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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YEHUDA BINDER

Appeal 2017-010995
Application 13/903,569
Technology Center 2600

Before JEFFREY S. SMITH, JOSEPH P. LENTIVECH, and
SHARON FENICK, *Administrative Patent Judges*.

FENICK, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the
Examiner's decision to reject claims 1–3, 6, 7, 11–28², 30–42, and 45–53.

We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.³

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as May Patents Ltd. Appeal Brief filed February 13, 2017 (“Appeal Br.”) 2.

² While Claim 29 is shown in the Claims Appendix (Appeal Br. 47), neither Appellant nor Examiner discusses the patentability of this claim and claim 29 appears to have been cancelled. *See* Amendment filed July 11, 2016, 7.

³ In addition to the Appeal Brief, this Decision refers to the Examiner's Final Office Action mailed Dec. 9, 2016 (“Final Action”); the Examiner's Answer mailed June 28, 2017 (“Answer”); and the original Specification filed May 28, 2013 (“Spec.”).

STATEMENT OF THE CASE

Appellant's disclosure relates to the use of face or hand gesture detection from a captured image, which is used to generate a control signal. The control signal is provided to a device and a display on the device displays information in response to the control signal. Spec., 4:19–9:27, Abstract.

Claim 1 is independent. Claim 1, reproduced below with certain limitations italicized for emphasis, is illustrative of the subject matter on appeal:

1. A television set responsive to an element in an image, the television set comprising:

a flat screen for displaying television channels;

a digital camera for capturing an image, said digital camera having an output port, and being operative to transmit a digital data form of the captured image via said output port, said digital camera being fixed in position relative to said screen to be movable in unison with said screen and being oriented to capture an image of a scene substantially in front of the screen;

an image processor coupled to receive the image in the digital data from said digital camera and for applying an algorithm to detect the element in the captured image;

an antenna for over-the-air radio-frequency communication;

a wireless transceiver coupled between said digital camera output port and said antenna for transmitting the digital data form of the captured image over the air; and

a single enclosure housing said flat screen, said digital camera, said image processor, said antenna and said wireless transceiver,

wherein information is displayed on said flat screen in response to the detection of the element in the captured image.

Appeal Br. 43 (Claims Appendix).

References and Rejections

The Examiner relies on the following references as evidence of unpatentability:

Wilson et al. ("Wilson")	US 2004/0189720 A1	Sept. 30, 2004
Kato et al. ("Kato")	US 2005/0084141 A1	Apr. 21, 2005
Gutta et al. ("Gutta")	US 6,931,596 B2	Aug. 16, 2005
Trovato	US 2006/0071135 A1	Apr. 6, 2006
Xu et al. ("Xu")	US 2007/0126884 A1	June 7, 2007
Kitaura	US 2007/0132725 A1	June 14, 2007
Binder et al. ("Binder")	US 2007/0173202 A1	July 26, 2007

Pamela Njissang, "WirelessHD® Next Generation Standard Now Supports 3DTV, HDCP 2.0, Data Applications and Data Rates in Excess of 10 Gbps," dated January 5, 2010. ("Njissang")

The Examiner also relies upon Appellant's Admitted Prior Art (AAPA), appearing in the Specification at paragraphs 109–118 of the Patent Application Publication (US 2013/0258113; A1 published Oct. 3, 2013) of the present application, corresponding to page 16, line 22 through page 20, line 30 of the Specification as filed.

Claims 1–3, 6, 12–15, 31–33, 37–42, and 48–53 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Trovato, Gutta, AAPA, and Wilson. Final Act. 19–23.

Claim 7 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Trovato, Gutta, AAPA, Wilson, and Kato. Final Act. 24.

Claims 11 and 36 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Trovato, Gutta, AAPA, Wilson, and Xu. Final Act. 24–25.

Claims 16, 17, 34, 35, and 45–47 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Trovato, Gutta, AAPA, Wilson, and Kitaura. Final Act. 25–26.

Claims 18–28 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Trovato, Gutta, AAPA, Wilson, and Binder. Final Act. 26–28.

Claim 30 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Trovato, Gutta, AAPA, Wilson, Binder, and Njissang. Final Act. 29.

Claims 1 and 53 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Kitaura and AAPA. Final Act. 29–30.

ANALYSIS

Argument regarding combination of AAPA with Trovato and Gutta

In the rejection of claim 1, the Examiner finds that Trovato and Gutta, in combination, teach or suggest the television set of claim 1, including a screen for display, a digital camera having an output port and oriented to capture an image of a scene substantially in front of the screen (e.g., of a

viewer), an image processor coupled to receive that image and for applying an algorithm to detect an element in the captured image. Final Action 19–20. The Examiner finds that the AAPA teaches claim limitations including the limitations directed to “an antenna for over-the-air . . . communication”, and “a wireless transceiver coupled between [the] digital camera output port and [the] antenna.” *Id.* at 20. The Examiner finds that one of ordinary skill would have been motivated to combine the AAPA with the teachings of Trovato and Gutta “to allow for the predictable result of communication of detected images of a network medium with increased image enhancements, further ensuring the operation of the display control system.” *Id.* The Examiner explains that the combination of “Trovato/Gutta . . . requires data transmission over some type of communication medium in order to communicate the camera image to the system” and that this is taught in the AAPA. *Id.* at 7. The Examiner further reasons that “the Trovato reference . . . requires that the device components be in communication with each other to carry out the object of the invention” and that the AAPA provides the necessary components to ensure that such communication takes place. *Id.* at 5–6.

Appellant argues that no motivation to combine is presented for this combination, and that the combination is based on impermissible hindsight. Appeal Br. 11–12. Appellant further argues that since in Trovato and Gutta the camera and flat screen are located together, in one enclosure, there is no need for any additional communication interface to the digital camera to communication to an entity outside the “closed loop control system.” *Id.* at 13, 15. Appellant argues that the rationale for combining is conclusory. *Id.* at 16–17.

We agree with the Appellant that the motivation for the combination is insufficient. The Specification includes a description (not marked as prior art) of a camera 16 which is connected to a control box 11 by a cable 26 for transmission of captured images. Fig. 6; Spec. 16:10–21. The Specification then describes, in the section the Examiner uses as AAPA, a prior art camera which could be used, including a transceiver 75, and specifying that the cable 26 could be a wired or non-wired medium. *Id.* at 17:20–24.

The Examiner’s motivation for combining the wireless teachings of the AAPA with the teachings of Trovato and Gutta, however, is “to allow for the predictable result of communication of detected images of a network medium with increased image enhancements.” Final Action 20. We see no indication in the AAPA that increased image enhancements are provided by wireless communication, of indeed of any image enhancements or differences between image enhancements. The Examiner cites a portion of the Specification. Answer 6, 8 (each citing “[0111]” of the published application, appearing at 16:22–23 of the Spec. as filed). That portion of the Specification describes the sensor of the camera. However, neither that paragraph, nor any other in the AAPA, describe image enhancements. Also, the AAPA does not describe a benefit for the sensor or overall device attributed to the use of wireless communications. Spec. 16:22–20:30. Additionally, as Appellant argues, the Trovato and Gutta references disclose a single enclosure for the camera and the image processor, and the Examiner has not sufficiently indicated why, in such a case, one of ordinary skill would have used an antenna and a wireless transceiver for communication between these elements. *See* Appeal Br. 13–14.

Thus, we do not sustain the rejections of claim 1, or claims 2, 3, 6, 12–15, 31–33, 37–42, and 48–53, which depend from claim 1, and were rejected based on the rejection of claim 1. The Examiner does not find that any of the secondary references cure this deficiency, and we, therefore, also do not sustain the rejections of claims 7, 11, 16–28, 30, 34–36, and 45–47.

Argument regarding combination of AAPA with Kitaura

In the rejection of claim 1 over Kitaura and AAPA, the Examiner uses the same elements of the prior art and the same motivation to combine. Final Action 29–30. Appellant argues that “[n]either the content of the AAPA, nor the disclosure of Kit[au]ra provide a motivation or suggestion for the combination on which the rejection is based” and the motivation provided amounts to impermissible hindsight and is conclusory. Appeal Br. 36, 38–39. Appellant argues that while the Examiner finds that one of ordinary skill would have been motivated to combine the prior art to “ensure the operation of the display control system” there is no indication that a deficiency exists to be remedied in the display control system of Kitaura. *Id.* 38–39.

As before, the Examiner’s recited motivation to combine is not found in the AAPA, and for the same reasons discussed above, we do not sustain the rejection of claims 1 or 53 over the combination of Kitaura and AAPA.

DECISION

We reverse the Examiner’s rejection of claims 1–3, 6, 7, 11–28, 30–42, and 45–53 under 35 U.S.C. § 103.

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1–3, 6, 12–15, 31–33, 37–42, and 48–53	§ 103 – Trovato, Gutta, AAPA, and Wilson		1–3, 6, 12–15, 31–33, 37–42, and 48–53
7	§ 103 – Trovato, Gutta, AAPA, Wilson, and Kato		7
11 and 36	§ 103 – Trovato, Gutta, AAPA, Wilson, and Xu		11 and 36
16, 17, 34, 35, and 45–47	§ 103 – Trovato, Gutta, AAPA, Wilson, and Kitaura		16, 17, 34, 35, and 45–47
18–28	§ 103 – Trovato, Gutta, AAPA, Wilson, and Binder		18–28
30	§ 103 – Trovato, Gutta, AAPA, Wilson, Binder, and Njissang		30
1 and 53	§ 103 – Kitaura and AAPA		1 and 53
Overall Outcome			1–3, 6, 7, 11–28, 30–42, and 45–53

REVERSED