not teach or suggest the content delivered to the user is based on non-speech information available on the mobile device. App. Br. 10–11. This argument is not persuasive.

As correctly noted by the Examiner, although GPS coordinates of the user's mobile device is offered as an example of non-speech information available on the mobile device, such an example does not constitute the broadest reasonable interpretation of non-speech information, nor can we import limitations from the Specification into the claim. Ans. 7–8. We, therefore, agree with the Examiner that Eggen's disclosure of using timestamp data on the user's mobile device as a basis for delivering content to the user teaches or suggests the disputed limitations. *Id.* at 8 (citing Eggen ¶ 23). Consequently, we sustain the Examiner's rejection of claim 3.

Regarding the rejection of claim 15, Appellant argues that the Examiner's reliance on a Wikipedia entry for Shazam cannot serve as prior art because Wikipedia can be edited at any time by anyone in the world. App. Br. 11. However, Appellant acknowledges that the original Shazam music recognition software is prior art to claim 15. *Id.* at 12. Appellant nonetheless argues that the original Shazam software would not allow for continuous listening, and continuous updates of song information. *Id.* This argument is not persuasive. As addressed in our discussion of claim 1 above, the combination of Eggen and NGT teaches the continuous listening and updating. Therefore, we agree with the Examiner that the combination of Eggen with NGT and Shazam also teaches the continuous listening of music and the continuous updating of the same. Accordingly we find no error in the Examiner's rejection of claim 15. Ans. 6–7.

Regarding claims 2, 4–10, and 12–14, because Appellant reiterates substantially the same arguments as those previously discussed for patentability of claims 1, 3, and 15 above, claims 2, 4–10, and 12–14 fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

For the above reasons, we affirm the Examiner's rejections of claims 1–10 and 12–15.[3]

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

[3] In the event of further prosecution, the Examiner should consider rejecting claims 1–10 and 12–15 as being directed to non-statutory subject matter because they recite a computer-readable-recordable storage medium, which is not defined in the Specification to exclude non-transitory media. *See Ex parte Mewherter*, 107 USPQ2d 1857 (PTAB 2013) (precedential).