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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ARSHAM HATAMBEIKI and PAUL D. ARLING[1]

Appeal 2017-011237
Application 14/461,928
Technology Center 2400

Before JEREMY J. CURCURI, ADAM J. PYONIN, and
AARON W. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] This case is captioned by inventor name according to PTAB convention. The Applicant, Appellant, and real-party-in-interest is Universal Electronics Inc. (*See* App. Br. 2.)

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1, 6–11, and 15–20, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

The application is directed to "[s]ensing interfaces associated with a home entertainment system [that] are used to automate a system response to events which occur in a viewing area associated with the home entertainment system." (Abstract.) Claim 1, reproduced below, exemplifies the subject matter on appeal:

> 1. A method for collecting information indicative of usage of at least one component device in a home entertainment system comprised of a plurality of component devices, comprising:
>
> capturing via a networked device interface associated with the home entertainment system user event data wherein the user event data captured via the networked device sensing interface comprises data indicative of a change in a number of network capable devices determined to be in [*sic*] communicatively coupled to the networked device interface;
>
> capturing via the networked device interface associated with the home entertainment system appliance event data;
>
> capturing via at least one of the plurality of component devices in the home entertainment system content event data;
>
> formatting the captured user event data, the captured appliance event data, and the captured content event data into a respective one of user event record class, an appliance event record class, and a content event record class; and
>
> providing one or more advertisement or content dissemination services access to information contained within the user event

record class, the appliance event record class, and the content event record class to allow for an analysis of user viewing habits and preferences;

wherein the appliance event data comprises data indicative of a command being provided to at least one of the plurality of component device from a network capable device communicatively coupled to the networked device interface and wherein the command comprises a command to change a state of the at least one of the plurality of component devices in the home entertainment system.

THE REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Karaoguz et al.	US 2005/0232210 A1	Oct. 20, 2005
Sekimoto et al.	US 2009/0019394 A1	Jan. 15, 2009
Christensen et al.	US 2009/0205000 A1	Aug. 13, 2009
Chai et al.	US 2012/0060176 A1	Mar. 8, 2012

THE REJECTIONS

1. Claims 1, 6–11, and 15–17 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Christensen, Chai, and Sekimoto. (*See* Final Act. 4–9.)

2. Claims 18–20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Christensen, Chai, Sekimoto, and Karaoguz. (*See* Final Act. 9–11.)

ANALYSIS

Appellant's claims are directed to a method that collects, in a home entertainment system, "user event data," "appliance event data," and "content event data," formats the data into three corresponding "classes," and makes the data available to "advertisement or content dissemination services." The user event data includes data "indicative of a change in a number of network capable devices . . . communicatively coupled to the networked device interface," and the appliance event data includes data "indicative of a command," from a network device to a component device, to "change a state" of a component device.

The Examiner found that Christensen discloses formatting data for transmission to a third party. (*See* Final Act. 4.) The Examiner further found that Chai discloses capturing user event data indicative of a change in the number of devices and making data available to an advertisement or content dissemination service. (*See id*. at 4–5.) The Examiner then found that Sekimoto discloses capturing appliance event data indicative of a command to change the state of a device, and content data. (*See id*. at 5–6.) The Examiner concluded that "[a]ll of the elements are known and could be combined by known methods to produce a predictable result wherein module client terminal devices can communicatively coup[le] to [a] main device to exchange and request content for display" and that, "[t]herefore[,] the invention would [have been] obvious to one of ordinary skill in the art at the time of the invention." (*Id*. at 6.)

Appellant's Argument Regarding Data Types

Appellant first argues that "because Christensen admittedly does not disclose capturing via a networked device interface associated with the home entertainment system *user event data . . . the appliance event record class, and the content event record class*, Christensen cannot disclose, teach, or suggest "a method for collecting information indicative of a usage of at least one component device, comprising: formatting captured user event data, the captured appliance event data, and the captured content event data into a respective one of user event record class, an appliance event record class, and a content event record class" as asserted and relied upon in rejecting the claims at issue." (App. Br. 4.)

This argument is not persuasive because, as explained above, the examiner relies on Chai and Sekimoto, not Christensen, for the teachings regarding the three types of data. The combination involves formatting (as described in Christensen) user event data, appliance event data, and content data (as described in Chai and Sekimoto).

Appellant's Argument Regarding Formatting

Appellant next argues that "because Christensen and Chai admittedly fail to disclose capturing [appliance event data and content event data], Christensen and Chai must also fail to disclose, teach, or suggest *formatting captured appliance event data and captured content [event] data into a respective one of an event record class and a content event record class* and providing the appliance event record class and content event record class to one or more advertisement or content dissemination services." (App. Br. 5.)

This argument is not persuasive because it does not address the Examiner's finding that it would have been obvious in view of Christensen

to format appliance event data and content event data such as that disclosed in Sekimoto. Christensen and Chai need not disclose capturing appliance and content data because the Examiner found that Sekimoto discloses those kinds of data.

Sekimoto

Appellant additionally argues that "while Sekimoto may disclose . . . allowing a user to interact with a customized menu that is presented on a client device to thereby cause a server device to transfer data, e.g., video content, for presentation on a display device," Sekimoto "does not disclose, teach, or suggest *that any information is captured by a device during this process*, let alone a networked device interface associated with the home entertainment system *capturing* appliance event data." (App. Br. 6.) Appellant argues this is particularly true "where *the captured appliance event data comprises* **data indicative of a command** to change a state of the at least one of the plurality of component devices in the home entertainment system *that is provided to [a] component device from a network capable device communicatively coupled to the networked device interface*, or at least one of the plurality of component devices in the home entertainment system capturing content event data." (App. Br. 6.)

The Examiner responds that "Sekimoto (paragraph 201) discloses user input being recognized by the system when the user makes a menu selection of content or changes the display state of a networked terminal device." (Ans. 11.)

We agree with the Examiner. Paragraph 201 of Sekimoto describes how "[i]f the user operation is a decision . . . , the selected item and parameter . . . are . . . transmitted to the server" and the server "executes a

function program corresponding to the content/function selection menu and presents the execution process and the corresponding content to the display device." (Sekimoto ¶ 201.) As part of that process, the network device (the server) would "capture" data that would be indicative of a command to change a state of a component device (the display device) that would be provided to the component device the network device. Although Appellant asserts that Sekimoto does not meet the claim limitation, it fails to specifically address the Examiner's analysis. Appellant also does not argue for a construction of "capture" that would avoid what is shown and described in Sekimoto.

Appellant additionally argues that "because Sekimoto does not disclose [appliance event] data being captured in the first instance, it is respectfully submitted that Sekimoto must also fail to disclose, teach, or suggest formatting this particular captured data into a correspond[ing] record class as additionally claimed." (App. Br. 6.) This argument is not persuasive because, as noted, the Examiner relies on Christensen, not Sekimoto, for the formatting.

Other Arguments

In the Reply, Appellant argues (1) Chai does not disclose or suggest "all of 'providing . . . advertisement or content dissemination services access to information contained within [the three classes]'"; (2) Chai does not disclose or suggest "all of 'capturing via a networked device interface associated with the home entertainment system user event data wherein the user event data captured via the networked device sensing interface comprises data indicative of a change in a number of network capable devices determined to be in communicatively coupled to the network device

interface'"; (3) the Examiner engaged in "impermissible use of hindsight reasoning"; and (4) the rejection lacks "articulated reasoning with some rational underpinning as is required to support a legal conclusion of obviousness." (App. Br. 4–6.)

These arguments were not made in the Appeal Brief, and Appellant's failure to timely raise them deprived the Examiner of a chance to respond and deprived the Board of the benefit of the Examiner's expertise. Accordingly, and in the absence of a showing of good cause for the delay, we find these arguments to be waived. *See Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative) ("[T]he reply brief [is not] an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner's rejections, but were not."); 37 C.F.R. § 41.41(b)(2) (2015) ("Any argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner's answer . . . will not be considered by the Board for purposes of the present appeal, unless good cause is shown.").

DECISION

The rejections of claims 1, 6–11, and 15–20 under 35 U.S.C. § 103(a) are 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