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13/715,590	12/14/2012	Laurence R. Lipstone	0447-US-U16	5105

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Level 3 Communications, LLC
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LAURENCE R. LIPSTONE, WILLIAM CROWDER, ANDREW SWART, CHRISTOPHER NEWTON, and LEWIS ROBERT VARNEY

Appeal 2018-000065
Application 13/715,590
Technology Center 2400

Before CARL W. WHITEHEAD JR., IRVIN E. BRANCH, and MICHAEL M. BARRY, *Administrative Patent Judges.*

BRANCH, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE[1]

Pursuant to 35 U.S.C. § 134(a), Appellant[2] appeals from the Examiner's decision to reject claims 1–4, 6–19, 21–26, 28–40, and 42–45.

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[1] We refer to the Specification, filed December 14, 2012 ("Spec."); Final Office Action, mailed October 21, 2016 ("Final Act."); Appeal Brief, filed May 2, 2017 ("Appeal Br."); and Examiner's Answer, mailed August 3, 2017 ("Ans.").

[2] 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 Level 3 Communications, LLC. Appeal Br. 2.

See Final Act. 1. An oral hearing was held on July 3, 2019. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

The claims are directed to devices and methods supporting content delivery with dynamically configurable log information. Claim 1, reproduced below with disputed limitations emphasized in *italics*, is illustrative of the claimed subject matter:

> 1. A device, operable in a system comprising a plurality of computers, each computer comprising hardware including memory and at least one processor, each computer configured to run at least two content delivery (CD) services of a plurality of CD services, wherein said CD services include: adaptation services, collector services, and control services, and wherein at least a first some of said computers run collector services, and wherein at least a second some of said plurality of computers run control services,
>
> said device comprising hardware including memory and at least one processor and:
>
> (i) a device configuration; and
>
> (ii) an adaptation service configured to provision and configure CD services on said device in accordance with said device configuration; and wherein each particular CD service on the device is configured to:
>
> (a) generate information relating to operation of said particular CD service; and
>
> (b) provide at least some of said information to at least one other CD service; and
>
> (c) obtain (i) control information from the control services, and (ii) state information from the collector services, and to base operation of said particular CD service on (x) said control information and on (y) said state information,
>
> wherein at least some of the control information obtained from the control system or state information from the collector

> services was derived based on information provided to said at least one other CD service by at least some of the plurality of CD services on the device, and
>
> wherein the kind of information to be generated by each particular CD service on the device relating to operation of said particular CD service on the device is configurable, and
>
> *wherein the kind of information generated by each particular CD service on the device is reconfigurable during operation of the particular CD service on the device*.

REFERENCE AND REJECTIONS

Claims 1, 2, 6–19, 21–24, 28–40, and 42–45 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Weller (US 7,840,667 B2; Nov. 23, 2010. Ans. 3–6.

Claims 3, 4, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Weller. Ans. 6–7.

RELATED APPEALS

Appellant states: "Appeals have been filed or are being filed in the following applications that share a priority application (Provisional Application 61/737,072, filed December 13, 2012) with the present application: 13/715,747; 13/802,093; 13/802,143; 13/802,335; 14/088,356; 14/088,358; 14/088,367; 14/088,542; 14/303,389; 14/307,380; and 14/578,402." Appeal Br. 2

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments. We have considered in this Decision only those arguments Appellant actually raised in the Brief. Any other arguments Appellant could

have made but chose not to make in the Brief are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

To the extent consistent with our analysis herein, we adopt as our own the findings and reasons set forth by the Examiner in (1) the action from which this appeal is taken (Final Act. 2–4; Ans. 3–7) and (2) the Examiner's Answer in response to Appellant's Appeal Brief (Ans. 8–3), and we concur with the conclusions reached by the Examiner. We highlight the following for emphasis.

35 U.S.C. § 102

Claims 1, 23, and 43

Appellant argues claim 1 with particularity and bases arguments regarding claims 23 and 43 on claim 1. Appeal Br. 11–16. Appellant's principal argument regarding the rejection of claim 1 is that Weller does not teach "wherein the kind of information generated by each particular CD service on the device is reconfigurable during operation of the particular CD service on the device." *Id.*

The Examiner responds, finding as follows:

> Weller teaches generating the kind of information (e.g., routing data) based on dynamic monitoring system status (e.g., load, connectivity) (see col 12, lines 62–67). Thus, this (first) kind of information is clearly reconfigurable or changeable during operation of the CD services. For instance, DNS is reconfigured with new routing data due to changed system status (see col 12, lines 62–67). Weller also teaches generating another kind of information (e.g., rates/prices) based on real-time bandwidth exchange among multiple CD service entities (see col 12, lines 19–48). This (second) kind of information is seen [as] reconfiguration of changeable by users and/or real-time demands

> (overflow basis) during operation of the CD services (see col 12, lines 19–48).

Ans. 9–10.

Appellant's arguments do not address these findings. *See generally* Appeal Br. 11–16. In particular, Appellant does not address reconfiguration of DNS with new routing data due to changed system status, as the Examiner finds. Ans. 9–10. Accordingly, because Appellant's arguments do not address the Examiner's findings, we are unpersuaded of error in the rejection of claims 1, 23, and 43.

Claims 9, 10, 14, 17, and 40

Claim 9 depends indirectly from claim 1 and recites "wherein at least one of the two or more reducers in the reducer system is a reducer service running on the device." Appellant argues claims 9, 10, 14, 17, and 40 on the basis that, "[e]ven if Weller does teach reducers . . . [t]he Examiner has not shown any teaching or suggestion in Weller of '<u>wherein at least one of the two or more reducers in the reducer system is a reducer service running on the device</u>.'" Appeal Br. 18–19; *see id*. at 17–19, 21. Appellant's argument is based on the definition of a "device."

The Examiner finds as follows:

> In Weller, "a device" is a regional or private CDN server that comprises one or more content or edge servers and is configured to operate a suite of software services including at least a first CD service (agent 109) for monitoring aspects of the device, e.g., network and server loads, and a second CD service (software 107) for using data generated by agent 109 to generate configuration formation (routing/mapping data) for use to direct/map user requests to content servers (see col 4, lines 1-20, col 5, lines 38-44, and col 12, lines 62-67).

Ans. 10–11.

Appellant's arguments do not persuasively rebut the Examiner's finding. *See generally* Appeal Br. 17–19. Accordingly, we are unpersuaded of error in the Examiner's rejection of claims 9, 10, 14, 17, and 40.

Remaining Claims Rejected under 35 U.S.C. § 102(b)

We have reviewed Appellant's arguments with respect to the remaining claims rejected as anticipated by Weller (Appeal Br. 20–23) and find the arguments unpersuasive for the reasons stated by the Examiner (Ans. 12–13), which Appellant does not persuasively rebut.

35 U.S.C. § 103

Appellant does not argue claims 3, 4, 25, and 26 with particularity. We therefore sustain the rejection of these claims.

CONCLUSION

We sustain the Examiner's decision rejecting claims 1–4, 6–19, 21–26, 28–40, and 42–45.

More specifically, we sustain the Examiner's rejection of claims 1, 2, 6–19, 21–24, 28–40, and 42–45 under 35 U.S.C. § 102(b) as being anticipated by Weller and the Examiner's rejection of claims 3, 4, 25, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Weller.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference	Affirmed	Reversed
1, 2, 6–19, 21–24, 28–40, 42–45	102(b)	Weller	1, 2, 6–19, 21–24, 28–40, 42–45	
3, 4, 25, 26	103(a)	Weller	3, 4, 25, 26	
Overall Outcome:			1–4, 6–19, 21–26, 28–40, 42–45	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED