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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ZARKO ALEKSOVSKI, ROLAND JOHANNES OPFER,
MERLIJN SEVENSTER, and ARVID RANDAL NICOLAAS

Appeal 2017-009290
Application 13/944,070
Technology Center 2400

Before JOHN A. EVANS, JOHN P. PINKERTON, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1–15 and 19–23, which are all of the claims pending in this application. Claims 16–18 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify Koninklijke Philips N.V. as the real party in interest. App. Br. 1.

STATEMENT OF THE CASE

Introduction

Appellants generally describe the disclosed and claimed invention as follows:

A report analyzing system is described. A text processing unit analyzes a text portion of a report. The text portion is in a natural language. The processing unit identifies a concept in the text portion, to obtain a set of identified concepts. A concept ranking unit ranks the concepts of the set of identified concepts based on a ranking criterion, to obtain a ranking. A concept selector selects at least one concept of the set of identified concepts based on the ranking, to obtain at least one selected concept. An associating unit associates a visual representation with the report based on the at least one selected concept. The selected concept may belong to an ontology, e.g. a medical ontology.

Abstract (reference numbers omitted).²

Claim 1 is representative and reproduced below (with the disputed limitations emphasized in italics):

1. An apparatus for analyzing a report, comprising:

one or more computers configured to:

analyze a text portion of the report to identify concepts in the text portion and obtain a set of identified concepts;

rank concepts of the set of identified concepts based on a ranking criterion;

² Our Decision refers to the Final Action mailed Aug. 8, 2016 (“Final Act.”); Appellants’ Appeal Brief filed Dec. 20, 2016 (“App. Br.”) and Reply Brief filed June 22, 2017 (“Reply Br.”); the Examiner’s Answer mailed Apr. 28, 2017 (“Ans.”); and the original Specification filed July 17, 2013 (“Spec.”).

select at least one concept of the set of identified concepts based on the ranking; and

associate a visual summary with the report indicative of said at least one selected concept; and

a display configured to display the visual summary.

App. Br. 20 (Claims App'x).

Rejections on Appeal

Claims 1, 2, and 4–10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawai et al. (US 2014/0122495 A1; published May 1, 2014) (“Kawai”) and Evans (US 2005/0182764 A1; published Aug. 18, 2005).

Claims 3, 13, 21, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawai, Evans, and Kirk et al. (US 5,768,578; issued June 16, 1998) (“Kirk”).

Claims 11 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawai, Evans, and Pedro et al. (US 8,229,881 B2; published July 24, 2012) (“Pedro”).

Claims 14, 15, 19, 20, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawai, Evans, Pedro, and Kirk.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments in the Briefs and are not persuaded the Examiner erred. Unless otherwise noted, we adopt as our own the findings and reasons set forth by the Examiner in the Office Action from which this appeal is taken (Final Act. 2–17) and in the Examiner’s Answer (Ans. 17–21), and we concur with

the conclusions reached by the Examiner. For emphasis, we consider and highlight specific arguments as presented in the Briefs.

Rejection of Claims 1, 2, and 4–10 under § 103(a)

Appellants assert that the Examiner relies on Kawai in rejecting claim 1, except for the limitation of “rank concepts of the set of identified concepts based on a ranking criterion,” which the Examiner finds is taught by Evans. App. Br. 3; *see* Final Act. 3–4 (citing Evans Title, Abstract, Fig. 2, ¶¶ 11, 42). Appellants argue the invention of Kawai is directed to calculating a score for concepts extracted from documents, and the documents are then clustered based on the scores. App. Br. 3 (citing Kawai ¶¶ 13, 14). According to Appellants, “the Examiner’s undoing of these steps” by combining the teachings of Evans with Kawai “would destroy the functionality of Kawai.” *Id.*; Reply Br. 3–4. Specifically, Appellants argue as follows:

Similarly, replacing the scoring system of Kawai with the ranking function of Evans would destroy the function of Kawai. For example, paragraphs [0013] and [0014] of page 2 of Kawai state that the invention of Kawai is directed to calculating a score for concepts extracted from documents. The documents are then clustered based on the scores. The Summary Section of Kawai, along with independent claim 1 of Kawai, set forth that this is the invention of Kawai. It is this function that would have to be replaced with the “ranking” function of Evans in order to arrive at the subject matter of claim 1.

Reply Br. 4.

We not persuaded by Appellants’ arguments. Instead, we agree with the Examiner that “Evans would not destroy Kawai” and “would have enhanced the versatility of Kawai by allowing Kawai to more efficiently

present concepts in a visual representation.” Ans. 18. Contrary to Appellants’ arguments, we do not understand the Examiner’s rejection to require replacing the scoring system of Kawai with the ranking function of Evans. Instead, the Examiner’s combination would supplement Kawai’s scoring system with Evans ranking system. Appellants have not provided persuasive reasoning or explanation why combining Evans’ ranking system with Kawai would require “undoing” or replacing the scoring function of Kawai. We find that combining the ranking system of Evans with the teachings of Kawai as proposed by the Examiner would have merely resulted in “the predictable use of prior art elements according to their established functions.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). We are further mindful that the skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle,” because the skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 420–21.

Thus, we sustain the Examiner’s rejection of claim 1 under § 103(a). Appellants argue that claims 2, 4–7, and 10 are allowable at least by virtue of their dependency from claim 1. App. Br. 9–12. Accordingly, we also sustain the rejection of claims 2, 4–7, and 10 under § 103(a).

Claim 8

Claim 8 recites that “the one or more computers are configured to rank each concept of the set of identified concepts of the report with the ranking criterion . . . including at least one of a context of the report and identified concepts in other reports within a record.” Appellants argue that although the portions of Evans cited by the Examiner, Figure 4 and paragraphs 53–57, “disclose ranking concepts by cumulative scores,” this

does not constitute “a ranking criterion that includes at least one of a context of the report and identified concepts in other reports within a record,” as recited in claim 8. App. Br. 11; Reply Br. 4.

We are not persuaded by Appellants’ argument that the Examiner erred. As the Examiner finds, Evans teaches ranking cluster concepts by cumulative scores. Ans. 18–19 (citing Evans Fig. 4 (item 113), ¶¶ 53–57). The Examiner also finds, and we agree, that each cluster concept can be evaluated against an acceptance criteria, including whether the concept is contained in a minimum of two documents or 30% of the documents in the cluster. *Id.* at 19 (citing Evans ¶¶ 53, 55). Thus, we agree with the Examiner that the ranking criterion of Evans “includ[es] . . . identified concepts in other reports within a record,” as recited in claim 8. Accordingly, we sustain the Examiner’s rejection of claim 8 under § 103(a).

Claim 9

Claim 9 recites “the one or more computers are configured to rank a first identified concept higher than a second identified concept . . . the first identified concept being less frequently identified in the reports within the record than the second identified concept.” Appellants argue that neither paragraph 41 nor 42 of Evans, both of which are cited by the Examiner, teach the features of claim 9. App. Br. 11; Reply Br. 5. Specifically, Appellants argue as follows:

The Examiner further cites paragraph [0042] of Evans as allegedly disclosing these features. This cited portion of Evans discloses that the document concepts for each cluster are ranked into ranked cluster concepts based on cumulative document concept scores. However, Evans does not disclose how these document concept scores are calculated. In addition, this cited

portion of Evans does not recite anything related to ranking a first concept higher than a second concept if the first concept is less frequently identified in the reports than the second concept, as recited in claim 9.

In the Examiner's Answer, the Examiner additionally cites paragraph [0041] of Evans as allegedly disclosing these features of claim 9. Paragraph [0041] discloses that document concepts are scored based on frequencies of occurrences in reports to generate document concept scores 48. These document concept scores 48 are different from the cumulative document concept scores 51 disclosed in paragraph [0042] of Evans. While Evans discloses how the document concept scores 48 are calculated, Evans does not disclose how the cumulative document concept scores 51 are calculated.

Reply Br. 5.

We are not persuaded by Appellants' arguments. The Examiner finds, and we agree, that the teachings of paragraph 41 of Evans "lead to" or are applicable to the teachings of paragraph 42 of Evans. Ans. 20. Paragraph 41 of Evans specifically teaches "[e]ach concept and term is then scored based on frequency, concept weight, structural weight, and corpus weight." Although Evans does not expressly teach ranking a first concept higher than a second concept based on the first concept being less frequently identified in the reports, we find this feature as recited in claim 9 is at least suggested by Evans. *See Merck & Co. v. Biocraft Laboratories, Inc.*, 874 F.2d 804, 807–08 (Fed. Cir. 1989) ("[T]he question under 35 [U.S.C. §] 103 is not merely what the references expressly teach but what they would have suggested to one of ordinary skill in the art at the time the invention was made"). Because Evans teaches the use of criteria other than frequency for scoring concepts, including "concept weight, structural weight, and corpus

weight,” this reasonably suggests that these other variables could override “frequency” in a given situation, in which event a first concept cited less frequently would be ranked higher than a second concept. Thus, we sustain the Examiner’s rejection of claim 9 under § 103(a).

Rejection of Claims 3, 13, 21, and 22 under § 103(a)

Claim 3

Claim 3 recites:

each visual summary includes a plurality of visual representations, each visual representation indicating a selected concept and including:

text with highlighted words or phrases indicative of the at least one selected concept; and

one or more pictures identifying the at least one selected concept.

Appellants note the Examiner finds Figures 6 and 7 of Kirk, and the accompanying description in column 26, lines 47–64, teach or suggest the limitations of claim 3. App. Br. 12. Appellants argue, however, “neither Figure 6 nor Figure 7 show highlighted text and pictures which illustrate the selected concepts.” *Id.* Appellants also argue “the graphics shown in Figures 6 and 7 of Kirk are not illustrative of a selected concept.” *Id.* at 13. Appellants further argue:

The Examiner alleges that a hypertext link 620 constitutes the selected concept, and that the graphic 606 is a picture of the selected topic. The link 620 recites “Strawberry Pop-Tart Blow-Torches.” It is unclear how the boxed graphic 606 is indicative of Strawberry Pop-Tart Blow-Torches. Figure 7 of Kirk does not show a corresponding link, and thus the text shown in Figure 7 is not related to a selected concept.

Reply Br. 6.

We are not persuaded by Appellants' arguments. Instead, we agree with the Examiner that Figures 6 and 7 of Kirk, and the description in column 26, lines 50–53, teach or suggest the limitations of claim 3. *See* Ans. 20–21. Regarding Figure 6, we agree with the Examiner's findings that it is a visual representation in which (1) component 620 corresponds to a selected concept, Strawberry Pop-Tart Blow-Torches, (2) the corresponding text portion is displayed with highlighted words, component 608, and (3) a related picture 606. The highlighted words, Dave Barry, relate to the concept because the text refers to Dave Barry as a columnist who "noted that Kellogg's Strawberry Pop-Tarts (SPTs) could be made to emit flames 'like a blow torch.'" The Abstract of the text mentions "[t]oasters which fail to eject Pop Tarts cause the Pop tarts to emit flames 10–18 inches in height." Thus, we find the shape of picture 606 reasonably identifies or suggests the concept of a pop-tart that could be placed in a toaster, which if not properly ejected could emit flames and become one of the notorious "Strawberry Pop-Tart Blow-Torches." Regarding Figure 7, we find it is a visual representation relating to the selected concept of the U.S. Patent and Trademark Office and contains related text with portion 708 highlighted and a picture of the then current Commissioner Bruce Lehman. Thus, we sustain the Examiner's rejection of claim 3 under § 103(a).

Claims 13, 21, and 22

Appellants advance no separate, substantive arguments for claims 13, 21, and 22. Instead, Appellants argue claim 13 is patentable for the reasons discussed in relation to claims 1 and 3. App. Br. 13–14. Appellants

argue claim 21 is patentable for the reasons argued in regard to claim 8, and claim 22 is patentable for the reasons argued in regard to claim 9. *Id.* at 14–15. These arguments are not persuasive for the reasons discussed *supra* regarding claims 1, 3, 8, and 9. Therefore, we sustain the rejection of dependent claims 13, 21, and 22 under § 103(a).

Rejection of Claims 14, 15, 19, 20, and 23 under § 103(a)

Appellants advance no separate, substantive arguments for claims 14, 15, 19, 20, and 23. Instead, Appellants argue (1) claim 14 is patentable for the reasons discussed in regard to claims 1, 3, and 13, (2) claims 15 and 20 are patentable because they depend from claim 14, (3) claim 19 is patentable for the reasons argued in regard to claims 1, 3, 13, and 14, and (4) claim 23 is patentable for the reasons argued in regard to claims 8, 9, 21, and 22. App. Br. 16–18. These arguments are not persuasive for the reasons discussed *supra* regarding claims 1, 3, 8, 9, and 13. Therefore, we sustain the rejection of claims 14, 15, 19, 20, and 23 under § 103(a).

DECISION

We affirm the Examiner’s rejections of claims 1–15 and 19–23 under 35 U.S.C. § 103(a).³

³ In the event of further prosecution, we invite the Examiner to consider whether the claims implicate 35 U.S.C. § 101 as reciting non-statutory subject matter (an abstract idea). *See* “2014 Interim Guidance on Patent Subject Matter Eligibility,” 79 Fed. Reg. 74618 (Dec. 16, 2014); “July 2015 Update on Subject Matter Eligibility,” 80 Fed. Reg. 45429 (July 30, 2015); “May 2016 Subject Matter Eligibility Update,” 81 Fed. Reg. 27381 (May 6, 2016). Although the Board is authorized to reject claims under 37 C.F.R.

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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)(iv).

AFFIRMED

§ 41.50(b), no inference should be drawn when the Board elects not to do so.
See Manual of Patent Examining Procedure (MPEP) § 1213.02.