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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MONIKA MAIDL and STEFAN SELTZSAM

Appeal 2017-009168
Application 14/124,728¹
Technology Center 2400

Before DEBRA K. STEPHENS, DANIEL J. GALLIGAN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Introduction

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 17–45, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b). Claims 1–16 have been cancelled.

We AFFIRM.²

¹ According to Appellants, the real party in interest is Siemens Aktiengesellschaft. App. Br. 1.

² Our Decision refers to Appellants’ Appeal Brief filed December 15, 2016 (“App. Br.”); Appellants’ Reply Brief filed June 14, 2017 (“Reply Br.”); Examiner’s Answer mailed April 14, 2017 (“Ans.”); and Final Office Action mailed February 19, 2016 (“Final Act.”).

STATEMENT OF THE CASE

Claims on Appeal

Claims 17, 44, and 45 are independent claims. Claim 17 is reproduced below:

17. A method for accessing data stored in a cloud, with (a) a provider of the cloud; (b) an entity that accesses the data, the entity comprising at least one of a client application, a server application, or a user wishing to access the data using the client application, the server application or the client application and the server application; (c) at least one rights application; and (d) a rights server comprising a rights policy configured to be used to define at least the following access rights: access rights of users, user groups or the users and the user groups, and access rights of client application, server application or the client application and the server application; the method comprising:

inquiring the rights application about whether access to the data by a accessing entity is allowed;

informing, by the rights application, the rights server of the inquired access, the rights server not subject to the control of the cloud provider;

providing the rights server an item of access information that is configured to be used to determine whether the access is allowed according to the access rights of the accessing entity; and

accessing the data only when access is allowed according to the access information.

References

Millman	US 2009/0210915 A1	Aug. 20, 2009
Auradkar	US 2010/0318812 A1	Dec. 16, 2010

Examiner's Rejections

Claim 44 stands rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 2–3.

Claims 17–35 and 37–45 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Auradkar. *Id.* at 4–19.

Claim 36 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Auradkar and Millman. *Id.* at 20–21.

Our review in this appeal is limited only to the above rejections and the issues raised by Appellants. Arguments not made are waived. *See* MPEP § 1205.02; 37 C.F.R. §§ 41.37(c)(1)(iv) and 41.39(a)(1).

ANALYSIS

Statutory Subject Matter: Claim 44

The Examiner rejects claim 44 under 35 U.S.C. § 101 because the Examiner determines the claim encompasses software *per se* and, thus, is not within one of the four classes of statutory subject matter. Final Act. 2–3; Ans. 8. Appellants argue claim 44 “includes the limitation of a device, a rights server, and is therefore directed to a machine which is a statutory category of invention.” Reply Br. 6; *see* App. Br. 12.

We are not persuaded. The Specification teaches that an “EDRM [(Enterprise Digital Rights Management)] server may be functionalities (comprising hardware and/or *software*) which are provided or installed on computers.” Spec. 6 (emphasis added). That is, the Specification expressly teaches that a server is not only a hardware device but also may be embodied as software. As such, Appellants’ argument that the recitation of the term “server” recites a device or machine, rendering the claim patent eligible

(Reply Br. 6; *see* App. Br. 12), is not persuasive.

The Examiner further determines, in view of the Specification, “the limitation of ‘a provider’ would include a person or non-machine entity that is void of hardware.” Final Act. 3. Appellants argue the Examiner’s “reasoning is incorrect” because the “court in *Enfish* established that software claims are not inherently abstract.” App. Br. 13 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)). We find this argument unpersuasive because Appellants fail to specifically respond to the Examiner’s determination that the claimed provider is void of hardware in view of the Specification. For example, the Specification states that a “service provider” is “also referred to as a cloud provider” (Spec. 20), suggesting that “a provider of the cloud,” as recited in claim 44, encompasses an entity, such as a company. “For all categories except process claims, the eligible subject matter must exist in some physical or tangible form.” *Digitech Image Techs., LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344, 1348 (Fed. Cir. 2014). Therefore, we sustain the rejection of system claim 44 under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Anticipation: Claims 17–35 and 37–45

Appellants contend “Auradkar is an improper § 102(b) reference.” App. Br. 6–7; Reply Br. 2–3. In particular, Appellants argue Auradkar was published December 16, 2010, but the “effective filing date of the present application” — based on a priority claim to German application DE10 2011 077 218.9 — “is June 8, 2011, only 6 months following the publication of Auradkar.” App. Br. 7; Reply Br. 3.

We are not persuaded the Examiner erred. Although Appellants argue Auradkar does not anticipate as section 102(b) prior art, Auradkar, in any case, anticipates under sections 102(a) and (e). Auradkar was published December 16, 2010, before Appellants' earliest possible priority date, June 8, 2011, and, thus, qualifies as prior art under section 102(a). Further, Auradkar was filed June 12, 2009, and, therefore, qualifies as prior art under section 102(e). Appellants rely on their German application's priority date to disqualify Auradkar under 102(b); however, a "rejection under pre-AIA 35 U.S.C. 102(b) cannot be overcome by . . . foreign priority dates." MPEP § 2133.02. Indeed, section 119(a) provides that "no patent shall be granted on any application for patent for an invention which had been patented or described in a printed publication in any country more than one year before *the date of the actual filing of the application in this country*" (emphasis added).³

Appellants further contend the Examiner erred in finding Auradkar discloses "a rights policy configured to be used to define at least the following access rights: access rights of users, user groups or the users and the user groups, and access rights of client application, server application or the client application and the server application," as recited in claim 17 and similarly recited in claims 44 and 45. App. Br. 7–11; Reply Br. 3–6. Specifically, Appellants argue Auradkar "fails to disclose a rights policy configured to be used to define both the access rights of users and/or user groups *as well as* access rights of a client application and/or server application." App. Br. 9 (emphasis added). According to Appellants, "there

³ We look to the pre-AIA version of 35 U.S.C. § 119(a). See AIA, Pub. L. No. 112–29, § 3(n)(1).

is no central or single rights policy for two or more subscribers” in Auradkar. Reply Br. 5.

We are not persuaded. The Examiner finds (Final Act. 4–5), and we agree, Auradkar provides “data selectively to subscribers requesting that data based on subscriber identity information encoded in key information generated in response to the subscriber requests” (Auradkar ¶ 113; *see* Auradkar ¶¶ 119, 128), i.e., data is accessed by subscribers according to “a rights policy” that defines the subscribers’ “access rights.” The Examiner further finds, and we agree, Auradkar teaches subscribers include users and user groups. Final Act. 5 (citing Auradkar ¶¶ 140, 151, 154; *see* Auradkar ¶ 59). We additionally agree with the Examiner’s finding (Ans. 4–5) that Auradkar teaches that “client applications . . . subscribe to data” (Auradkar ¶¶ 136, 161), i.e., subscribers include client applications.

Appellants’ argument that “there is no central or single rights policy for two or more subscribers” in Auradkar (Reply Br. 5; App. Br. 9–10) is not commensurate with the scope of the claim. The claim does not recite, and therefore, does not require, a central rights policy. Furthermore, the Specification teaches “*files* which comprise the rights policy,” i.e., that a rights policy can be a collection of multiple parts. Spec. 23 (emphasis added), 35. Accordingly, even if each of Auradkar’s subscribers had their “own rights policy” as suggested by Appellants (Reply Br. 3), multiple rights policies are within the scope of “a rights policy” in light of the Specification.

Moreover, even if the claim did require a central rights policy, Auradkar teaches a central rights policy. Auradkar discloses “a center for key generation” (CKG) which “acts as a custodian for trust for publishers

encrypting data based on a public key, and hand[s] out private keys to data subscribers based on their capabilities.” Auradkar ¶ 161, Fig. 33. Thus, a CKG provides multiple subscribers respective keys, depending on the subscribers’ access rights to data. *Id.* ¶¶ 128 (“publisher data is made accessible to the subscriber . . . based on the dynamically definable capabilities granted”), 130 (CKG “customer(s) 1330 include . . . subscribers of data”), 161, Figs. 13, 15–17, 33. Accordingly, Auradkar’s CKG discloses a central rights policy for Auradkar’s subscribers, e.g., users and client applications, because the CKG provides those subscribers keys to access data based on the subscribers’ access rights policy.

We are not persuaded of Examiner error, and, therefore, we sustain the anticipation rejection of independent claims 17, 44, and 45⁴ as well as the anticipation rejection of dependent claims 18–35 and 36–43, for which Appellants present no additional arguments for patentability. We further sustain the rejection of dependent claim 36 under 35 U.S.C. § 103(a) as being unpatentable over Auradkar and Millman, for which Appellants present no additional arguments for patentability.

⁴ Claim 45 recites “a rights policy configured to be used to define *at least the following* access rights: access rights of users, access rights of a client application, access rights of a server application *or* combinations thereof” (emphasis added). That limitation initially requires all listed limitations by reciting “at least the following,” but the actual listed limitations are listed in the alternative by reciting “or.” Appellants argue claim 45 recites similar limitations as claim 1. App. Br. 11. Because we determine the Examiner has not erred in rejecting claim 1, and Appellants do not present separate arguments for claim 45 (*id.*), we do not need to resolve this discrepancy to determine the Examiner has not erred in rejecting claim 45. However, in the event of further prosecution, the Examiner may wish to review claim 45 for compliance with the definiteness requirement of 35 U.S.C. § 112, second paragraph.

DECISION

We affirm the Examiner's decision rejecting claim 44 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

We affirm the Examiner's decision rejecting claims 17–35 and 37–45 under 35 U.S.C. § 102 as being anticipated by Auradkar.

We affirm the Examiner's decision rejecting claim 36 under 35 U.S.C. § 103(a) as being unpatentable over Auradkar and Millman.

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. § 41.50(f).

AFFIRMED