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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/186,730	02/21/2014	Leonard Henry Grokop	111174C1 (900698)	5941

15093 7590 09/14/2017

Kilpatrick Townsend & Stockton/Qualcomm
Mailstop: IP Docketing - 22
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309

EXAMINER
THOMAS-HOMESCU, ANNE L

ART UNIT	PAPER NUMBER
2659	

NOTIFICATION DATE	DELIVERY MODE
09/14/2017	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):

ipefiling@kilpatricktownsend.com
ocpat_uspto@qualcomm.com
qcominst@kilpatricktownsend.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LEONARD HENRY GROKOP,
VIDYA NARAYANAN, JAMES W. DOLTER,
and SANJIV NANDA

Appeal 2016-003047
Application 14/186,730[1]
Technology Center 2600

Before MAHSHID D. SAADAT, NORMAN H. BEAMER, and MICHAEL J. ENGLE, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 2–31, which are all the claims pending in the application. A hearing was held on August 31, 2017. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Technology

The application relates to capturing and analyzing a subset of a continuous audio stream. Spec. Abstract.

---

[1] Appellants state the real party in interest is Qualcomm Inc. App. Br. 2.

Illustrative Claim

Claim 2 is illustrative and reproduced below with certain limitations at issue emphasized:

> 2. A method for performing an audio analysis, the method comprising:
>
> receiving, by a computerized device, a continuous audio stream;
>
> capturing, by the computerized device, from the continuous audio stream, a collection of audio frames from a plurality of audio blocks of the continuous audio stream, wherein:
>
> *each audio block of the plurality of audio blocks includes multiple audio frames*; and
>
> capturing the collection of audio frames comprises *capturing a single audio frame from each audio block of the plurality of audio blocks*;
>
> analyzing, by the computerized device, the collection of audio frames; and
>
> determining, based on analyzing the collection of audio frames, a characteristic of an ambient environment of the continuous audio stream.

Rejections

Claims 2–6, 8–14, 16–21, and 23 stand rejected under 35 U.S.C. § 101 as being directed to ineligible subject matter. Final Act. 11.

Claims 2–6, 24–28, and 31 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Malkin, *The CLEAR 2006 CMU Acoustic Environment Classification System*, CLEAR 2006, pp. 323–30 (2007); Ellis et al., *Minimal-Impact Audio-Based Personal Archives*, CARPE (2004); and Gavalda (US 2011/0218798 A1; Sept. 8, 2011). Final Act. 12.

Claims 10–14 and 17–21 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Malkin, Ellis, Gavalda, and Lacroix et al. (US 2008/0223627 A1; Sept. 18, 2008). Final Act. 21.

Claims 8 and 30 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Malkin; Ellis; Gavalda; and Cristoph et al., *Automatic Context Detection of a Mobile User*. Final Act. 25.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as obvious over the combination of Malkin, Ellis, Gavalda, and Burke et al. (US 2013/0013316 A1; Jan. 10, 2013). Final Act. 27.

Claims 16 and 23 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Malkin, Ellis, Gavalda, Lacroix, and Burke. Final Act. 28–29.

Claims 2–31 stand rejected on the ground of non-statutory obviousness-type double patenting over U.S. Patent No. 8,700,406. Final Act. 4–11.

ISSUES

1. Did the Examiner err in concluding claim 2 is directed to ineligible subject matter under § 101?

2. Did the Examiner err in finding Gavalda teaches or suggests "capturing a single audio frame from each audio block of the plurality of audio blocks" and "each audio block of the plurality of audio blocks includes multiple audio frames," as recited in claim 2?

ANALYSIS

§ 101: Non-Statutory Subject Matter

The Examiner concludes the rejected claims "are directed to the abstract idea of 'a generic audio analysis'." Final Act. 11.

We do not agree with the Examiner's conclusion. The Federal Circuit has said "describing the claims at such a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Similarly, the Federal Circuit has "previously cautioned that courts must be careful to avoid oversimplifying the claims by looking at them generally and failing to account for the specific requirements of the claims." *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016) (quotation omitted). We agree with Appellants that calling the claims a "generic audio analysis" oversimplifies the claims and fails to account for the specific requirements of capturing only a single frame from each block, analyzing the collection of captured frames, and determining a characteristic of an ambient environment based on that analysis. *See* App. Br. 7–8.

"The Board's primary role is to review the adverse decision as presented by the Examiner, and not to conduct its own separate examination of the claims." MPEP § 1213.02. Thus, we address only the 35 U.S.C. § 101 rejection as set forth in the Final Office Action, which is the decision from which Appellants appeal. *See also* 35 U.S.C. § 134(a) ("An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Patent Trial and Appeal Board"); 35 U.S.C. § 6(b) ("The Patent Trial and Appeal Board shall . . . review

adverse decisions of examiners upon applications for patents pursuant to section 134(a).").

Accordingly, we do not sustain the Examiner's rejection of claims 2–6, 8–14, 16–21, and 23 under § 101.

§ 103: Obviousness

Claim 2 recites "capturing a single audio frame from each audio block of the plurality of audio blocks" and "each audio block of the plurality of audio blocks includes multiple audio frames."

Appellants argue "Gavalda discloses capturing features during **each** 2.5 ms." App. Br. 12. "Thus, rather than teaching sampling only a small subset of audio data from a number of blocks of audio data, Gavalda teaches that one should sample ***all*** frames within a time period." *Id.*

Gavalda discloses "to measure features f such as power . . . during *some portion* of a frame period." Gavalda ¶ 27 (emphasis added). "In one example, the features are obtained *periodically* during each 2.5 ms of a frame period." *Id.* (emphasis added).

The Examiner identifies the claimed "block" as "the extracted portion plus the un-extracted portion, ending at the start of the next block." Ans. 7. We agree with this finding. Gavalda discloses measuring only *some* portion (i.e., obtaining features only *periodically*). Gavalda ¶ 27. As the Examiner found, this means Gavalda teaches a measured portion followed by a non-measured portion, and the claimed "block" includes both the measured portion and the non-measured portion.[2] Thus, the thrust of the Examiner's

[2] We observe that Gavalda's 2.5 ms consists of multiple frames, some of which measure power and some of which do not. As such, Gavalda's

rejection is correct that Gavalda teaches or suggests capturing a single audio frame (i.e., the periodic frame from which the feature is obtained) from each of the plurality of audio blocks.

Accordingly, we sustain the Examiner's rejection of claim 2, and claims 3–6, 8–14, 16–21, 23–28, 30, and 31, which Appellants argue are patentable for similar reasons. *See* App. Br. 11–13; 37 C.F.R. § 41.37(c)(1)(iv).

Obviousness-Type Double Patenting

Appellants state, "The Appellant is not contesting the double patenting rejections at this time." App. Br. 6.

Accordingly, we summarily affirm the Examiner's rejection of claims 2–31 for double patenting.

DECISION

For the reasons above, we affirm the Examiner's decision rejecting claims 2–6, 8–14, 16–21, 23–28, 30, and 31 under § 103 and claims 2–31 for double patenting. We reverse the Examiner's decision rejecting claims 2–6, 8–14, 16–21, and 23 under § 101. Because we affirm at least one rejection for every appealed claim, we designate this Decision an affirmance.

No time for taking subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

"period" would meet the claimed block (i.e., including one frame of measurement and all the non-measuring frames until the next measurement).