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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFRY KEITH GREEN

Appeal 2017-002640
Application 13/705,871
Technology Center 2100

Before MAHSHID D. SAADAT, CARL L. SILVERMAN, and
ALEX S. YAP, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the Examiner's decision to reject claims 1, 2, 6–11, 15–20, and 22–31, which are all the claims pending in this application.³ We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ An oral hearing was held for this appeal on October 24, 2019.

² We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a) (2017). Appellant, appearing pro se, identifies the real party in interest as Jeffrey Keith Green. Appeal Br. 2.

³ Claims 3–5, 12–14, 21, 32, and 33 have been canceled.

STATEMENT OF THE CASE

Introduction

Appellant's disclosure is directed "to a system having a utility function for a user interface that enables the user to focus his or her attention on primary personal relationships." Spec. ¶ 2.

Claim 1 is illustrative of the invention and reads as follows:

1. A system comprising:

a mobile phone;

a user interface for interacting with at least one personal relationship of a user, wherein said at least one personal relationship is one of primary or non-primary;

a utility function; the utility function for said user interface being integrated into said mobile phone; the utility function allows the user to select individuals for interaction from the at least one personal relationship displayed on the home screen the utility function allowing the user to switch between relationship-centric mode and app-centric mode; and the utility function customizes a plurality of interaction modalities to interact with said at least one personal relationship of the user;

wherein said at least one personal relationship of the user is selectable by the user from real life individuals having a real life relationship with the user;

wherein relationship-centric mode allows the user to only interact with primary personal relationships;

and wherein app-centric mode allows the user to interact with both primary and non-primary relationships.

The Examiner's Rejection

Claims 1, 2, 6–11, 15–20, and 22–31 stand rejected 35 U.S.C.

§ 102(b) (pre-AIA) as being anticipated by La Rotonda (US 2006/0184578 A1; pub. Aug. 17, 2006). *See* Final Act. 2–7.

ANALYSIS

Appellant specifically argues claim 1 and states the remaining claims (i.e., independent claims 11 and 22, as well as the other dependent claims) are distinguishable over the prior art based on the reasons presented for claim 1. *See* Appeal Br. 6. We select independent claim 1 for review, with the remaining claims standing or falling with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We have reviewed the Examiner's rejections in light of Appellant's arguments that the Examiner has erred. We disagree with Appellant's arguments. The Examiner has provided a comprehensive response, supported by sufficient evidence, to each of the contentions raised by Appellant. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (*see* Final Act. 2–8) and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellant's Appeal Brief (*see* Ans. 2–3). However, we highlight and address specific findings and arguments for emphasis as follows.

CONTENTIONS

Claim 1 is directed to a system including a user interface on a mobile device for interacting with primary or non-primary personal relationships of a user, that allows the user “to select individuals for interaction from the at least one personal relationship displayed on the home screen” and “to switch between relationship-centric mode and app-centric mode.” The claim defines the personal relationship as “primary” or “non-primary” such that “[the] relationship-centric mode allows the user to only interact with primary personal relationships” and “[the] app-centric mode allows the user to

interact with both primary and non-primary relationships.” Appeal Br. 8 (Claims App.).

The Examiner finds that La Rotonda discloses the recited “interacting with at least one personal relationship of a user” as the user interface 300 which allows lists 310 to be viewable only to the users who are assigned first degree relationships or others without such assignment. Final Act. 2–3 (citing La Rotonda ¶ 42, Figs 1, 3). The Examiner also finds that “allowing the user to switch between relationship-centric mode and app-centric mode” is met with the disclosure in paragraphs 41–43 of La Rotonda related to the user specifying that lists 310 will be viewable only to other users that are assigned first degree relationships, or alternatively third degree relationships or higher, by the client user. Final Act. 3.

Appellant argues the Examiner’s proposed rejection is in error because:

[I]n La Rotonda, the system filters messages *based on a hierarchy of relationships*, while in the present application filtering is occurring based on a set of criteria chosen by the user. None are necessary better or worse or higher or lower in any hierarchy, but they are discretely chosen by the user. In the present invention, it has been clarified that *the user specifically and by the user’s own choice selects individuals regardless of the type of relationship* and even regardless whether there is a relationship or not.

Appeal Br. 4–5 (emphases added). According to Appellant, La Rotonda “enables a first user to preview content as seen by a second user, which implies a two-way relationship,” whereas the recited system is “one directional and much more static” with “no reciprocal requirement on the part of the other user.” Appeal Br. 6. Additionally, Appellant challenges the

Examiner's characterization of the recited "primary personal relationships" as the "first degree relationship" in La Rotonda by stating:

However, a careful reading and consideration of the above phrase shows only that the La Rotonda user can specify that certain lists will be viewable only to other users, whereas the claimed subject matter calls for the user to only be allowed to interact with others. There is a subtle but powerful difference between the systems that must be considered by the BPAI.

While it is appreciated that between any two documents there may exist common vocabulary, the prior art process relied upon is distinctly and inherently reciprocal from the claim. A further reading of La Rotonda shows the system enables a first user to preview content as seen by a second user, which implies a two-way relationship, but the instant application "allows the user to only interact" with certain other users.

Reply Br. 2.

The core issue in dispute is whether the claim language "interacting with at least one personal relationship" and "primary or non-primary" relationships in Claim 1 encompasses the user specifying which group of other users having different degrees of relationship may view content provided by the user, as described in La Rotonda. There is no dispute that La Rotonda discloses that the client user specifies which group of other users having different degrees of relationship may view content provided by the client user. Appeal Br. 4; Reply Br. 2. Rather, Appellant argues that "filtering messages based on a hierarchy of relationships" in La Rotonda is not the same as the claimed "filtering [is] based on a set of criteria chosen by the user." Appeal Br. 4.

CLAIM INTERPRETATION

We begin with claim interpretation, because before a claim is properly interpreted, its scope cannot be compared to the prior art or analyzed for

patent eligibility. Regarding claim construction, we give this phrase the broadest reasonable interpretation that is “consistent with the specification.” *In re Smith Int’l, Inc.*, 871 F.3d 1375, 1382-83 (Fed. Cir. 2017) (quoting *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997)). “[T]he PTO must give claims their broadest reasonable construction consistent with the specification Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation.” *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007). “[As applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee.” *Id.* During examination, claims are given their broadest reasonable interpretation consistent with the specification as it would be understood by one of ordinary skill in the art. *In re Montgomery*, 677 F.3d 1375, 1379 (Fed. Cir. 2012) (citations omitted).

First, the broadest reasonable interpretation of the claimed term “interact,” in view of the Specification, encompasses any functionality allowed based on the application for connecting the user with other users or contacts. Appellant has not pointed to any portion of the disclosure for defining the term “interact,” whereas the term is used in its generic form in the Specification and is only described based on “interaction modality” or the type of application that allows the user communicate with the other users. *See e.g.*, Spec. ¶¶ 16, 37 (describing modality as information concerning voice calls, SMS (Short Message Service), social networking sites, file sharing, photos, videos, and calendars).

Second, the ambiguity at issue here is that Appellant’s arguments (*see* Appeal Br. 4–5) are based on a very specific interpretation that the claimed

subject matter relates to a “one directional and much more static” relation or dealing that does not need reciprocal relation from the other user. The claim is not so limited. Thus, according to the Specification, interaction modalities including file sharing, photos, videos and calendars are among the recited interactions available to the user, which may require a two-way relationship or constitute a one directional relationship. *See* Spec. ¶ 16.

Therefore, the Examiner’s treatment of La Rotonda’s client user using the interface “to specify that lists 310 will be viewable only to other users that the client user has assigned first degree relationships” with the first degree relationship being equated to the recited “primary personal relationships” is consistent with the claims as interpreted in light of the Specification. *See* Final Act. 3; Ans. 2–3 (citing La Rotonda ¶ 42). Similarly, the Examiner properly characterizes the option for viewing “by other users at a third degree relationship or higher (e.g., 2nd degree or 1st degree)” as the recited “non-primary relationships.” *See* Final Act. 3; Ans. 3 (citing La Rotonda ¶ 42). Appellant has not apprised us of error in this interpretation or the Examiner’s findings based thereon. Instead, Appellant focuses on a limited definition or meaning of the term “interaction” as “static, one directional” without specifying the exact language in the claim or any parts of the Specification for support. *See* Reply Br. 2.

ANTICIPATION

Claim 1

La Rotonda relates to a system for “[e]nabling a first user to preview content as it would be seen by a second user, if the second user had a selected user relationship with the first user.” *See* La Rotonda Abs. Based on the broadest but reasonable interpretation of the claim terms “interact”

and “relationship,” La Rotonda discloses a user interface of a mobile device that allows the user to interact with at least one personal relationship of the user. La Rotonda Fig. 3, ¶ 40 (“a screen of a client user interface 300 that enables a client to edit and view content controlled by the client user”). The recited “interacting” is further met by the function of sharing or making viewable content related to the user such as list of things, profile information, and photos, or other content such as web sites, calendar, or other services, to list a few. *See* La Rotonda ¶ 41 (“lists 310 of things relevant the client user, profile information 312 about the client user, photos 314 provided by the client user”). With respect to the recited personal relationship being “one of primary or non-primary,” the client user sets parameters associated with a specific content to specify which other users can view the content based on the assigned degree of relationships to those other users. *See* La Rotonda ¶ 42 (“[t]he client user can edit the content through client user interface 300 and can set parameters associated with each type of content and/or portions of content” and “the client user can use a portion of client user interface 300 to specify that lists 310 will be viewable only to other users that the client user has assigned first degree relationships”).

More specifically, Paragraph 42 of La Rotonda discloses specifying the content is viewable by other users who are assigned third degree relationship or others who are assigned a higher degree relationship, such as first or second degrees. As such, assigning the relationship level and determining which relationships define the “other user” who can view the content meets the recited selection of “relationship-centric” and app-centric” modes. *See* La Rotonda ¶ 42 (“The relationship is generally assigned by the

client user, but may be determined based on client behavior, predefined settings, or other parameters.”), ¶ 43 (“Client user interface 300 may include a preview selection-drop-down box 320 that enables the client user to select a relationship.”).

In view of the discussion above regarding the recited “interact” and “primary or non-primary” personal relationship, and because Appellant’s arguments do not distinguish the disputed claim features from the client user interface of La Rotonda, we agree with the Examiner’s finding that the disclosure of La Rotonda anticipates the subject matter of claim 1.

Claims 11 and 22

The Examiner rejected independent claims 11 and 22 on the same basis as claim 1, because, as found by the Examiner, claims 11 and 22 recite substantially the same subject matter as claim 1. *See* Final Act. 4, 6. Appellant argues the patentability of these claims by referring to the same arguments presented for claim 1. *See* Appeal Br. 6. In light of our analysis above and Appellant’s acknowledgement that claims 11 and 22 recite limitations similar to those of claim 1 (*see id.*), we conclude the Examiner did not err in relying upon the analysis of claim 1 to support the rejection of claims 11 and 22. Thus, we are not persuaded that the Examiner erred in rejecting claims 11 and 22.

Conclusion

For the above-stated reasons, we are not persuaded by Appellant’s arguments that the Examiner erred in finding La Rotonda discloses the disputed elements of claim 1, as well as independent claims 11 and 22 and the remaining dependent claims which are not argued separately or with

Appeal 2017-002640
Application 13/705,871

sufficient specificity. *See* Appeal Br. 6. Therefore, we sustain the 35 U.S.C. § 102(b) (pre-AIA) rejection of claims 1, 2, 6–11, 15–20, and 22–31.

DECISION SUMMARY

In summary:

| Claims Rejected | 35 U.S.C § | Reference(s)/Basis | Affirmed | Reversed |
|-----------------------------|-------------------|---------------------------|-----------------------------|-----------------|
| 1, 2, 6–11, 15–20, 22–31 | 102 | La Rotonda | 1, 2, 6–11, 15–20, 22–31 | |
| Overall Outcome | | | 1, 2, 6–11, 15–20, 22–31 | |

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED