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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN BATEMAN, KEN ERBES,
MICHAEL CHENG, VIJAY KAMATAKI, OLEG OSTAP,
OLIVER HOHEISEL, and DAVID KIM

Appeal 2016-001350
Application 13/960,202
Technology Center 2100

Before JOSEPH L. DIXON, MARC S. HOFF, and CARLA M. KRIVAK, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–21. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

The claims are directed to a wireless video camera and connection methods including a USB emulation. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A computing device comprising:

a network interface; and

a processor configured to:

establish a virtual USB bus available to an operating system of the computing device;

establish a virtual USB camera device;

report to the operating system that the virtual USB camera device is connected to the virtual USB bus;

wherein the virtual USB camera is configured to:

establish a network connection to a network camera using the network interface;

receive video data from the network camera via the network interface; and

send the video data via the virtual USB bus.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Cohen et al.	US 2009/0031381 A1	Jan. 29, 2009
Cota-Robles et al.	US 8,296,472 B2	Oct. 23, 2012
Anderson et al.	US 8,640,216 B2	Jan. 28, 2014

REJECTIONS

The Examiner made the following rejections:

Claims 1–3, 6, 7, 10–12, and 16–19 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Cota-Robles in view of Cohen.

Claims 4, 5, 8, 9, 13–15, 20, and 21 are rejected under pre-AIA 35 U.S.C. § 103 (a) as being unpatentable over Cota-Robles in view of Cohen and further in view of Anderson.

ANALYSIS

With respect to independent claims 1, 6, 10, and 18, the Examiner applies the same combination of prior art references as each of the claims contains similar argued limitations. Therefore, we address independent claim 1 as the illustrative claim.

With respect to illustrative independent claim 1, Appellants contend the Examiner impermissibly changes the grounds of rejection in the Examiner's Answer; however, Appellants did not petition the asserted new ground of rejection. (Reply Br. 1–2). As a consequence, Appellants have waived this procedural argument, and we address the merits of the rejection as set forth in the Examiner's Answer (Ans. 2–16) and as argued in the Reply Brief (Reply Br. 3–6).

We note that the Examiner identifies the same portions of the Cota-Robles reference as relied upon in the Final Action and additionally maintains:

> Cota-[R]obles also teaches a virtual system including user mode USB drivers in a virtual space, wherein the virtual system is implemented in software using known techniques to emulate the corresponding components of an actual device (Please see col. 13, lines 58 – col. 14, line 8).

(Ans. 3–4).

We note the Examiner's new citation refers to "prior art" Figure 12, which illustrates:

> a USB passthrough application for a virtual machine. As is well known in the field of computer science, a virtual machine (VM) is a software abstraction — a "virtualization" — of an actual physical computer system. FIG. **12** illustrates, in part, the general configuration of a virtual machine **1200,** which is installed as a "guest" on "host" hardware **1210.**

(Cota-Robles 13: 45–51).

Appellants contend that the originally identified portions of the Cota-Robles reference "describe user mode applications/drivers acting exactly as user mode applications/drivers" and therefore do not correspond to a virtual USB camera (which is a virtual device). (Reply Br. 3).

We agree with Appellants that the Examiner's originally identified portions of the Cota-Robles reference do not teach or suggest a virtual USB camera as claimed.

Appellants further contend that the newly cited portion of the Cota-Robles reference "does not explicitly disclose establishing *a virtual USB bus* available to an operating system of the computing device, or reporting to the operating system [of the computing device] that the virtual USB camera

device is *connected to the virtual USB bus,* as claimed." (Reply Br. 3).

Appellants further argue that:

> even if the virtual machine 1200 in Cota-Robles, were interpreted as emulating *a full computing system,* it does not reasonably correspond to the claimed features regarding the discreet virtual USB bus and virtual USB camera device, that are "available to" and/or "reported to" the claimed operating system *of the computing device.*

(Reply Br. 3–4). Because the Examiner made the new citation in the Examiner's Answer and did not provide a response to Appellants' arguments in the Reply Brief, we are left with no response/clarification from the Examiner. Therefore, Appellants have shown error in the underlying factual findings by the Examiner used in the conclusion of obviousness of illustrative independent claim 1. *See Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (an appellant may attempt to overcome an Examiner's obviousness rejection on appeal to the Board by: (1) submitting arguments and/or evidence to show that the examiner made an error in either (a) an underlying finding of fact upon which the final conclusion of obviousness was based or (b) the reasoning used to reach the legal conclusion of obviousness; or (2) showing that the prima facie case has been rebutted by evidence of secondary considerations of nonobviousness).

Because Appellants have shown error in the Examiner's underlying factual findings used in the conclusion of obviousness of illustrative independent claim 1, we do not address the remainder of Appellants' arguments in the Reply Brief.

On the record before us, we similarly cannot sustain the rejection of independent claims 6, 10, and 18, and dependent claims 2, 3, 7, 11, 12, 16, 17, and 19 which contain similar limitations.

The Examiner has not identified how the Anderson reference remedies the deficiency in the base combination. As a result, we cannot sustain the rejection of dependent claims 4, 5, 8, 9, 13–15, 20, and 21 for the reasons discussed above.

CONCLUSION

The Examiner erred in rejecting claims 1–21 based upon obviousness under 35 U.S.C. § 103.

DECISION

For the above reasons, we reverse the Examiner's rejection of claims 1–21 based upon obviousness under 35 U.S.C. § 103.

REVERSED