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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GREGORY A. PICCIONELLI

Appeal 2017-007577
Application 13/385,847
Technology Center 2400

Before CARL W. WHITEHEAD JR., IRVIN E. BRANCH, and AMBER L. HAGY, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant is appealing the final rejection of claims 1–15 under 35 U.S.C. § 134(a). Appeal Brief 8. We have jurisdiction under 35 U.S.C. § 6(b) (2012).

We affirm.

Introduction

The invention is directed to "methods for displaying live performances on a site on a network, and more particularly, live performances satisfying one or more performance criteria." Specification 1.

Illustrative Claim

> 1. A method of aggregating displays of live performances into an aggregation site on a network, the live performances originating from at least one performance site on a network, the live performances being monitored from a monitoring site, the method comprising the steps of:
>
> i) establishing performance criterion upon which live streaming website camera performances will be selected for aggregation onto a site on a network,
>
> ii) observing at least one live streaming website camera performance originating from at least one performance website on a network, the at least one live streaming website camera performance being associated with a link to access the at least one live performance on a network in response to the performance criterion being met by the at least one live performer during the at least one live streaming website camera performance,
>
> iii) detecting a signal at a monitoring site in response to the performance occurring live when the at least one live streaming website camera performance meets the performance criterion, and
>
> iv) establishing, in response to the signal, the link associated with the at least one live streaming website camera performance meeting the performance criterion into an aggregation site on a network, wherein steps (ii) and (iv) are carried out in conjunction with a processor that is operatively coupled to a memory for displaying the at least one live streaming website camera performance and for storing the established link on the aggregation site on the network.

Rejections on Appeal

Claims 1–15 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Final Action 2–5.

Claims 1–3, 7–9, and 15 stand provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over claims 2, 5, and 6 of copending Application 13/815,795, Rasanen (US Application Publication 2008/0086747 A1; published April 10, 2008), and Titus (US Application Publication 2010/0026802 A1; published February 4, 2010).[1] Final Action 5–11.

Claims 1–15 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Rasanen, Gutta (US Patent Application Publication 2003/0126267 A1; published July 3, 2003), and Titus. Final Action 12–27.

ANALYSIS

Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed February 27, 2017), the Reply Brief (filed April 20, 2017), the Answer (mailed March 3, 2017) and the Final Action (mailed July 28, 2016) for the respective details.

[1] Appellant does not provide arguments disputing this rejection in the Appeal Brief. However, we do not reach the merits of the Examiner's provisional double patenting rejection because the issue is not ripe for decision at this time, consistent with the holding of *Ex Parte Moncla*, 95 USPQ2d 1884, 1885 (BPAI 2010) (precedential).

35 U.S.C. § 101 rejection of claims 1–15

The U. S. Supreme Court provides a two-step test for determining whether a claim is directed to patent-eligible subject matter under 35 U.S.C. § 101.[2] In the first step, we determine whether the claims are directed to one or more judicial exceptions (i.e., law of nature, natural phenomenon, and abstract ideas) to the four statutory categories of invention (i.e., process, machine, manufacture, and composition of matter). *Alice*, 134 S. Ct. at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)) ("*Mayo*"). In the second step, we "consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." *Id.* (citing *Mayo*, 132 S. Ct. at 1297–98). In other words, the second step is to "search for an 'inventive concept'—*i.e.*, an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Id.* (citing *Mayo*, 132 S. Ct. at 1294).

Appellant contends:

> Applicant is not simply claiming establishing a link or filtering; rather Applicant is claiming establishing a link in an aggregation site. The aggregation site is aggregates links to the different live performances together on a site. The meaning of aggregation is being read out of the claims.
>
> The dynamic grouping of content of live performances is occurring and that is new in the art and has never been done. Further, Applicant is not simply claiming the idea of putting links on a website but when the links are CREATED. The claims are tailored to cover links of live performers being aggregated into an aggregation site while the performance is occurring.

[2] *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014).

Appeal Brief 9.

The Examiner finds:

> **Similar in operation to *Electric Power Group*[3], claim 1 collects information (i.e., the claimed "observing" of live streaming website camera performances for performance criteria as defined by "establishing" step). Next, the claim "detects" when** at least one live streaming website camera performance meets the performance criterion. This operation is analogous to ***Electric Power Group's* "analyzing it" step. Lastly, the instant claim** "establishes" a link associated with the at least one live streaming website camera performance meeting the performance criterion into an aggregation site . . . for displaying the at least one live streaming website camera performance. Analogously, ***Electric Power Group* "displays certain results of the collection and analysis."**
>
> **Analogous to *Classen*[4], the instant claim collects information "observes" performances for performance criterion being met by at least one live performer (i.e., collecting known information). Based on this collection of data, the instant claim "detects" when at least one website camera performance meets the performance criterion and establishes a link for the at least one website camera performance (i.e., "comparing known information")**.

Answer 3–4 (emphasis added).

We find Appellant's arguments persuasive and find that the claims are more than an abstract concept because the claims manipulate links to live performances over a network, thus, addressing an Internet-centric problem.[5]

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[3] *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016).
[4] *Classen Immunotherapies, Inc. v. Biogen IDEC*, 659 F.3d 1057 (Fed. Cir. 2011).
[5] *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259 (2014) ("[T]he claimed solution amounts to an inventive concept for resolving this particular Internet-centric problem, rendering the claims patent-eligible.)

The claims do not need to be technologically complex to be patent eligible under 35 U.S.C. § 101.[6] Accordingly, we reverse the Examiner's 35 U.S.C. § 101 rejection of claims 1–15.

35 U.S.C. § 103 rejection of claims 1–15

Appellant contends,

> *Ras[a]nen et al.* when combined with *Gutta* results in a guide of upcoming performances and media or media that may be accessed, while *Gutta* would filter that media once it is selected and played. All the references when combined fail to teach or show a link being crated to a live performance based upon what is occurring in that live performance as claimed in the independent claims by the Applicant.

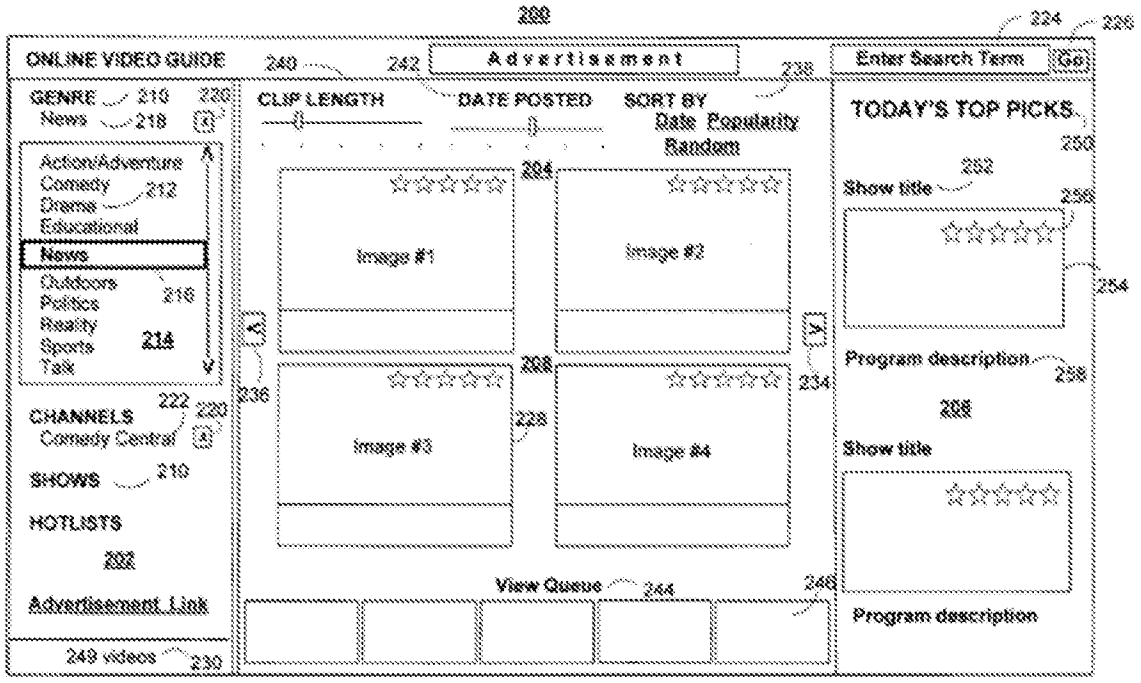
Appeal Brief 12–13.

Rasanen discloses in paragraph 8,

> [a]ccordingly, systems and methods are provided for identifying and obtaining information for a set of media provided on the Internet, and displaying a subset of the identified media in a listing. Systems and methods are also provided that systematically narrow down a set of online media listings provided to a user based on criteria that interests the user.

Further, Rasanen employs a display screen utilizing a mosaic configuration for online video. Rasanen, paragraph 16. Rasanen's Figure 2 is reproduced below:

[6] *Id.*



Display 200 provides guidance for Internet-delivered videos, and may be provided as a display in an online media guidance application, or as a display in a client-server or stand-alone (e.g., set-top box based) guidance application. In some examples herein, Internet-delivered television programs are provided, although the disclosed embodiments may provide guidance for movies, user-generated content, or any other types of media content. Rasanen, paragraph 42.

Rasanen further discloses in paragraph 42 in reference to Figure 2 that:

> [w]ith a user input device, a user may select a criteria element 212 in window 214 (e.g., by moving highlighted region 216 to a desired criteria element and pressing a key or by directly clicking the desired criteria element). Once selected, in addition to being displayed within window 214, the selected criteria element may appear at 218.

The Examiner finds Gutta discloses "an electronic media object is any entity electronic media object that can be obtained from a local or remote source, such as the Internet, including HTML documents, images, audio and video streams and applets" and "[i]n a further variation, the electronic media

objects that are filtered by the present invention may be generated in real-time, for example, by a video camera or another recording device." Gutta, paragraph 13; *see* Final Action 14. The Examiner concludes, "[i]t would have been obvious to one of ordinary skill at the time of the claimed invention to have introduced Gutta's teaching of a content filtering system that identifies desired/permissible performers alongside Rasanen's disclosure of a method for aggregating displays of performances into an aggregation site." Final Action 14.

We agree with the Examiner's findings and do not find Appellant's arguments persuasive. Accordingly, we sustain the Examiner obviousness rejection of claims 1–15.

DECISION

The Examiner's non-statutory subject matter rejection of claims 1–15 is reversed.

The Examiner's obviousness rejection of claim 1–15 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED