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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DEREK S. ANDERSON and RYAN T. KORTE

Appeal 2018-001750
Application 14/450,495
Technology Center 2400

Before IRVIN E. BRANCH, MICHAEL M. BARRY, and
SCOTT RAEVSKY, *Administrative Patent Judges*.

BRANCH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the Examiner's decision to reject claims 1–20. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was held on January 28,

¹ We refer to the Specification, filed August 4, 2014 (“Spec.”); Final Office Action, mailed July 21, 2016 (“Final Act.”); Appeal Brief, filed December 21, 2016 (“Appeal Br.”); and Examiner’s Answer, mailed October 2, 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.

2020. A transcript of the oral hearing is being prepared and will be entered into the record in due course.

We AFFIRM.

CLAIMED SUBJECT MATTER

The claims are directed to implementing a high-quality Video over Internet Protocol (VoIP) network accessible through a public network, such as the Internet. Spec. Abstract. Claim 1, reproduced below with disputed limitations emphasized in *italics*, is illustrative of the claimed subject matter:

1. A method for providing services over a telecommunications network, the method comprising:

receiving a request for telecommunication services from a requesting device, the telecommunications services comprising transmission of one or more high-definition multimedia signals through the telecommunications network;

accessing an equipment database associated with the telecommunications network to determine a customer identification associated with the requesting device;

registering an encoding device with the telecommunications network based at least on the customer identification, the encoding device configured to encode the one or more high-definition multimedia signals;

scheduling one or more components in response to the request from the requesting device; and

commissioning the one or more components for transmission of the one or more high-definition multimedia signals through the telecommunications network.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Lupulescu	US 2003/0030751 A1	Feb. 13, 2003
Stirbu	US 2006/0168656 A1	July 27, 2006
O'Neil	US 2007/0067807 A1	Mar. 22, 2007
Eng	US 2010/0208634 A1	Aug. 19, 2010

REJECTIONS

Claims 1–4 and 9–11 stand rejected under 35 U.S.C. § 103 as unpatentable over O'Neil and Eng. Final Act. 3–8.

Claims 6–8 and 13–15 stand rejected under 35 U.S.C. § 103 as unpatentable over O'Neil, Eng, and Stirbu. Final Act. 8–11.

Claims 16, 17, 19, and 20 stand rejected under 35 U.S.C. § 103 as unpatentable over O'Neil, Stirbu, and Eng. Final Act. 11–16.

Claims 5 and 12 under 35 U.S.C. § 103 stand rejected under 35 U.S.C. § 103 as unpatentable over O'Neil, Eng, and Lupulescu. Final Act. 16–17.

Claim 18 stands rejected under 35 U.S.C. § 103 as unpatentable over O'Neil, Stirbu, Eng, and Lupulescu. Final Act. 17–18.

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 Briefs. Any other arguments Appellant could have made but chose not to make in the Briefs 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. 3–18) and (2) the Answer in response

to Appellant's Appeal Brief (Ans. 5–13) and concur with the conclusions reached by the Examiner. We highlight the following for emphasis.

With respect to the obviousness rejection of independent claim 1, Appellant contends that the combination of O'Neil and Eng does not teach or suggest "registering an encoding device with the telecommunications network based at least on the customer identification." Appeal Br. 10; *see also id.* at 9–11. Appellant further contends that the combination of O'Neil and Eng does not teach or suggest "scheduling one or more components in response to the request from the requesting device," as recited in claim 1. *Id.* at 12–14.

Regarding "registering an encoding device with the telecommunications network based at least on the customer identification," the Examiner finds this limitation corresponds to O'Neil's "process of determining subscriber content encoding and format configuration . . . based on device type and capabilities . . . during network registration request and/or information service request operation . . . by the system/ broadcast application server." Ans. 8. (citing O'Neil ¶¶ 46, 47, 54, 60–64, and 67–69); *see also* Final Act. 3–5.

Appellant contends that the argued limitation should be construed such that "a customer's encoding device is registered with the telecommunications network 'based on a customer identification' for the purpose of determining the characteristics of the encoding device that the customer will use to encode the high-definition video signal for transmission over the local loop." Appeal Br. 11. Appellant argues that "O'Neil has no disclosure of registering an encoding device because O'Neil does not disclose an encoding device at all" and that "[w]hat the Office relies on in

O’Neil is, at most, the transmission of encoded ‘subscriber content’ to subscribing devices. As such[,] O’Neil does not disclose an encoding device at all.” *Id.*

We are not persuaded by Appellant’s arguments for the reasons stated by the Examiner (Ans. 5–8), which Appellant does not persuasively rebut. In particular, we find persuasive the Examiner’s construction of (and findings regarding) the argued limitation as follows:

the examiner interprets this limitation as based on the customer identification to register an encoding device with the telecommunications network and the encoding device will perform encoding for one or more multimedia signals. In []other words, customer/user/subscriber can login a telecommunications network for requesting a multimedia /content service, then the telecommunication network needs to assign/register a multimedia/content encoding device/element/ process to perform encoding function for the specific customer/user/subscriber and the encoding operation can be performed separated from the requesting device of the customer/user/subscriber.

Ans. 5.

A claim under examination is given its broadest reasonable interpretation consistent with the underlying specification. *See In re American Acad. of Science Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). In the absence of an express definition of a claim term in the specification or a clear disclaimer of scope, the claim term is interpreted as broadly as the ordinary usage of the term by one of ordinary skill in the art would permit. *See In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007); *see also In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Appellant does not direct our attention to—and we do not ascertain—any construction of “registering an encoding device” that precludes O’Neil’s

process, as broadly but reasonably construed by the Examiner. Ans. 8.

We also disagree that O’Neil does not disclose an encoding device. Appeal Br. 11. O’Neil discloses a “content application server” that is “configured to format [i.e., encode] the content associated with the information service to provide subscriber content that is encoded and/or otherwise configured to prevent at least some use by devices that are not associated with a subscription to the information service.” O’Neil ¶ 47. Accordingly, we find Appellant’s arguments are unsupported by sufficient evidence or explanation to be persuasive.

We also are unpersuaded of error by Appellant’s argument that O’Neil does not disclose “scheduling one or more components in response to the request from the requesting device.” Appeal Br. 12–14. The Examiner interprets the limitation as “after receiving the service request from the requesting device, [the] service provider scheduling one or more components for the service provision. In [o]ther words, after receiving customer/user/ subscriber multimedia/content service request, the service provider needs to provision /schedule network resources /elements for the requested multimedia /content service.” Ans. 9. The Examiner finds the limitation reads on O’Neil’s subscriber content being “broadcast using a particular frequency, time slot, and/or spreading code associated with the communication session.” *Id.* at 10 (citing O’Neil Figs. 1, 4, and ¶¶ 16, 52, 81–83). The Examiner finds that “[b]oth particular frequency and time slot are bandwidth related resource allocation /scheduling for a specific request; and selected spreading code is also for a specific user’s communication session.” *Id.* at 10–11.

Appellant does not persuasively rebut the Examiner’s findings.

Appellant argues that the “portion of O’Neil purportedly disclosing a ‘specified frequency, time slot, and/or spreading code’ is actually directed to altering a broadcast to cause ‘the exclusion of non-subscribers’ from receiving the transmission” and that “[n]either this portion, nor any other part of O’Neil, discloses ‘scheduling one or more components in response to the request from the requesting device.’” Appeal Br. 13 (quoting O’Neil ¶ 83). We find Appellant’s argument is unsupported by sufficient evidence or explanation to be persuasive.

Accordingly, for the foregoing reasons we are unpersuaded of error in the Examiner’s rejection of claim 1. We also are unpersuaded of error in the rejection of claim 9, which Appellant argues on the same basis. *See* Appeal Br. 12, 14. Because Appellant argues the rejections of the remaining claims based either directly or indirectly on claims 1 and 9 (*id.* at 14–16), we are unpersuaded of error in the rejections of claims 2–8 and 10–20 for the same reasons.

Appellant argues claims 7 and 14 for the additional reason that the portions of O’Neil relied upon by the Examiner “nowhere disclose an ‘encoding device,’ let alone ‘detecting an encoding device’ and ‘analyzing the encoding device to obtain one or more identifiers of the encoding device.’” *Id.* at 14–15. Appellant contends that “[t]he relied-upon portions of O’Neil disclose only steps ‘when content is available’ without reference to a decoding device or analyzing the decoding device.” *Id.* at 15.

Appellant’s arguments do not persuade us of error for the reasons stated by the Examiner (Ans. 11–12), which Appellant does not persuasively rebut. We adopt the Examiner’s response to Appellant’s arguments.

CONCLUSION

For the foregoing reasons, we are unpersuaded of error in the Examiner's rejections of claim 1-20.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-4, 9-11	103	O'Neil, Eng	1-4, 9-11	
6-8, 13-15	103	O'Neil, Eng, Stirbu	6-8, 13-15	
16, 17, 19, 20	103	O'Neil, Stirbu, and Eng	16, 17, 19, 20	
5, 12	103	O'Neil, Eng, Lupulescu	5, 12	
18	103	O'Neil, Stirbu, Eng, Lupulescu	18	
Overall Outcome:			1-20	

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