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EXAMINER

GREENE, SABRINA LETICIA

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS E. KATIS, JAMES T. PANTTAJA,
MARY G. PANTTAJA, and MATTHEW J. RANNEY

Appeal 2016-003624
Application 12/883,116
Technology Center 2100

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

JURGOVAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ seek review under 35 U.S.C. § 134(a) from the Non-Final Rejection of claims 1–7, 9, 10, 13–15, 19–24, 26, 28, 30–32, 34, and 35.²

We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.³

¹ Appellants identify Voxer IP, LCC, as the real party in interest. (App. Br. 2.)

² Claims 8, 11, 12, 16–18, 25, 27, 29, 33, and 36 were canceled. (App Br. 13–17 (Claims App’x).)

³ Our Decision refers to the Specification filed Sept. 15, 2010 (“Spec.”), the Non-Final Office Action mailed July 2, 2015 (“Non-Final Act.”), the Appeal Brief filed Aug. 14, 2015 (“App. Br.”), the Examiner’s Answer mailed Feb. 4, 2016 (“Ans.”), and the Reply Brief filed Feb. 17, 2016 (“Reply Br.”).

CLAIMED SUBJECT MATTER

The claims are directed to using a communication application through a web browser, the application enabling users to conduct voice conversations in either a synchronous real-time mode, asynchronously in a time-shifted mode, and with the ability to seamlessly transition between the two. (Spec.

¶ 2.) Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method, comprising:

providing, at a first communication device, access to a voice messaging application through a web browser interfacing with a web site the voice messaging application enabling a user of the first communication device to selectively participate in a voice messaging conversation through the web browser in both:

(i) a real-time mode by progressively rendering voice media of an incoming message as the voice media is routed to and received at the first communication device, the incoming message including a message header containing information for progressively routing the voice media of the incoming message to the user as the voice media is transmitted by a second communication device;

(ii) a time-shifted mode by rendering voice media of the incoming message out of storage; and

(iii) providing the ability for the user to selectively transition participation in the voice messaging conversation between the two modes (i) and (ii).

REJECTION

Claims 1–7, 9, 10, 13–15, 19–24, 26, 28, 30–32, 34, and 35 stand rejected under 35 U.S.C. § 103(a) based on Yao et al. (US 2008/0037721 A1; published Feb. 14, 2008) and Gardell et al. (US 6,031,896; issued Feb. 29, 2000). (Ans. 2–20.)

ANALYSIS

Independent Claim 1

Appellants contend the combination of Yao and Gardell does not teach

a real-time mode by progressively rendering voice media of an incoming message as the voice media is routed to and received at the first communication device, the incoming message including a message header containing information for progressively routing the voice media of the incoming message to the user as the voice media is transmitted by a second communication device

as recited in claim 1 (emphasis added). (App. Br. 7–8; Reply Br. 3–4.) Appellants argue Yao merely teaches a synchronous protocol for real-time communication, which does not use a message header containing information to route media to a user, or a conventional store-and-forward email, which does not progressively route messages. (*Id.* (citing the Hallin Declaration (filed Jan. 16, 2015) ¶¶ 13, 14, 30, 31, 34).) Appellants contend all communication links in Gardell are synchronous, therefore, Gardell does not teach voice messages having message headers for routing the message to a user. (*Id.* (citing the Hallin Declaration ¶¶ 32–33).)

We have considered Appellants’ arguments, as well as the evidence presented in the Hallin Declaration, but we are not persuaded of Examiner error in the rejection. Appellants’ contention referring to an “email header” is not commensurate with the scope of claim 1, which does not require a “progressive *email*” or “*email header*.” See Spec. ¶ 86; see also *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (limitations not appearing in the claims cannot be relied upon for patentability). Although claims are interpreted in light of the Specification, limitations from the Specification, such as

Appellants' specific examples of a "progressive email" having an "email address of a recipient in the header of a message" (Spec. ¶ 86), are not read into the claims. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). Further, Appellants' disclosure states that an "identifier" used for "routing of media" to a recipient can include both email addresses and telephone numbers (Spec. ¶ 82).

Therefore, under the broadest reasonable interpretation consistent with Appellants' disclosure, "a real-time mode" that "progressively render[s] voice media of an incoming message . . . including a message header" does not preclude a synchronous protocol that uses a phone number identifier in the message header (i.e., an IP protocol header) to route the voice media data of a real-time phone call. *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."). We agree with the Examiner's finding that the combination of Yao's real-time, VoIP phone communication system (Ans. 2-4, 2-21 (citing Yao ¶¶ 20-21)) with Gardell's phone system that routes voice media using a phone number identifier in the routing header and allows a user to switch between a stored voicemail and a live phone call (*id.* (citing Gardell, col. 2:17-28; *see also* Gardell, col. 6:64-col. 7:2)) teaches the claimed communication method. Accordingly, we sustain the Examiner's rejection of claim 1 under 35 U.S.C. § 103(a) as unpatentable over Yao and Gardell.

Claim 6

Appellants contend the combination of Yao and Gardell does not teach "progressively transmit[ing] the voice media of the outgoing voice

message to a participant of the voice messaging conversation as the voice media is created and stored,” and repeats the same arguments regarding Yao and Gardell as presented for claim 1. (App. Br. 8 (emphasis omitted).) As discussed *supra*, we are not persuaded of Examiner error. Further, we agree with the Examiner’s finding that Gardell teaches a real-time voice messaging system allowing a user to monitor a live voice mail message being recorded onto the system, thus we agree the combination of Yao and Gardell teaches the voice message is “progressively transmitted” as the media is created and stored. (Ans. 6–8 (citing Gardell, col. 2:17–28; *see also* Gardell, col. 7:34–38).) We, therefore, sustain the Examiner’s rejection of claim 6 under 35 U.S.C. § 103(a).

Claims 20–24, 26, and 28

Appellants contend the real-time communication in Yao and Gardell is synchronous, thus there is no need for “a message header containing an identifier uniquely identifying the recipient,” as recited in claim 20. We are unpersuaded of Examiner error. As discussed with respect to claim 1, *supra*, Appellants disclose the “unique identifier” can include a phone number (Spec. ¶ 82), and we agree with the Examiner’s finding that Gardell teaches routing a voice media message using a phone number identifier as the message header. (Ans. 13–14 (citing Gardell, col. 2:17–28; *see also* Gardell, col. 6:64–col. 7:2).)

Appellants further argue the messaging in Yao is not progressive, thus each step in the communication process must be completed before the next step starts, which fails to teach “progressively transmitting the voice media” to the recipient “a partial delivery route” is discovered, as recited in claim

20, as well as the related limitations in claims 21–24, 26, and 28. (App. Br. 9–10 (emphasis omitted).) Appellants’ contention is not persuasive of Examiner error, because Appellants are essentially attacking the Yao reference individually where the rejection is based on the combination of Yao and Gardell. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981) (“[O]ne cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references.”). We agree with the Examiner’s finding that the combination of Yao and Gardell teaches progressively transmitting a live voice media message, where a partial delivery route is used (i.e., “discovered”) for each partial segment of the voice message data as it is created and transmitted. (Ans. 13–14 (citing Gardell, col. 2:17–28).)

Accordingly, we sustain the Examiner’s rejection of claims 20–24, 26, and 28 under 35 U.S.C. § 103(a).

Claims 34 and 35

Appellants contend Yao and Gardell are incapable of supporting a “live’ messaging” mode that transmits voice media as it is created. (App. Br. 10.) As discussed with regard to claim 6, *supra*, we are not persuaded of error, and agree with the Examiner’s finding that Gardell teaches “live messaging” that allows a user to monitor a live, incoming voice mail message that is being recorded onto the system. (Ans. 18–19 (citing Gardell, col. 2:17–28; *see also* Gardell, col. 7:34–38).) Therefore, we sustain the Examiner’s rejection of claims 34 and 35 under 35 U.S.C. § 103(a).

Remaining Claims

No separate arguments are presented for remaining dependent claims 2–5, 7, 9, 10, 13–15, 19, and 30–32. (*See* App. Br. 8–10.) Thus, for reasons stated with respect to independent claim 1, we sustain the Examiner’s rejection of the dependent claims under 35 U.S.C. § 103(a). *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986); *In re Sernaker*, 702 F.2d 989, 991 (Fed. Cir. 1983).

DECISION

We affirm the Examiner’s rejection of claims 1–7, 9, 10, 13–15, 19–24, 26, 28, 30–32, 34, and 35 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