



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
13/508,021 09/17/2012 Anne-marie Praden 1032326-000574 9621

21839 7590 12/13/2016
BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

Table with 1 column: EXAMINER

DOSHI, AKSHAY

Table with 2 columns: ART UNIT, PAPER NUMBER

2423

Table with 2 columns: NOTIFICATION DATE, DELIVERY MODE

12/13/2016

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPDOC1@BIPC.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANNE-MARIE PRADEN

Appeal 2016-002810
Application 13/508,021¹
Technology Center 2400

Before CAROLYN D. THOMAS, DANIEL J. GALLIGAN, and
ADAM J. PYONIN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 1–10. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ The Appeal Brief identifies Gemalto SA as the real party in interest. App. Br. 2.

² Our Decision refers to Appellant's Appeal Brief, filed June 12, 2015 ("App. Br."); Appellant's Reply Brief, filed January 14, 2016 ("Reply Br."); the Examiner's Answer, mailed November 19, 2015 ("Ans."); and the Final Office Action, mailed December 9, 2014 ("Final Act.").

STATEMENT OF THE CASE

Claims on Appeal

Claims 1 and 8–10 are independent claims. Claim 1 is reproduced below:

1. A method for controlling an audience measurement relating to broadcast data, wherein the method comprises the following steps:

 sending, from a server to at least one device, within the broadcast data, at least one piece of information identifying content data that is broadcast for which an execution of an audience measurement is not allowed; and

 stopping, by the device, an audience measurement of the content data identified by the at least one piece of information sent from the server.

References

Revital et al.	US 2004/0101138 A1	May 27, 2004
Houston	US 2008/0103978 A1	May 1, 2008
Lo et al.	US 2009/0254930 A1	Oct. 8, 2009

Examiner's Rejections

Claims 1–4 and 6–10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Houston and Revital. Final Act. 5–16.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Houston, Revital, and Lo. Final Act. 16–17.

ANALYSIS

Claims 1–3 and 8–10

Appellant contends “Houston does not teach a ‘piece of information identifying content data that is broadcast,’ let alone to disallow audience

measurement for the identified content.” App. Br. 6. According to Appellant, paragraph 42 of Houston, which the Examiner relies upon in rejecting claim 1, “discloses only that the MRA [measurement rights agreement] may include rules descriptive of ‘the *scope* of media content *to be measured*.’” App. Br. 6. Appellant argues that Houston “does not provide the ability to disallow audience measurement on a program-by-program basis.” App. Br. 6.

We are not persuaded the Examiner erred. Houston describes that a “measurement rights agreement 165 may include any or all of the following business rules: . . . a description of the scope of media content to be measured (e.g., such as a description of the type of content, products and/or services measured and/or *excluded from measurement*, etc.).” Houston ¶ 42 (emphasis added). Houston further teaches that the media content whose consumption is to be measured or not measured is “content data that is broadcast,” as recited in claim 1, when it describes that a “another media content source 125 may correspond to a broadcast media source, such as, for example, a cable television service provider, a satellite television service provider, a terrestrial television service provider, a broadcast radio provider, a satellite radio provider, a cellular phone television provider, etc.” Houston ¶ 25. Therefore, we agree with the Examiner that Houston teaches identifying broadcast content for which audience measurement is not allowed. *See* Final Act. 6. Furthermore, claim 1 does not require disallowing measurement “on a program-by-program basis,” and, therefore, Appellant’s argument that Houston does not teach this feature is not commensurate with the scope of the claim.

Appellant also contends “[t]he key that is transmitted in Revital does not identify content data, much less content data that is broadcast for which an execution of an audience measurement is not allowed.” App. Br. 8. However, as the Examiner explains, “Revital is only being used to teach the step of transmission of piece of information from server to client device transmitted within the broadcast data.” Ans. 6; *see also* Final Act. 6–7. As such, this argument is not responsive to the Examiner’s findings and therefore not persuasive of error.

Appellant further contends that the combination of Revital and Houston is improper and would not result in the method of claim 1. *See* App. Br. 8–10; Reply Br. 2–3. In particular, Appellant argues that the measurement rights agreement (MRA) of Houston is user specific and, therefore, there would be no reason to broadcast the MRA and further that doing so would render Houston unsatisfactory for its intended purpose. App. Br. 8–10. According to Appellant, “the MRA 165 of Houston is *not relevant to more than one user device*,” and, “[t]hus, one skilled in the art would *never seek to broadcast* the individual contract of a single user to a plurality of user devices.” Reply Br. 3.

As an initial matter, we note that claim 1 recites “sending, from a server to *at least one device*, within the broadcast data, at least one piece of information.” Claim 1 does not recite a step of broadcasting information, let alone broadcasting to a plurality of devices, as Appellant’s argument suggests. *See* Spec. 2:22–23 (“The broadcast data is to be received by at least one terminal.”). Furthermore, although a measurement rights agreement may be user specific, as Appellant argues, Houston also describes a “default measurement rights agreement” that is provided to audience

members. *See* Houston ¶¶ 54, 80. Such a “default” MRA would not be specific to any particular user, and broadcasting such information would have involved nothing more than applying a known technique (broadcasting information) to the method of Houston to yield predictable results, as determined by the Examiner. Ans. 9–10; *see KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007) (“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”). Therefore, Appellant’s arguments against the combination based on the premise that Houston discloses only user-specific agreements are not persuasive, particularly in light of Houston’s disclosure of default MRAs that are not user-specific.

We further note that claim 1 does not require that the “at least one piece of information identifying content data that is broadcast” also specify whether or not audience measurement is allowed with respect to that content. The decision that audience measurement is not allowed with respect to particular content that is identified may be based on different information entirely. Houston discloses that media content may come from a broadcast media source, and it discloses “information (e.g., such as identification tags, metadata, etc.) embedded in the media content.” Houston ¶¶ 25, 28. Thus, Houston teaches broadcast data that includes information that identifies content. Houston further discloses a measurement rights agreement having business rules under which certain content is “excluded from measurement.” Houston ¶ 42. Houston describes a process for determining whether to authorize audience measurement, which involves “evaluat[ing] the business rules (terms) contained in the measurement rights agreement 165,” and, if measurement is not authorized,

“ensur[ing] that the cooperative media handler 150 is configured in a non-cooperative mode, thereby disabling audience measurement.” Houston ¶ 87, Fig. 7. This further supports the Examiner’s rejection of independent claim 1 as obvious over Houston and Revital because Houston teaches identifying media content that is broadcast and determining, by reference to business rules, that audience measurement of the identified content is not allowed and stopping audience measurement.

Based on the foregoing, we are not persuaded of Examiner error. Rather, we agree with the Examiner’s conclusion that the subject matter of claim 1 would have been obvious based on Houston and Revital. As such, we sustain the rejection of claim 1 under 35 U.S.C. § 103(a), as well as the rejection of claims 2, 3, and 8–10, for which Appellant presents no additional arguments for patentability. *See* App. Br. 10.

Claim 4

Claim 4 depends from claim 1 and recites that “the at least one piece of information is included within a specific message that is timely linked to the identified content data.” The Examiner finds that Houston’s disclosure of checking a measurement rights agreement when a user selects particular content to display teaches a timely linkage between identified content data and the MRA information (“the at least one piece of information”). Ans. 11–12 (citing Houston ¶¶ 32, 42, 50, 83–87, Figs. 1, 7).

Appellant contends the Examiner’s rejection of claim 4 is inconsistent with the rejection of claim 1 because

if the MRA 165 of Houston were for some reason to be sent within broadcast data, as suggested by the Examiner in the rejection of claim 1, the process described in paragraphs [0083]-[0087] of Houston *cannot occur*, as it is *dependent* upon the

DRM 160 controlling the retrieval of the MRA 165 in response to a triggering event.

Reply Br. 4–5.

However, the Examiner relies on Houston’s disclosure of accessing a locally stored measurement rights agreement. Ans. 11–12 (citing Houston ¶¶ 83–87, Fig. 7). Houston discloses “the measurement rights agreement 165 may be stored locally in a storage unit 175 accessible by the cooperative DRM 160.” Houston ¶ 84. A locally stored measurement rights agreement would have been sent earlier within broadcast data, according to the Examiner’s rejection of claim 1 based on the combination of Houston and Revital. Thus, the Examiner’s rejection of claim 4 is not inconsistent with the rejection of claim 1.

We are not persuaded the Examiner erred in concluding the subject matter of claim 4 would have been obvious over Houston and Revital, and, therefore, we sustain the rejection of claim 4 under 35 U.S.C. § 103(a).

Claim 6

Claim 6 recites:

Method according to claim 1, wherein, a first value of one piece of information is predetermined to not allow an execution of an audience measurement relating to the identified content data, and when a value of the piece of information matches the predetermined first value, the device does not execute an audience measurement relating to the identified content data.

Appellant argues that the relied-upon portions of Houston describe disabling all audience measurement and that “[s]uch a blanket disablement of audience measurement is not an identification of content data.” App. Br. 11–12 (citing Houston ¶ 86). We are not persuaded because disabling audience measurement for all content teaches that the device will “not

execute an audience measurement relating to the identified content data,” as required by claim 6. As the Examiner correctly points out, the “current claim language of claim 6 does not indicate that measurement is only disabled for identified content and audience measurement for unidentified or other content continues.” Ans. 13. Furthermore, even if the claim were so limited, the Examiner correctly finds that “Houston discloses measur[ing] or exclud[ing] specific content type from audience measurement based on rules as disclosed in par. 0042.” Ans. 13.

As such, we are not persuaded the Examiner erred in concluding the subject matter of claim 6 would have been obvious over Houston and Revital, and, therefore, we sustain the rejection of claim 6 under 35 U.S.C. § 103(a).

Claim 7

Claim 7 depends from claim 1 and recites that “the server inserts within data to be broadcast the at least one piece of information.” Appellant argues “[t]he audience measurement of Houston is based upon information provided in the MRA 165 which is not broadcast,” and, therefore, “Houston does not teach or suggest the recitation of Claim 7.” App. Br. 12.

In response, the Examiner explains that Revital discloses sending control information within broadcast data, therefore, it is the combination of Houston and Revital that teaches the subject matter of claim 7. Ans. 13 (citing Houston ¶ 32; Revital ¶ 109, Fig. 2). Appellant’s argument against Houston alone does not persuade us of error in the Examiner’s rejection based on the combination of references. Therefore, we sustain the rejection of claim 7 under 35 U.S.C. § 103(a).

Claim 5

Claim 5 depends from claim 1 and recites that “the at least one piece of information is included within a Short Term Key Message.” Appellant argues “Lo does not cure the deficiencies of Houston and Revital” because “the portion of Lo interpreted by the Office as the Appellant’s recited ‘piece of information,’ relates to the decryption and display of content to a user, not the disablement of an audience measurement.” App. Br. 12. This argument is not persuasive because, as the Examiner points out, the combination of Houston and Revital teaches audience measurement, and Lo is relied upon only for teaching sending a piece of information via a short term key message. Ans. 14.

As such, we are not persuaded the Examiner erred in concluding the subject matter of claim 5 would have been obvious over Houston, Revital, and Lo, and, therefore, we sustain the rejection of claim 5 under 35 U.S.C. § 103(a).

DECISION

We affirm the Examiner’s decision to reject claims 1–10 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