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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MATS CEDERVALL and NILO MITRA<sup>1</sup>

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Appeal 2018-002466  
Application 14/606,072  
Technology Center 2400

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Before MICHAEL J. STRAUSS, IRVIN E. BRANCH, and  
AARON W. MOORE, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> According to Appellants, the real party in interest is TELEFONAKTIEBOLAGET L M ERICSSON (PUBL). *See* App. Br. 2.

## STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 16, 17, and 19–25.<sup>2</sup> Claims 1–15 and 18 are canceled. App. Br. 19–21 (Claims App.). We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.<sup>3</sup>

## THE INVENTION

The claims are directed to upgrading internet protocol television (IPTV) devices from a simple service profile to a more feature rich service profile. App. Br. 3. Claims 16 and 20, reproduced below, are illustrative of the claimed subject matter:

16. An upgradable television (TV) device, the TV device being connectable to an internet protocol TV (IPTV) system including an operator system and a TV manufacturer system, the TV device comprising:

a memory for storing TV device specific information; and  
a processor coupled to the memory, wherein the processor generates a browser that obtains a token object, and receives and transmits messages to and from the TV manufacturer system via the operator system, such that an upgrade of the TV device can be initiated and completed, wherein the processor, executing local object code, interacts with the TV manufacturer system, such that an upgrade of the TV device is executed in response to

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<sup>2</sup> The Examiner omits dependent claims 24 and 25 from the listing of claims rejected under 35 U.S.C. § 112, second paragraph. Final Act. 6, Ans. 6. However, because these claims depend from rejected independent claim 22 and thereby inherit any deficiency of that claim, for purposes of this appeal we treat dependent claims 24 and 25 also as having been rejected under 35 U.S.C. § 112, second paragraph. We find the clerical error of omission to be harmless in view of our decision.

<sup>3</sup> We refer to the Specification, filed January 27, 2015 (“Spec.”); the Final Office Action, mailed March 31, 2017 (“Final Act.”); the Appeal Brief, filed August 14, 2017 (“App. Br.”); the Examiner’s Answer, mailed November 16, 2017 (“Ans.”); and the Reply Brief, filed January 5, 2018 (“Reply Br.”).

receiving the token object from the TV manufacturer system to be used for verifying an upgrade of the TV device, the token object being generated by the TV manufacturer system and comprising a redirection address indicating an upgrade site of the TV manufacturer, and the processor, executing the local object code, returns the token object to the TV manufacturer system, thereby enabling an upgrade of the TV device to be completed from the upgrade site by the TV manufacturer system if the token object is found to be valid.

20. An operator system for assisting in an upgrade of a television (TV) device, the operator system being part of an internet protocol TV (IPTV) system that also includes a TV manufacturer system, the operator system comprising:

a processor, which generates an operator Portal that receives and transmits messages to and from the TV device and the TV manufacturer system and that processes such messages, such that an upgrade of the TV device is assisted, wherein the processor requests a token object to be used during the upgrade from the TV manufacturer system upon request from the TV device, forwards the token object to the TV device, receives the token object back from the TV device, and forwards the token object to the TV manufacturer system, the token object being generated by the TV manufacturer system and comprising a redirection address indicating an upgrade site of the TV manufacturer, thereby enabling an upgrade of the TV device to be completed from the upgrade site by the TV manufacturer system if the token object is found to be valid; and

a business support system, which manages interaction between the operator system and TV manufacturer system by receiving and transmitting messages to and from the TV device and processing such messages, thereby enabling service and billing arrangements to be established between a user and an operator of operator system.

## REJECTIONS

The Examiner made the following rejections:

Claims 16, 17, and 19–21 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.<sup>4</sup>  
Ans. 3–4.

Claims 20–25<sup>5</sup> stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Ans. 6–8.

## ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments that the Examiner has erred in rejecting independent claims 16, 20, and 22 under 35 U.S.C. § 112. We agree with Appellants’ conclusions as to these rejections of the claims.

The Examiner finds “[n]owhere in [the] specification [is there] disclose[d] ‘a processor coupled to the memory, wherein the processor generates [a browser] that obtains a token object’ as [required by claim 16]” or “‘a processor [that] generates an operator Portal’ and performs [the recited] multiple functions as [required by claim 20].” Ans. 3–4. In connection with claim 16, the Examiner explains, rather than disclosing “the processor generates a browser that *contains*<sup>[6]</sup> a token object,” the Specification discloses the browser requests and receives a token. *Id.* at 9

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<sup>4</sup> The rejection of claims 22–25 under 35 U.S.C. § 112, first paragraph, has been withdrawn. Ans. 2.

<sup>5</sup> *See* fn. 2.

<sup>6</sup> The Examiner occasionally misstates the disputed limitation, mistakenly substituting the word “contains” for the word “obtains” recited by claim 16.

(emphasis with italics added). The Examiner finds “nowhere in specification [does it] disclose the TV device includes ‘a processor coupled to the memory, wherein the processor generates a browser that contains [sic., obtains] a token object” and that “[t]he processor cannot generate a browser.” *Id.*

Appellants contend “the ‘processor’ element added to the claims<sup>[7]</sup> is *inherently* supported by the original disclosure because the claimed structures *require* a processor to operate in the manner disclosed and claimed.” App. Br. 9. Appellants argue the “upgrade Function” is disclosed as configured to execute a proprietary upgrade procedure implemented as a local object code. *Id.* at 10. According to Appellants, “one skilled in the art would have recognized a processor is required to generate the disclosed browser 202 and execute local object code 201 to perform the disclosed functions.” *Id.* At 11. Appellants further note Examiner error in characterizing claim 16 as requiring generation of a browser that *contains* a token rather than a browser that *obtains* a token. Reply Br. 2–3.

We agree with Appellants the Examiner erred in finding a lack of support for the processor of claim 16. It is not clear whether the Examiner finds the limitation unsupported (i) because, based on a misreading of the claim, the Specification discloses the token is generated by and obtained from a TV manufacturer system and not by the TV device or (ii) because there is no specific mention of a “processor” for executing the disclosed JAVA script code and providing browser functionalities. However, either

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<sup>7</sup> According to Appellants, the disputed “processor coupled to the memory, wherein the processor generates [a browser]” language was added to avoid means plus function interpretation under 35 U.S.C. § 112, sixth paragraph. See Amendment under 37 C.F.R. § 1.111 filed January 3, 2017 at page 5.

rationale is unpersuasive. In the case of the former, we would agree with Appellants that the Examiner's finding is based on a misreading of the claim language which does not require generation of a browser that contains a token, thereby also requiring generation of the token itself. Instead, the disputed limitation only requires generation of a browser that *obtains* a token as from the TV manufacturer system as disclosed by Appellants'

Specification. We also would not be persuaded one skilled in the art would not have understood that the disclosed processing and functionalities would be implemented and/or supported by hardware and that such hardware would include a processor for generating and/or executing, for example, the disclosed browser. Accordingly we do not sustain the rejection of claim 16 or the rejection of dependent claims 17 and 19 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

In connection with claim 20, the Examiner finds “[n]owhere in [the] specification [does it] disclose ‘a processor generates an operator Portal’ and performs . . . multiple functions as claimed.” Ans. 4. Appellants contend “[t]he specification clearly describes the operator portal as a website that interacts with the TV device’s browser” (App. Br. 12) and that, as such, the portal provides functionalities that must be implemented using a processor (*id.* at 12–14).

We agree with Appellants the Examiner erred in finding a lack of written description for the processor of claim 20. Concerning the claimed functionality, it had previously been claimed as performed by the operator Portal. The disputed processor, which generates the operator Portal, was added by the Amendment filed January 3, 2017 resulting in the instant rejection for lack of a written description of the processor. The Examiner

does not direct attention to a particular function not supported by the Specification and we are unable to ascertain any such unsupported function. Therefore, the Examiner's rejection is based solely on whether the operator Portal is generated by a processor.

We agree with the Examiner that the Specification does not use the word "processor" in describing how the operator Portal is generated, i.e., provided. Ans. 4. However, the Specification discloses, "Operator system **203** of Figure 5 comprises an operator portal **204** that is configured to enable communication with a browser (not shown) of a TV device 200 to be upgraded, and a TV manufacturer system 206 to be executing the upgrading." Spec. p. 15, ll. 4–6. One skilled in the art at the time of the invention would have understood the required functionalities, including the portal browser, communication, and upgrading task execution, would be supported and/or provided by hardware broadly functioning as and commonly referred to as a processor. Accordingly, we do not sustain the rejection of independent claim 20 or dependent claim 21 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement

The Examiner additionally rejects claims 20–25<sup>8</sup>, concluding the claimed operator Portal and business support system are to be interpreted under 35 U.S.C. § 112, sixth paragraph, as means plus function limitations. Ans. 4–5. According to the Examiner, both the operator Portal and business

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<sup>8</sup> The Examiner's analysis of the claim language concludes claims 24 and 25, in addition to claims 20, 22, and 23, are subject to means plus function interpretation under 35 U.S.C. § 112, sixth paragraph. Ans. 6–8. We consider the omission of claims 24 and 25 from the related rejection under 35 U.S.C. § 112, second paragraph, to be harmless clerical error. *See* fn. 2.

support system are generic placeholders coupled with functional language rather than structural elements. *Id.* As such, the Examiner finds insufficient disclosure of structure for performing the recited functions and rejects the claims as indefinite under 35 U.S.C. § 112, second paragraph. *Id.* at 6–8.

Appellants contend, “although the ‘business support system’ . . . and the ‘operator Portal’ . . . use functional terms, these terms denote well-known structures, and thus are not subject to means-plus-function interpretation.” Reply Br. 7. Appellants argue a business support system would have been understood to have a definite meaning as a structure that performs the recited function rather than a generic place holder, i.e., “[t]he system used by network operators to manage business operations such as billing, sales management, customer-service management and customer databases.” *Id.* at 7–8, citing Harry Newton, *Newton’s Telecom Dictionary* 111 (14<sup>th</sup> ed. 1998). Regarding the disputed “operator Portal,” Appellants argue it would have been understood to be Appellants’ disclosed website, the website argued to be inherently disclosed as being generated by a processor required to provide the disclosed website. App. Br. 11–12.

The Examiner responds by contending the proffered definition of a business support system fails to provide the claimed functionality of managing interactions between the operator system and TV manufacturer system. Ans. 14–15. Addressing the operator Portal, the Examiner finds it is disclosed as an HTTP protocol or software and, as such, “does not describe a known structure or category of structures sufficient to perform the above function, because specification has no algorithm to describe how to perform the [recited] function.” *Id.* at 16.

We agree with Appellants that the disputed business support system and operator Portal are disclosed in sufficient detail such that one skilled in the art would have appreciated the recited functions are performed by specific structures. There is a rebuttable presumption that claim 20 is not intended to invoke 35 U.S.C. § 112, sixth paragraph, and should not be construed as having means-plus-function elements. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015) (“[T]he failure to use the word ‘means’ . . . creates a rebuttable presumption . . . that § 112, para. 6, does not apply.”). To rebut this presumption, the Examiner must find that the *claim term* fails to recite sufficiently definite structure or recites function without reciting sufficient structure for performing that function. *Id.* (citing *Watts v. XI Sys., Inc.*, 232 F.3d 877, 880 (Fed. Cir. 2000)). The Federal Circuit has further explained:

To determine whether the claim recites sufficient structure, “it is sufficient if the claim term is used in common parlance or by persons of skill in the pertinent art to designate structure, even if the term covers a broad class of structures and even if the term identifies the structures by their function.” *Skky, Inc. v. MindGeek, s.a.r.l.*, 859 F.3d 1014, 1019 (Fed. Cir. 2017) (quoting *TecSec, Inc. v. Int’l Bus. Machs. Corp.*, 731 F.3d 1336, 1347 (Fed. Cir. 2013) (internal quotation marks and citations omitted)). In this case, the Examiner erred by finding the presumption had been overcome with respect to the two claim terms identified. Our review of the Specification and Figures and proffered technical dictionary definition persuade us the terms designate sufficient structure to perform the functional language.

In connection with business support system, we disagree the proffered definition is inapplicable to the claimed functionality. Claim 20 requires the

business support system manage interaction with the operator system and TV manufacturer to establish service and billing arrangements between a user and an operator of the operator system. These activities fall within the scope of billing and customer-service relations provided by a business support system included within the dictionary definition of a business support system proffered in support of Appellants' argument. The additional functionality of receiving and transmitting messages to enable service and billing arrangements does not render the definition inapposite. To the contrary, one skilled in the art would have understood messaging to be a function supported by such a system. Therefore, the disputed business support system is not a generic placeholder or a nonce term having no specific structural meaning but, instead, requires a specific structure, i.e., a system used by network operators to manage business operations. Accordingly, the disputed business support system limitation is not expressed as means plus function subject to interpretation under 35 U.S.C. § 112, sixth paragraph.

Concerning the disputed operator Portal, we agree with Appellants that one skilled in the art would have recognized that a web page or website, having been disclosed as corresponding to the claimed operator Portal, discloses structure rather than constituting a generic place holder for the recited functions. App. Br. 17–18; Reply Br. 9. Accordingly, the disputed operator Portal limitation is not expressed as means plus function subject to interpretation under 35 U.S.C. § 112, sixth paragraph.

Because the Examiner's rejection is premised on an erroneous claim construction improperly invoking 35 U.S.C. § 112, sixth paragraph, we do

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not sustain the resultant rejection of claims 20 and 21 under 35 U.S.C. § 112, second paragraph.

#### DECISION

We reverse the Examiner's decision to reject claims 16, 17, and 19–21 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

We reverse the Examiner's decision to reject claims 20–25 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

REVERSED