



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/580,278	12/23/2014	Andreas Sommerwerk	814693	7684
95683	7590	11/26/2019	EXAMINER	
Leydig, Voit & Mayer, Ltd. (Frankfurt office) Two Prudential Plaza, Suite 4900 180 North Stetson Avenue Chicago, IL 60601-6731			LY, NGHI H	
			ART UNIT	PAPER NUMBER
			2642	
			NOTIFICATION DATE	DELIVERY MODE
			11/26/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chgpatent@leydig.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDREAS SOMMERWERK, KRZYSTOF MIODUSZEWSKI,
PIOTR MIKOLAJ KARAS, GRZEGORZ SIKORA, and
DOMINIK SKROBACZ

Appeal 2017-011831
Application 14/580,278
Technology Center 2600

Before JEREMY J. CURCURI, KARA L. SZPONDOWSKI, and
PHILLIP A. BENNETT, *Administrative Patent Judges*.

BENNETT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1, 4–12, and 16. Claims 2, 3, and 13–15 have been cancelled. Oral Argument was heard before this panel on November 13, 2019, and a copy of the Hearing Transcript will be placed in the record in due course. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

CLAIMED SUBJECT MATTER

Appellant's claims relate generally to systems and methods which allow for media data, such as a sound file, to be “injected” in real time into an ongoing telecommunications session, such as a phone call. The claims are more specifically directed to a system that “provides that a communication client, in the course of the communication data exchange, through the application control server, may dynamically select a media data file from a plurality of media data files stored in the processing engine. Once selected, the media data file is presented, by the communication processing server, to the communication clients simultaneously.”

Spec. ¶ 18. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A system for presenting media data to a first communication client and a second communication client during an ongoing communication data exchange between the first communication client and the second communication client in a telecommunication network, the system comprising:

¹ We use the word “Appellant” to refer to “Applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Noisy Unit GmbH and Deutsche Telekom AG. Appeal Br. 1.

a storage engine, configured to store a plurality of media data files;

an application control server, configured to receive media data file selection signals from at least one of the first communication client and the second communication client during the ongoing communication data exchange between the first communication client and the second communication client, and to select media data files from the storage engine based on the received media data file section signals; and

a communication processing server, configured to retrieve the selected media data files from the storage engine and to supplement the ongoing communication data exchange between the first communication client and the second communication client with the retrieved media data files by simultaneously presenting the retrieved media data files at the first communication client and the second communication client while the ongoing communication data exchange between the first communication client and the second communication client is being routed through the communication processing server.

App. Br. 11 (Claims Appendix).

REFERENCES

The prior art relied upon by the Examiner is:

Paczkowski	US 8,966,034 B1	Feb. 24, 2015
Xu	US 2002/0114322 A1	Aug. 22, 2002
Robinson	US 2006/0174026 A1	Aug. 3, 2006
Park	US 2011/0238494 A1	Sep. 29, 2011

REJECTIONS

Claims 1, 4–8, 11, and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Park, Robinson, and Xu. Final Act. 3–9.

Claims 9, 10, and 12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Park, Robinson, Xu, and Paczkowski. Final Act. 9–11.

ISSUE

Has the Examiner erred in finding the cited references teach or suggest,

an application control server, configured to receive media data file selection signals from at least one of the first communication client and the second communication client during the ongoing communication data exchange between the first communication client and the second communication client,

as recited in claim 1?

ANALYSIS

The Examiner rejects claim 1 as obvious over Park, Robinson, and Xu. Final Act. 3–7. We understand the Examiner to be relying on Park as teaching a general computing environment in which the claimed system operates, including an application server, media data, corresponding storage, and client access via simultaneous transmission of data. *See* Final Act. 4 (citing Park ¶¶ 7, 48). The Examiner appears to rely on Robinson as teaching “receiv[ing] media data file selection signals from . . . [a] first communication client . . . during the ongoing communication data exchange.” Final Act. 4–5 (citing Robinson ¶¶ 5, 34, 35, and 82). The Examiner appears to rely on Xu as teaching “ongoing communication data exchange between the first communication client and the second communication client.” Final Act. 6–7 (citing Xu ¶¶ 61 and 93). The Examiner finds that a person of ordinary skill in the art would have been motivated to combine the teachings of Park with those of Robinson “in order to provide a remote user interface displayed on a consumer electronics device.” Final Act. 5 (citing Robinson ¶ 4). The Examiner finds that a person of ordinary skill in the art would have combined the teachings of Xu

with those of Park and Robinson “in order to establish and maintain real time media data sessions through a firewall.” Final Act. 7 (citing Xu ¶ 2).

Appellant argues the Examiner’s rejection is in error. Appellant asserts that “Park merely describes pushing advertisements from a server to a group of clients after an auction process for the right to advertise to those clients.” App. Br. 5. Appellant further contends that “Robinson merely describes a user hitting a play button for a song and a server retrieving information about the song so as to send the information about the song while the song is being played.” App. Br. 6. Appellant contends that Robinson is deficient because “[t]he streaming of music from a server to a client described in Robinson [0082] does not involve any ongoing communication data exchange between a first communication client and a second communication client.” *Id.*

Appellant also asserts error in the findings made with respect to Xu. Appellant asserts that the cited passages in Xu “merely describe[] a straightforward communication of media data from one client to another which passes through a relay server.” App. Br. 6 (citing Xu ¶¶ 61, 93). Appellant further contends that the Examiner’s rationale for combining the references is flawed, and that even if combined for the stated reasons, “the hypothetical combination would merely provide a server pushing advertisements to multiple clients having remote user interfaces, with the advertisements being pushed through a relay server providing a firewall.”

We agree with Appellant that the Examiner has erred in finding the cited references teach or suggest,

an application control server, configured to receive media data file selection signals from at least one of the first communication client and the second communication client during the ongoing

communication data exchange between the first communication client and the second communication client,
as recited in claim 1.

Park relates to an “auction system for maximizing advertising efficiency.” Park, Abstract. Park describes an environment in which an “auction server” sets up and carries out a bidding process for internet advertisements using a bidding server and a corresponding database. Park ¶ 7. Park further teaches that advertisements may be transmitted simultaneously to different groups of recipients on behalf of successful bidders. Park ¶ 48.

Robinson relates to a streaming media server which delivers “a full motion, full-color, dynamic interface with complex visuals without imposing heavy hardware requirements on a consumer electronics device.” Robinson, Abstract. Robinson describes an embodiment in which a song is streamed from the media server to a client device, and information about the song is retrieved from a media database and sent for display on the client device. Robinson ¶ 82.

Xu relates to “establishing and maintaining real time media data sessions through a firewall.” Xu ¶ 2. More specifically, Xu teaches a method of routing IP telephony voice data through a firewall between a first client and a second client. Xu ¶ 14. The cited portions of Xu teach that media datagrams (i.e., voice data) may be transmitted between the call parties using a call control manager (CCM) server acting as a relay server. Xu ¶ 61.

The Examiner finds that the cited portions of the references, as described above, each teach a portion of the disputed limitation.

Specifically, the Examiner finds that Park teaches “an application control server” in a targeted advertising environment (Park ¶ 48), Robinson teaches “configured to receive media data file selection signals . . . during the ongoing communication data exchange” (Robinson ¶ 82), and Xu teaches an ongoing communication data exchange “between the first communication client and the second communication client” (Xu ¶¶ 61, 93). *See* Final Act. 3–7; Ans. 3–5.

Park and Robinson each describe systems in which a client device interacts with a server device to exchange data. However, there is no client-to-client communication in Park and Robinson, as client devices do not interact with each other in an “ongoing communication data exchange between the first communication client and the second communication client.” The Examiner introduces Xu as evidence of client-to-client communication data exchange. In order to support a conclusion of obviousness, there must be some reason that would have prompted a skilled artisan to apply the teachings of Park and Robinson, which are used in a one-way, client/server context, to a two-way client-to-client communication session, as taught by Xu. We agree with Appellant that the Examiner has not provided sufficient reasoning to arrive at a conclusion of obviousness.

The Examiner states that a person of ordinary skill in the art would have added Xu to Park and Robinson “in order to establish and maintain real time media data sessions through a firewall.” Final Act. 7. We agree with Appellant that enabling real time communication through a firewall as taught by Xu would not have given a skilled artisan a reason to modify Park and Robinson to implement two-way client-to-client communication sessions. Rather, it would have merely resulted in the client/server sessions

taught by Park and Robinson using a relay server to communicate through a firewall. As such, the proposed modification would not have resulted in an application control server “receiv[ing] media data file selection signals from at least one of the first communication client and the second communication client *during the ongoing communication data exchange between the first communication client and the second communication client,*” as recited in claim 1, and we do not sustain the rejection.

Remaining Claims

Independent claims 11 and 16 recite limitations commensurate to the disputed limitation discussed above. App. Br. 13 (Claim 11), 14 (Claim 16). For the same reasons, we do not sustain their rejections. The remaining claims are dependent, and stand with their respective independent claims.

CONCLUSION

The Examiner’s rejections are reversed.

More specifically,

We reverse the rejection of claims 1, 4–8, 11, and 16 under 35 U.S.C. § 103 as being unpatentable over Park, Robinson, and Xu.

We reverse the rejection of claims 9, 10, and 12 under 35 U.S.C. § 103 as being unpatentable over Park, Robinson, Xu, and Paczkowski.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 4-8, 11, 16	103	Park, Robinson, Xu		1, 4-8, 11, 16
9, 10, 12	103	Park, Robinson, Xu , Paczkowski		9, 10, 12
Overall Outcome				1, 4-12, 16

REVERSED