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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AVADIS TEVANIAN JR., MARK STEVANS, and
WILLIAM CHARLES HANKINSON

Appeal 2016-003169
Application 12/112,613
Technology Center 2100

Before MAHSHID D. SAADAT, JOHNNY A. KUMAR, and
JON M. JURGOVAN, *Administrative Patent Judges*.

KUMAR, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 16–22, 25, 26, and 37.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is John Nicholas and Kristin Gross Trust (App. Br. 3).

² Claims 1–15, 23, 24, 27–36, and 38–40 were canceled.

STATEMENT OF THE CASE

Introduction

Appellants' invention relates to electronic methods of collecting, facilitating, and compiling content from online users concerning the performance and time-behavior of items (Spec. 1:15–17). Exemplary claim 16 under appeal reads as follows:

16. A method of generating a Wiki web page with a computing system comprising:

a. providing a first type of content directed to a first topic within a Wiki portion of a first web page that can be altered manually by at least some members of an online community accessing said first web page;

b. creating a plurality of automated variable structured data sources for said first topic by aggregating a second type of content from a plurality of members of the online community with the computing system, which second type of content includes structured data contributed in a variable sized table format by such members for said first topic as well as associated first tags;

wherein said plurality of automated variable structured data sources are shareable and made accessible to contributors to the first web page by the computing system;

c. providing said second type of content for said first topic within the Wiki portion of the first web page with the computing system, which second type of content is updated automatically from said one or more of said automated variable structured data sources selected for said first web page;

d. creating a plurality of automated shared images for said first topic by aggregating a third type of content from a plurality of members of the online community with the computing system, which third type of content includes image data and associated second tags contributed by such members for said first topic;

wherein said plurality of automated shared images are shareable and made accessible by the computing system to contributors to the first web page;

e. providing said third type of content within said Wiki portion of the first web page using the computing system;

wherein shared resource objects obtained by the computing system from the members of the online community in the form of second type of content and third type of content are made available for creating the first web page.

The Examiner's Rejections

Claims 16–22, 25, 26, and 37 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement (Ans. 2–7).

Claims 16–22, 25, 26, and 37 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite (Ans. 7–8).

Claims 16–19, 21, 22, 26, and 37 are rejected under 35 U.S.C. § 102(e) as anticipated by Curtis et al. (US 2008/0010609 A1; publ. Jan. 10, 2008), or, in the alternative, are rejected under 35 U.S.C. § 103(a) as unpatentable over Curtis and Hon et al. (US 2007/0198534 A1; Aug. 23, 2007) (Ans. 9–14).

Claim 20 is rejected under 35 U.S.C. § 103(a) as unpatentable over Curtis and Griffin et al. (US 2007/0028162 A1; publ. Feb. 1, 2007), or, in the alternative, is rejected under 35 U.S.C. § 103(a) as unpatentable over Curtis, Hon, and Griffin (Ans. 14–15).

Claim 25 is rejected under 35 U.S.C. § 103(a) as unpatentable over Curtis and Sohn et al. (US 2002/0091762 A1; July 11, 2002), or, in the

alternative, is rejected under 35 U.S.C. § 103(a) as unpatentable over Curtis, Hon, and Sohn (Ans. 15).

Claim 26 is rejected under 35 U.S.C. § 103(a) as unpatentable over Curtis and Chowdhry et al. (US 2003/0167315 A1; Sept. 4, 2003), or, in the alternative, is rejected under 35 U.S.C. § 103(a) as unpatentable over Curtis, Hon, and Chowdhry (Ans. 15–16).

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments that the Examiner has erred. With respect to the rejections under 35 U.S.C. § 102(e) and § 103(a), we agree with the Examiner’s findings and conclusion and adopt them as our own. However, regarding the rejections under 35 U.S.C. § 112, first paragraph, and § 112, second paragraph, we are persuaded by Appellants’ contentions that the Examiner erred.

Rejection under 35 U.S.C. § 112, First Paragraph

The Examiner rejects independent claims 16 and 37 as failing to comply with the written description requirement because the limitation “variable sized table format” is not described in Appellants’ Specification (Ans. 2–4, 16–17). The Examiner finds the Specification discusses a data table including “a number of” configurable columns and rows,” but does not disclose changing or varying the size of the table (*id.*). The Examiner further finds claims 16 and 37 lack written description support because the limitations “*automated* variable structured data sources” and “*automated* shared images” imply that a computer automatically creates the data table and images, whereas the Specification only supports manually creating

content and then automatically updating and propagating content to Wiki pages (Ans. 4–5, 17–18) (emphasis added). Finally, the Examiner rejects claims 16 and 37 as failing to comply with the written description requirement because Appellants’ use in the claims of “first” and “second” types of content differs from the use of those terms in the Specification, and the introduction of a “third” type of content is not supported in the original disclosure (Ans. 5–7, 18–20).

To satisfy the written description requirement, the disclosure must reasonably convey to skilled artisans that Appellants possessed the claimed invention as of the filing date. *See Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). The exact level of detail required in the disclosure depends upon “the nature and scope of the claims and on the complexity and predictability of the relevant technology.” *Id.* We agree with Appellants’ contentions that the Specification reasonably conveys possession of the claimed subject matter. The Specification provides an example of a sales data table that can be updated to add data from the most recent quarter (App. Br. 9–10; Reply Br. 2–3 (citing Spec. 16–17 and Fig. 6A)), and, thus, we agree that a skilled artisan would recognize Appellants’ possession of a “variable sized table.” Regarding the “automated variable structured data sources” and “automated shared images,” we agree with Appellants that a skilled artisan would understand, in light of the Specification, that “automated” refers to updating and propagating content across webpages, and does not require the content to be created automatically by a computer, thus, the limitations are supported by Appellants’ disclosure (App. Br. 10; Reply Br. 4). We also agree with Appellants’ contention that the terms “first,” “second,” and “third” are

merely labels for the various types of claimed content, which are described in the Specification and, therefore, do not lack written description support (App. Br. 10–11; Reply Br. 4–5).

Accordingly, we do not sustain the Examiner’s rejection of claims 16 and 37 under 35 U.S.C. § 112, first paragraph. Because we reverse the rejection of independent claim 16, we also reverse the 35 U.S.C. § 112, first paragraph, rejection of dependent claims 17–22, 25, and 26, which depend from claim 16.

Rejection under 35 U.S.C. § 112, Second Paragraph

The Examiner rejects independent claims 16 and 37 as indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention, because the limitations “*automated variable structured data sources*” and “*automated shared images,*” which indicate the content itself is automated, are contradicted by the limitations regarding the content being “*from a plurality of member,*” which would be manual actions performed by the members (Ans. 7–8, 20) (emphasis added).

A decision on whether a claim is indefinite under 35 U.S.C. § 112, second paragraph, requires a determination of whether one of ordinary skill in the art would understand what is claimed when the claim is read in light of the specification. *See Power-One, Inc. v. Artesyn Techs., Inc.*, 599 F.3d 1343, 1350 (Fed. Cir. 2010); *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1568 (Fed. Cir. 1986). Applying such test to the claim language in question, we agree with Appellants’ contention that, in light of the Specification, a skilled artisan would understand there can be human involvement in creating the content (i.e., content from a plurality of

members), while the later act of sharing or propagating the content is automated (App. Br. 11–12; Reply Br. 6).

Thus, we do not sustain the Examiner’s rejection of claims 16 and 37 under 35 U.S.C. § 112, second paragraph. Because we reverse the rejection of independent claim 16, we also reverse the 35 U.S.C. § 112, second paragraph, rejection of dependent claims 17–22, 25, and 26, which depend from claim 16.

Rejections under 35 U.S.C. § 102(e)

Based on Appellants’ arguments, we decide the appeal of claims 16–22, 25, 26, and 37 on the basis of representative claims 16 and 17. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Claim 16

Appellants contend Curtis does not disclose the claimed content from a plurality of members of an online community, including “automated variable structured data sources [that] are sharable” in a “variable sized table format,” and “automated shared images” (App. Br. 12–17; Reply Br. 6–10). Appellants argue Curtis generally describes various data and image content being embedded into Wiki pages, including dynamic web feeds that provide news and weather updates, but Curtis does not disclose creating automated variable size tables and automated shared images, which are shareable to other Wiki pages, by aggregating content from human contributors (*id.*)

We are not persuaded of Examiner error by Appellants’ contentions. The claims do not require the content to be *directly* created or generated by the members, and, thus, under the broadest reasonable interpretation consistent with Appellants’ disclosure, we agree with the Examiner’s finding

that “content from a plurality of members” does not preclude content that is “selected by” members of the community from various sources for inclusion on the Wiki page (Ans. 21–23). See *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004) (“[T]he PTO is obligated to give claims their broadest reasonable interpretation during examination.”). The Examiner finds, and we agree, that Curtis’ Wiki page includes content selected by members of the collaborative web community (Ans. 22–24). The selected content includes images and variable sized tables, such as the table of addresses to include on the weather map page and the corresponding weather icons (*id.* (citing Curtis Fig. 10)), the table of cars available in the web community (*id.* (citing Curtis ¶ 349 and Fig. 16)), and company logos or images (*id.* (citing Curtis ¶ 268)). We further agree that the content selected by the members of Curtis’ community is dynamically, or automatically, updated via data feeds (Ans. 22 (citing Curtis ¶¶ 133, 137)) and is shareable and made accessible to contributors to the “first” web page (Ans. 24 (citing Curtis ¶ 133 (Wiki page is a collaborative web environment that allows multiple users to efficiently integrate interactive content))).

Claim 17

Appellants contend Curtis’ does not disclose a plurality of shared resource objects that are created by users and are shared by a plurality of Wiki web pages, because Curtis’ objects come from only a single website, not from other users (App. Br. 18; Reply Br. 12). We are unpersuaded of error, because, as discussed *supra*, the claims do not require the content or resource objects to be directly created by the users. We agree with the Examiner’s finding that Curtis discloses a Wiki page containing content that is selected by members of the Wiki community (Ans. 22–24), and the

selected content is shared between a plurality of Wiki pages in a hierarchy of pages and sub-pages (Ans. 26 (citing Curtis ¶¶ 133 and 268; *see also* Curtis ¶ 134)).

Accordingly, we sustain the Examiner’s rejection of claims 16–19, 21, 22, 26, and 37 under 35 U.S.C. § 102(e) as anticipated by Curtis. We also sustain the Examiner’s rejections of claims 20, 25, and 26 under 35 U.S.C. § 103(a) based on Curtis, which are not argued separately (*see* App. Br. 19).

Rejections under 35 U.S.C. § 103(a)

The Examiner alternatively rejects claims 16–19, 21, 22, 26, and 37 under 35 U.S.C. § 103(a) as unpatentable over Curtis and Hon, based on an interpretation of “content from a plurality of members” that requires the content to be directly created by the member (Ans. 12–13). As discussed *supra*, we find the claims do not require such an interpretation, but we nonetheless agree with the Examiner’s findings regarding the combination of Curtis and Hon.

Appellants contend Hon’s user created content is not shareable as an automated source to other Wiki pages (App. Br. 17–18; Reply Br. 10–12). We are not persuaded of Examiner error, because nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981) and *In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Here, the Examiner relied upon the combination of Curtis and Hon to teach content that is directly created by a user (Ans. 24–25 (citing Hon ¶ 31)) and that is shareable as an automated source to other Wiki pages (Ans. 21–24 (citing Curtis ¶¶ 133 and 268; *see also* Curtis ¶ 134)).

Appellants further argue the Examiner has not provided a reasonable rationale to combine the references, and has relied upon improper hindsight reconstruction to reject the claims (App. Br. 17–18; Reply Br. 10–12). We are unpersuaded of error, and find the Examiner has provided “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness,” specifically that the capabilities of Curtis can be improved by including resources created directly by members of the online community (Ans. 25). *See KSR Int’l v. Teleflex, Inc.*, 550 U.S. 398, 417–18 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). The Examiner’s combination of familiar elements, i.e., Curtis’ Wiki page system and Hon’s user generated content, does no more than yield predictable results, and, thus, we sustain the Examiner’s rejection of claims 16–19, 21, 22, 26, and 37 under 35 U.S.C. § 103(a) as unpatentable over Curtis and Hon. *See KSR*, 550 U.S. at 416.

DECISION

We reverse the Examiner’s rejections of claims 16–22, 25, 26, and 37 under 35 U.S.C. § 112, first paragraph, and 35 U.S.C. § 112, second paragraph.

We affirm the Examiner’s rejection of claims 16–19, 21, 22, 26, and 37 under 35 U.S.C. § 102(e).

We affirm the Examiner’s rejections of claims 16–22, 25, 26, and 37 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