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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SABRINA TAI-CHEN YEH,
TAKASHI HIRONAKA, DAVID ANDREW YOUNG,
and STEVEN FRIEDLANDER

Appeal 2016-007380¹
Application 14/037,263
Technology Center 2400

Before CARLA M. KRIVAK, IRVIN E. BRANCH, and
ADAM J. PYONIN, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1, 3–5, 10, 12, 17, 19–23, and 26–31, which are all of the pending claims. *See* App. Br. 9–13. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Sony Corp. is identified as the real party in interest. *See* App. Br. 2.

STATEMENT OF THE CASE

Introduction

The Application is directed to “digital ecosystems that are configured for use when engaging in physical activity and/or fitness exercises.” Spec.

1. Claims 1, 5, and 12 are independent. Claim 1 is reproduced below for reference:

1. A device comprising:
 - at least one computer memory that is not a transitory signal and that comprises instructions executable by at least one processor for:
 - providing identifying data of a user automatically to an exercise facility; providing identifying data of the user automatically to at least a first exercise machine in the exercise facility;
 - gathering data pertaining to physical activity of the user while the user uses the first exercise machine;
 - using the identifying data of the user, accessing an exercise plan of the user indicating a second exercise machine different from the first exercise machine; and
 - based at least in part on the exercise plan, presenting a prompt to the user of the first exercise machine to move to the second exercise machine in the exercise plan.

References and Rejections

Claims 1, 5, and 21 stand rejected under 35 U.S.C. § 102(a)(2) as being anticipated by *Auto Setting at Gym*, IBM, September 07, 2006, IP.com number 000140323 (hereafter, “IBM”). Final Act. 7.

Claim 12 stands rejected under 35 U.S.C. § 103 as being obvious over IBM and Iori (US 2002/0108000 A1; Aug. 8, 2002). Final Act. 24.

Claims 3, 4, 10, 17, 19, 20, 22, 23, and 26–31 stand rejected under 35 U.S.C. § 103 as being unpatentable over various combinations of IBM and other prior art references. Final Act. 11–32.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments. Any arguments Appellants could have made but chose not to make in the Briefs are deemed to be waived. *See Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). We are not persuaded the Examiner erred; we adopt the Examiner’s findings and conclusions as our own, and we add the following primarily for emphasis.

A. Independent Claim 1

Appellants argue the Examiner erred in rejecting independent claim 1, because “IBM fails to teach what is claimed, namely, that the workout plan . . . references particular machines, as opposed to heart rate goals, exercise times, and other machine-independent factors.” App. Br. 5. Appellants contend that their “arguments do not turn on whether IBM teaches, or not, a ‘next’ machine in a vacuum, but rather that IBM fails to teach nay [*sic*] machine in a plan and prompting a user to move to a machine identified in the relied-upon plan.” Reply Br. 4.

We are not persuaded of error. We agree with the Examiner that Appellants’ arguments are not commensurate with the scope of the claim. *See* Ans. 6. Claim 1 recites “the second exercise machine in the exercise plan” which is “different from the first exercise machine.” Appellants argue IBM’s “next workout station” is not the claimed “second exercise machine,”

because IBM chooses the next workout station “based on availability without reference to the plan of IBM(3).” Reply Br. 1 (emphasis omitted). We agree with the Examiner, however, that “[p]rompting customer to the next workout station involves following the exercise plan.” Final Act. 4; IBM page 1. Appellants do not persuade us the claim is distinguishable from IBM’s workout plan choosing the second exercise machine based on availability.

Further, IBM discloses that after the customer’s workout program is applied to a first exercise station, the customer is “prompted to next workout station that is available,” and the “[c]ustomer can pause workout circuit at any time using terminal located in facility.” IBM page 1. We find IBM’s disclosure that the customer’s workout program will prompt the customer to a next workout station, as part of workout circuit, to be tantamount to claim 1’s requirement of presenting a prompt to the user to move to the second exercise machine in the exercise plan. *See* Ans. 4.

Accordingly, we are not persuaded the Examiner erred in finding IBM discloses the limitations of independent claim 1.

B. Independent Claim 5

Independent claim 5 recites “determining whether a heart rate of the user is within a heart rate target zone, wherein the heart rate target zone is identified at least in part based on the identifying data of the user.”

Appellants argue the Examiner erred in rejecting independent claim 5, because “[t]he putative heart rate target zone of IBM does not necessarily have to be based on the identifying data of the user. It could be (and for

liability purposes, plausibly would be) based on best practices for the population in general.” Reply Br. 4–5.

We give claims their broadest reasonable interpretation consistent with the Specification as they would be understood by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). Appellants’ Specification describes the target zone can be “indicated in the user account.” Spec. 17; *see also* Spec. 14 (“the account data typically includes . . . identifying data of the user, as well as . . . heart rate target zones.”). Thus, contrary to Appellants’ assertions, the target zone does not need to be tailored to the specific user; rather the claimed heart rate target zone is the zone included in the user’s account along with the identifying data. *Contra* App. Br. 6. The Examiner finds IBM similarly discloses such a heart rate target zone per the customer’s account data, based on identifying data of the user: “[b]ased upon heart rate and blood pressure data terminal at workstation might suggest that customer pause workout for safety reasons Customer is identified at exercise station so server automatically sets equipment or at terminal shows customer setting defined at step 3.” Final Act. 10; *see also* Ans. 9; IBM page 1.

We therefore agree with the Examiner that, in light of the Specification, IBM reasonably discloses the target heart rate zone identified at least in part based on identifying data of the user. *See* Ans. 9. Accordingly, we sustain the Examiner’s rejection of independent claim 5.

C. Independent Claim 12

Independent claim 12 recites “in response to the authenticating at the entrance, providing a NFC [near field communication] code associated with

the first NFC element to the exercise machine,” and “unlocking the exercise machine in response to the receipt of the NFC code from the first NFC element while the first NFC element communicates with the exercise machine.”

Appellants argue the Examiner erred in rejecting claim 12, because “Iori’s system is not [] based on NFC codes” and “for all IBM teaches, nothing is provided to any terminal at all.” Reply Br. 5.

Appellants’ arguments are unpersuasive of error because they attack the references individually, and thus fail to address the Examiner’s findings. *See* Ans. 14; *see also In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”). Here, the Examiner correctly finds IBM teaches or suggests providing an NFC code for access to a gym. *See* Ans. 12; IBM page 1 (“Gym patrons can be identified using but not limited to RFID . . . at each work station Customer walks into Gym and identifies themselves with RFID, smartcard or other device at a terminal”). The Examiner also correctly finds Iori teaches or suggests unlocking equipment in gyms. *See* Ans. 13–14; Iori ¶ 72 (“integrated system 10 is particularly indicated for use in automatic billing dispensing machines, equipment, e.g. for gyms, machines that can be automatically set after users recognition, in releasing locks without the use of keys and so on, in the authorisation of payments, purchases, bank transfers or and the like.”).

Appellants have not persuasively shown the Examiner erred in finding one skilled in the art would use the NFC codes of IBM with the equipment unlocking system of Iori. *See* Final Act. 25. Thus, Appellants do not

persuade us the Examiner erred in finding the *combination* of IBM and Iori teaches or suggests the limitations of claim 12.

CONCLUSION

We sustain the Examiner's rejections of independent claims 1, 5, and 12. Appellants advance no further argument for dependent claims 3, 4, 10, 17, 19–23, and 26–31. Accordingly, we sustain the Examiner's rejections of these claims for the same reasons discussed above.

DECISION

The Examiner's decision rejecting claims 1, 3–5, 10, 12, 17, 19–23, and 26–31 is affirmed.

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