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EXAMINER

JENKINS, BENJAMIN A

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GARY W. GRUBE, S. CHRISTOPHER GLADWIN,
and
TIMOTHY W. MARKISON¹

Appeal 2017-010379
Application 13/527,811
Technology Center 2400

Before CARLA M. KRIVAK, JASON V. MORGAN, and
PHILLIP A. BENNETT, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–14. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants list IBM as the real party in interest.

STATEMENT OF THE CASE

Appellants' invention is directed to "data storage solutions within" computing systems. (Spec. 1:20–21).

Independent claim 1, reproduced below, is exemplary of the subject matter on appeal.

1. A method comprises:

determining, for multi-media content that has not been released, access priority to the multimedia content for a user device, wherein the multi-media content is dispersed storage error encoded to generate a plurality of encoded data slices for transfer and storage, and wherein a threshold number of encoded data slices of the plurality of encoded data slices are needed to reconstruct the multi-media content, in which the threshold number of encoded data slices being less than the plurality of encoded data slices generated;

selecting one of a plurality of pre-release data distribution schemes based on the access priority to distribute a pre-release sub-set of the encoded data slices;

selecting one of a plurality of post-release data distribution schemes based on the access priority to distribute a post-release sub-set of the encoded data slices;

distributing two or more encoded data slices, but less than the threshold number of encoded data slices, as the pre-release sub-set, in accordance with the pre-release data distribution scheme prior to release of the multi-media content; and

distributing one or more encoded data slices as the post-release sub-set, in accordance with the post-release data distribution scheme subsequent to the release of the multi-media content, in which a combination of the pre-release sub-set and the post-release sub-set of the encoded data slices meet at least the threshold number of encoded data slices to reconstruct the multi-media content.

REJECTIONS and REFERENCES

The Examiner rejected claims 1–3, 5–10, and 12–14 under 35 U.S.C. § 103(a) based upon the teachings of Ganesan (US 2006/0218220 A1, published Sept. 28, 2006), Marvit (US 2008/0065771, issued Mar. 13, 2008), and Michael O. Rabin, *Efficient Dispersal of Information for Security, Load Balancing, and Fault Tolerance*, J. of the Ass’n for Computing Machinery, 36(2) (1989) (hereinafter “Rabin”).

The Examiner rejected claims 4 and 11 under 35 U.S.C. § 103(a) based upon the teachings of Ganesan, Marvit, Rabin, and Dieumegard (US 2011/0150412 A1, published June 23, 2011).

ANALYSIS

Appellants contend the Examiner errs in finding: a) Rabin teaches and suggests “a threshold number of encoded data slices of the plurality of encoded data slices are needed to reconstruct the multi-media content, in which the threshold number of encoded data slices being less than the plurality of encoded data slices generated” (Final Act. 17); and b) Ganesan and Marvit teach and suggest the remaining limitations recited in claim 1 (Final Act. 12–18). App. Br. 6–13. Particularly, Appellants contend Rabin teaches “every m pieces [of the slicing algorithm] suffice for reconstructing” (underline omitted). App. Br. 10. Further, Ganesan explicitly teaches “there must be at least one copy of all corresponding segments in the network” (App. Br. 11, citing Ganesan’s ¶ 124) and Marvit has a similar scope in that “Marvit appears to require that each uploader must collect missing content portions to play the complete content.” App. Br. 13. Therefore, Appellants contend, collecting “anything less than a complete set of data segments for

content playback in Ganesan and Marvit would render the rejection references, being modified by Rabin (only a subset of data dispersed), inoperative and therefore it would not have been obvious to have combined these references.” *Id.* 13.

The Examiner finds, and we agree, Rabin discloses a threshold number of encoded data slices being less than the plurality of encoded data slices generated. Ans. 4; Final Act. 3. Additionally, we agree “Ganesan does not teach that it is necessarily inoperative when it does not have ‘all segments’” as Appellants’ invention is also unable to reconstruct an output when below a threshold number similar to Ganesan and Marvit. Final. Act. 3, 12, 17; *see also* Ans. 4–5 (Ganesan’s paragraph 96 teaches “not all segments for a title must be fetched to play back the title”).

We also agree Appellants are arguing the references separately and not as a combination. See Ans. 4. Appellants’ arguments do not take into account what the *collective teachings* of the prior art would have *suggested* to one of ordinary skill in the art and are therefore ineffective to rebut the Examiner's prima facie case of obviousness. The test for obviousness is not whether the features of a secondary reference may be *bodily incorporated* into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art (emphasis added). *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

The Examiner has made reasonable findings with a rational underpinning for combining Ganesan and Marvit with Rabin. Appellants have provided no persuasive evidence that the references would become

inoperable if combined or that the references criticize or discourage the proposed combination. *See In re Kahn*, 441 F.3d 977, 990 (Fed. Cir. 2006). Thus, we agree with the Examiner that employing Rabin's encoding scheme into Gavin's and Marvit's systems for distributing/reconstructing encoded multi-media data content would have been an obvious design choice to a skilled artisan at the time of Appellants' invention.

Therefore, we sustain the Examiner's rejection of independent claims 1 and 8, and dependent claims 2–7 and 9–14, not separately argued. App. Br. 14.

DECISION

The Examiner's decision rejecting claims 1–14 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