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EXAMINER

BRUCKART, BENJAMIN R

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SEAN S. LEE

Appeal 2017-009917
Application 11/715,185
Technology Center 2400

Before ALLEN R. MacDONALD, JON M. JURGOVAN, and
AMBER L. HAGY, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1, 3–6, 9–13, 15, 16, 18–23, and 25–32. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Representative Claim

Representative claim 1 under appeal reads as follows (emphases and bracketed material added):

1. A method of operating a system comprising:

[A.] generating a request for a list of content from a seat terminal disposed within a vehicle;

[B.] providing a list of content to the seat terminal from a central server within the vehicle;

[C.] selecting a selection from the list of content;

[D.] ***streaming content*** corresponding to the selection ***to the seat terminal***;

[E.] displaying the content at the seat terminal;

[F.] initiating a purchasing event from the seat terminal;

[G.] selecting a purchase option from the seat terminal to form a purchase selection;

[H.] purchasing the ***content not fully viewed in its entirety*** after selecting the purchase option by communicating the purchase selection to the central server within the vehicle;

[I.] coupling a portable device to the seat terminal;

[J.] ***communicating the content*** not fully viewed in its entirety to the portable device through the seat terminal after purchasing from the central server ***with digital rights associated therewith*** said digital rights comprising a time limit for playing back the content not fully viewed in its entirety or a number of playback limit;

[K.] storing the content not fully viewed in its entirety and the digital rights within the portable device; and

[L.] preventing playback of the content not fully viewed in its entirety when a current time is beyond the time limit or a number of playbacks exceeds the playback limit.

Rejection

1. The Examiner rejected claims 1, 3–6, 9–13, 15, 16, 18–23, and 25–32 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Weinberger et al. (US 6,813,777 B1; iss. Nov. 2, 2004), Wysocki (US 2008/0052704 A1; pub. Feb. 28, 2008), Beetcher et al. (US 2008/0040758 A1; pub. Feb. 14, 2008), and Read et al. (US 2008/0109368 A1; pub. May 8, 2008).¹

Issues on Appeal

Did the Examiner err in rejecting claim 1 as being obvious?

ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellant’s arguments (Appeal Brief and Reply Brief) that the Examiner has erred. We disagree with Appellant’s conclusions.

¹ Separate patentability is not argued for claims 3–6, 9–13, 15, 16, 18–23, and 25–32. Except for our ultimate decision, claims 3–6, 9–13, 15, 16, 18–23, and 25–32 are not discussed further herein.

Claim 1

A

First, Appellant contends that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) because:

Weinberger, Wysocki, Beetcher and Read, individually and in combination, do not teach or render obvious the combination of:

streaming content corresponding to the selection to the seat terminal;

displaying the content at the seat terminal;

initiating a purchasing event from the seat terminal;

selecting a purchase option from the seat terminal to form a purchase selection;

purchasing the content after selecting the purchase option by communicating the purchase selection to the central server within the vehicle;

coupling a portable device to the seat terminal;

communicating content to the portable device through the seat terminal after purchasing from the central server with digital rights associated therewith; and

storing the content and the digital rights within the portable device.

App. Br. 6.

As to Appellant's above contention, it does not persuade us that the Examiner erred. Appellant merely recites the particular language of steps D. through K. of claim 1 and asserts the cited prior art references do not teach or suggest the claim limitations. Without more, this fails to constitute an argument on the merits. *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011).

Appellant similarly contends:

There is no teaching or suggestion for a system in Read that includes the elements missing from the references as described above. That is, the Read system does not include a system that couples a portable device to the seat terminal, communicates content to the portable device through the seat terminal after purchasing from the central server, storing the content not fully viewed in its entirety and the digital rights within the portable device, and preventing playback of the content not viewed in its entirety when a current time is beyond the time limit or a number of playbacks exceeds the playback limit.

App. Br. 11.

As above, Appellant merely recites the particular language of steps I. through L. of claim 1 and assert the cited prior art references do not teach or suggest the claim limitations. Again, this does not persuade us that the Examiner erred.

B

Further, Appellant contends that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) because:

Weinberger is silent as to streaming content to a seat terminal, displaying that content at the seat terminal, purchasing that content not fully viewed in its entirety (streamed to and displayed at the seat terminal), communicating that content not fully viewed in its entirety (streamed to, displayed at, and purchased at the seat terminal) to a portable device through the seat terminal, and storing that content not fully viewed in its entirety within the portable device, as in claim 1.

Additionally, Weinberger is entirely silent as to communication of digital rights associated with purchased content that was not fully viewed in its entirety.

App. Br. 7–8 (emphasis omitted; Panel emphasis added).

As to Appellant's above contention, we disagree. Appellant is mistaken in arguing "Weinberger is silent as to streaming content to a seat terminal [and] displaying that content at the seat terminal." App. Br. 7. Weinberger teaches these limitations at the sections cited by the Examiner (e.g., column 8, lines 1–13; column 39, lines 3–10 and 55–67; and column 57, line 60, through column 58, line 10).

In addition, we conclude the remainder of Appellant's argument does not address the actual reasoning of the Examiner's rejection. Instead, Appellant attacks the Weinberger reference singly for lacking teachings that the Examiner relied on the Wysocki, Beetcher and Read references in a combination of all four references to show. It is well established that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *See In re Keller*, 642 F.2d 413 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). This form of argument is inherently unpersuasive to show Examiner error. Our reviewing court requires that references must be read, not in isolation, but for what they fairly teach in combination with the prior art as a whole. *Id.*

Appellant presents similar arguments attacking individually the Wysocki (App. Br. 9:7–18) and Beetcher (App. Br. 10:3–15) references. As with Appellant's attack on the Weinberger reference singly, these arguments are unpersuasive to show Examiner error.

C

Appellant contends that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) because:

The Examiner alleges that Wysocki teaches communication of digital rights to a portable device and storage of the digital rights within the portable device. *See* the Final Office Action, p. 3. This is a factual error as to the teachings of Wysocki As the Examiner has factually erred as to the teachings of Wysocki, the Examiner has failed to set forth a *prima facie* case of obviousness.

App. Br. 9.

As to Appellant's above contention, we agree as to the factual error set forth by Appellant. However, we disagree with Appellant's conclusion that this alone is sufficient to show "the Examiner has failed to set forth a *prima facie* case of obviousness." Appellant overlooks that the Examiner also correctly found "Read discloses the use of digital rights . . . where the requested content is provided to and stored on a portable media device." Final Act. 8. Although Appellant disputes the Examiner's findings as to other aspects of Read (addressed *infra*), Appellant does not dispute this finding by Examiner.

We see no reason to reverse the Examiner's rejection based on this argument.

D

Also, Appellant contends that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) because:

Read also does not teach or suggest content ***that was not viewed in its entirety***. The Read reference is directed to an archival type system that is used to store both content and the digital rights associated therewith.

App. Br. 11 (emphasis added).

In the Answer, the Examiner responds:

As an initial matter it is the examiners position that Appellant has failed to effectually delineate any differences between the pre-amended claim which recited “the content” and the amended claim which recites “the content ***not fully viewed in its entirety***”. Although the terms are different the end result is the same.

Given its broadest reasonable interpretation, with respect to video content which is transferred from a first device to a portable device the examiner interprets “the content” as being identical to “the content ***not fully viewed in its entirety***”. In other words, whether or not a user has viewed content prior to transferring said content from a first device to a portable device, the content which is transferred “not fully viewed in its entirety” does not render “the content ***not fully viewed in its entirety***” to be any different from “the content” and is thus interpreted as being the same content in form.

Ans. 4–5.

As to Appellant’s above contention, we disagree. First, we find no detail beyond the claim language in Appellant’s Specification (*see* paragraph 73) to assist in construing this claim limitation. Second, we interpret “not fully viewed in its entirety” to be the entire content (part viewed, part unviewed), rather than some designated sub-portion of the entire content.

We agree with the Examiner that the added claim 1 limitation “not fully viewed in its entirety” does not serve to distinguish over the prior art “content.” The Examiner correctly points out “whether or not a user has viewed content” does not cause the content to be different. Ans. 5. We conclude the language of the “not fully viewed in its entirety” limitation describes an intangible property of the content (no measurable change in the content due to the property as the content is unmodified by viewing).

Also, the property of “not fully viewed in its entirety” is subjective. The term “viewed” is descriptive of the user not the content. That is, an objective observer must ask the user to see if this intangible property exists. For example, did the user fall asleep as the content played.

As with a tangible property, for the claimed intangible property the Examiner has established a prima facie case for obviousness by showing a product identical or substantially identical in structure or composition. *In re Best*, 562 F.2d 1252, 1255 (CCPA 1977). “[W]hen the PTO shows sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not.” *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990). However, the prima facie case can be rebutted by evidence showing that the prior art product does not necessarily possess the characteristics of the claimed product. *Best*, 562 F.2d at 1255; *see also Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985). Appellant has presented no evidence that the prior art content, which is identical to the claimed structure, meaningfully differs from the claimed content. The burden of going forward has shifted to Appellant.

CONCLUSIONS

(1) The Examiner has not erred in rejecting claims 1, 3–6, 9–13, 15, 16, 18–23, and 25–32 as being unpatentable under 35 U.S.C. § 103(a).

(2) Claims 1, 3–6, 9–13, 15, 16, 18–23, and 25–32 are not patentable.

DECISION

The Examiner's rejection of claims 1, 3–6, 9–13, 15, 16, 18–23, and 25–32 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)(iv).

AFFIRMED