



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

Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes details for application 14/106,922 and examiner MCBETH, WILLIAM C.

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):

patents@verizon.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* FENGLIN YIN

---

Appeal 2017-003975  
Application 14/106,922<sup>1</sup>  
Technology Center 2400

---

Before ERIC B. CHEN, KAMRAN JIVANI, and SCOTT E. BAIN,  
*Administrative Patent Judges.*

BAIN, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s Final Rejection of claims 1–7, 9–11, 13–16, 18, 19, 21, and 23–25, which constitute all claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

---

<sup>1</sup> Appellant identifies the real parties in interest as “Verizon Communications Inc. and its subsidiary companies.” App. Br. 3.

STATEMENT OF THE CASE

*Claimed Invention*

Appellant's claimed invention relates to real-time insertion of secondary video (e.g., advertisements and emergency alerts) into an adaptive video presentation being streamed to a client device (e.g., an online video). Spec. ¶ 12. Claims 1, 11, and 25 are independent. Claims 1, 4, and 21 are illustrative of the subject matter of the appeal, and read as follows:

1. A computer-implemented method comprising:

storing, at a playlist server device in a video service provider network, a last position in an adaptive streaming presentation of a video program associated with a client device;

receiving, from the client device, at the playlist server device in the video service provider network, a request for the last position in the adaptive streaming presentation of the video program;

sending the last position in the video program to the client device;

receiving, at the playlist server device, a periodic update of a current position in the video program from the client device;

determining whether a secondary video content insertion uniform resource indicator (URI) is received, wherein the secondary video content insertion URI is associated with secondary video content and the secondary video content insertion URI includes a manifest file for an adaptive video presentation of the secondary video content;

determining a time that the secondary video content requires insertion into the video program; and

sending a response to the client device that includes the secondary video content insertion URI and a timing indicator based on the time that the secondary video content requires insertion into the video program, in response to a determination that the secondary video content insertion URI has been received, wherein the client device is configurable to send a particular last position in the video program and switch from the adaptive streaming presentation of the video program to adaptive streaming presentation of the secondary video content based on receipt of the secondary video content insertion URI and information associated with the client device and to switch back to the adaptive streaming presentation of video program at the particular last position in the video program at an end of the secondary video content.

4. The computer-implemented method of claim 3, further comprising:

sending the timing indicator that indicates that the client device is to immediately switch to the emergency alert.

21. The client device of claim 11, wherein the client device is required to allow insertion of the secondary video content in exchange for reduced cost access to the video program.

App. Br. 25–26, 29 (Claims App’x.).

*Rejections on Appeal*

Claims 1–3, 5–7, 9–11, 13, 15, 16, 18, 19, and 23–25 stand rejected under 35 U.S.C. § 103 as unpatentable over Wong et al.

(US 2011/0320626 A1; Dec. 29, 2011) (“Wong”), Surianarayanan et al.

(US 2013/0219023 A1; Aug. 22, 2013) (“Surianarayanan”), Haberman et al.

(US 2009/0094639 A1; Apr. 9, 2009) (“Haberman”), and Simongini et al.

(US 2009/0204719 A1; Aug. 13, 2009) (“Simongini”). Final Act. (May 11, 2016) 4–26.<sup>2</sup>

Claims 4 and 14 stand rejected under 35 U.S.C. § 103 as unpatentable over Wong, Surianarayanan, Haberman, Simongini, and Tumuluru et al. (US 2014/0282704 A1; Sept. 18, 2014) (“Tumuluru”). Final Act. 27–28.

Claim 21 stands rejected under 35 U.S.C. § 103 as unpatentable over Wong, Surianarayanan, Haberman, Simongini, and Li et al. (US 2007/0107011 A1; May 10, 2007) (“Li”). Final Act. 28–29.

#### ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellant’s arguments presented in this appeal. Arguments which Appellant could have made but did not make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). On the record before us, we are unpersuaded the Examiner has erred. We adopt as our own the findings and reasons set forth in the rejections from which the appeal is taken and in the Examiner’s Answer, and provide the following for highlighting and emphasis.

*Claims 1–3, 5–7, 9–11, 13, 15, 16, 18, 19, and 23–25*

Appellant argues the Examiner erred in finding [i] Surianarayanan teaches a secondary video content insertion URI (uniform resource indicator) and [ii] Wong teaches a singular client device performing the “last position” communications, as recited in claim 1. App. Br. 10–14. Appellant

---

<sup>2</sup> Claims 9 and 25 also were rejected under 35 U.S.C. § 112(b) as indefinite, Final Act. 3, but this rejection has been withdrawn. Adv. Act. (July 27, 2016) 2.

further argues the Examiner erred in finding a rationale or motivation to combine the references. We address Appellant's arguments in turn.

As to the first disputed limitation, as the Examiner finds, Surianarayanan teaches a server determining an emergency alert is "active" and consequently providing a response to the client. Surianarayanan ¶¶ 33–34; Final Act. 6–7. As the Examiner further finds, Surianarayanan teaches the response includes a notification for the alert, a playlist, and URIs for playlist segments. *Id.* Thus, we agree with the Examiner's finding that one of ordinary skill would understand the server as determining an alert is active and accordingly providing the client a mechanism to obtain the alert (i.e., the mechanism being the notification and client's consequent actions). Surianarayanan ¶ 34.

Appellant, nevertheless, argues Surianarayanan's server does not, as claim 1 requires, determine whether a secondary video content insertion URI is received, and then send the URI to the client for playback of the secondary video. App. Br. 13–14. The Examiner, however, relies on Surianarayanan's teachings as modified in view of Haberman, not Surianarayanan alone, as teaching the claimed invention's use of the content insertion URI. Final Act. 8. Specifically, the Examiner finds Haberman's advertisement notification includes a URI and time of insertion for the advertisement. *Id.*; Haberman ¶ 49. In view of Haberman, the Examiner finds it would have been obvious for Surianarayanan's alert notification to include a URI and time of insertion for the alert. *Id.* Appellant's argument based on Surianarayanan alone does not, therefore, persuade us the Examiner erred. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (holding

that one cannot show non-obviousness by attacking references individually where a rejection is based on a combination of references).

Regarding the second disputed limitation, as the Examiner finds, Wong's Figures 7A–B teach client devices 102A–B: updating a server as to the last “temporal position” of streaming video; requesting the last position from the server in requesting to resume playback of the video; and accordingly receiving the last position from the server insofar as receiving a new play list that demarks the last played segment of the video. Wong ¶¶ 86–90; Final Act. 4–5. Appellant argues:

Wong is directed to a method for pausing playback of a media program on a first device and resuming playback of the media program on a second device. Such features do not disclose or suggest receiving the request from the client device and sending the last position to the same client device, as required by claim 1.

App. Br. 10–11.

We, however, agree with the Examiner's finding that one of ordinary skill would understand Wong's description of “[o]ther embodiments” (at ¶ 96) teaches the resuming device of Figure 7B (steps 732–44) as selectively either a new device 102B (as illustrated in Figure 7B) or the same device 102A where playback last occurred. *Ans. 3; see KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (holding obviousness may “take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”); *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (explaining that prior art references must be “considered together with the knowledge of one of ordinary skill in the pertinent art”). The pertinent teaching in Wong is that these other embodiments determine “where

playback should begin anew with the new device or original device” in response to “undesired shutdowns and terminations.” Wong ¶ 96. We agree with the Examiner’s finding that the foregoing passages in Wong teach performing the Figure 7B playback resumption (i.e., steps 732–44) on the original device 102A, to address an unexpected shutdown of that device 102A. Ans. 3.

Finally, Appellant argues that the Examiner has not found a sufficient rationale for a person of ordinary skill in the art to combine the references’ teachings as proposed. App. Br. 16–17. We, however, discern no error in the Examiner’s unrebutted rationale. Ans. 10–11. Appellant’s Reply Brief simply quotes the Examiner, but does not address the recited reasons for modification (e.g., “to notify the user device of Wong of the availability of an advertisement to be played back”). Reply Br. 7–8. Appellants’ argument refers to the abstracts of the prior art references, and then summarily states the references are directed to “different problems” that, as such, would not motivate an artisan to combine their teachings. *Id.*; *see also* App. Br. 17–18 (mirroring the Reply Brief statements). The Examiner, however, has explained how “[e]ach of Wong, Surianarayanan, Haberman, and Simongini discloses a method and system for interrupting and resuming playback of streaming media,” Ans. 9, with these features plainly being relevant to problems addressed by the claimed invention. *Id.* at 10–11.

We, therefore, are not persuaded the Examiner erred in rejecting claim 1 as obvious over Wong, Surianarayanan, Haberman, and Simongini. Appellant does not argue dependent claims 2, 3, 5–7, 9, 10, and 24 separately. Accordingly, we are not persuaded of error as to those claims.

Appellant further argues the Examiner erred in rejecting independent claim 11 and its dependent claims 13, 15, 16, 18, 19, and 23 “[f]or reasons similar to those discussed . . . with respect to claim 1.” App. Br. 18–19. Appellant makes the same assertion regarding independent claim 25. App. Br. 19–20. We, however, are not persuaded the Examiner erred regarding claim 1. *See supra*. Accordingly, Appellant’s argument does not persuade us of error regarding claims 11, 13, 15, 16, 18, 19, 23, and 25.

For the foregoing reasons, we sustain the Examiner’s rejection of claims 1–3, 5–7, 9–11, 13, 15, 16, 18, 19, and 23–25 as obvious over Wong, Surianarayanan, Haberman, and Simongini.

#### *Claims 4 and 14*

Claim 4 depends from claim 1, and recites the timing indicator as “indicat[ing] that the client device is to immediately switch to [an] emergency alert.” Appellant argues that the Examiner’s rationale to modify Haberman’s timing indicator in view of Tumuluru’s alert priority value (and thereby achieve the claimed timing indicator) is “merely a conclusory statement providing an alleged benefit of the combination . . . [without] provid[ing] the requisite motivation” to add the benefit. App. Br. 21.<sup>3</sup> We are not persuaded.

As the Examiner finds, Haberman teaches a URI and timing indicator for a client’s insertion of advertising. Final Act. 8; Haberman ¶ 49; *supra* 5–6 (addressing Haberman). As the Examiner further finds, Tumuluru’s

---

<sup>3</sup> Appellant argues claims 4 and 14 as a group. App. Br. 20–21. We choose claim 4 as representative of the group. *See* 37 C.F.R. § 41.37(c)(1)(4).

paragraphs 11, 61, and 98 teach an alert priority value indicating whether an alert is to be immediately viewed. Final Act. 27. Specifically, “[w]hen the alert priority value is above a predetermined threshold, the EAS emergency service content is immediately played” and the client is consequently “instruct[ed] . . . to immediately retrieve the EAS emergency service content[.]” Tumuluru ¶ 98; *see also* Tumuluru ¶ 58 (use of a URI to retrieve an alert).

One of ordinary skill in the art would understand each of the foregoing disclosures as teaching a content locator (e.g., URI) and timing indicator for a client’s insertion of secondary video content. Accordingly, we discern no error in the Examiner’s finding that one of ordinary skill, when implementing a content locator (URI) and timing indicator such as presented in Haberman, would additionally contemplate Tumuluru’s alert priority value for the disclosed benefit of causing the client to immediately obtain and insert an alert. This cited benefit is not a mere summary of what Tumuluru’s alert priority value does, but rather sets forth why one of ordinary skill would be motivated to combine the teachings of Tumuluru and Haberman mutually directed to a client’s insertion of secondary video. *See KSR*, 550 U.S. at 417 (“[I]f . . . a person of ordinary skill in the art would recognize that [a technique] would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.”).

For the foregoing reasons, we sustain the Examiner’s rejection of claims 4 and 14 as obvious over Wong, Surianarayanan, Haberman, Simongini, and Tumuluru.

*Claim 21*

Claim 21 depends from claim 11 and recites that “the client device is required to allow insertion of the secondary video content in exchange for reduced cost access to the video program.” Appellant argues:

Li merely discloses an internet based system that includes different subscription levels and subsidizing service levels with ads. This portion of Li, or any other portion of Li, does not disclose the client device is required to allow insertion of the secondary video content in exchange for reduced cost access to the video program, as recited by claim 21.

App. Br. 22. We, however, are not persuaded of error.

As the Examiner finds, one of ordinary skill would understand Li’s teaching to lower the purchase price of video content in exchange for more advertising is not limited to lowering the prices of subscription service levels, i.e., to lowering a subscription price in exchange for more advertising within all subscribed video content. Ans. 20; *see KSR*, 550 U.S. at 421 (person of ordinary skill is not an automaton). As the Examiner further finds, Li teaches that “some subscribers will pay more money to watch TV with fewer ads” and “[o]ther subscribers may be agreeable to watching more ads if they can receive TV for less money.” Li ¶ 12; *see also id.* at ¶ 21; Ans. 20; Final Act. 29. The pertinent teaching in Li is that providing each viewer a tailored exchange of advertising and content price, e.g., a personalized sliding-scale exchange, increases viewership and resulting revenue. Li ¶¶ 12, 21. We agree with the Examiner’s finding that this teaching of Li, in combination with Wong’s teaching to selectively add advertisements to a user-selected program, suggests providing a user option

Appeal 2017-003975  
Application 14/106,922

to accept advertising within a particular program in exchange for a lower program cost. *Ans. 5; Wong ¶¶ 45–48, 59–60*. Accordingly, we are not persuaded the Examiner has erred.

For the foregoing reasons, we sustain the Examiner’s rejection of claim 21 as obvious over Wong, Surianarayanan, Haberman, Simongini, and Li.

#### DECISION

We affirm the Examiner’s rejections of claims 1–7, 9–11, 13–16, 18, 19, 21, and 23–25.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED