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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PHILIP HEWINSON

Appeal 2018-002988
Application 13/600,749
Technology Center 2400

Before DAVID M. KOHUT, BARBARA A. BENOIT, and
LYNNE E. PETTIGREW, *Administrative Patent Judges*.

KOHUT, *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 21–41. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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 Google Inc. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to a system for processing digital media content related to movie finding. Spec. ¶ 1. More specifically, the system detects a group of users at a common location and considers the personal profiles of the detected users to stream content that matches all or a majority of the user's preferences. *Id.* at ¶ 23. Claim 21, reproduced below, is illustrative of the claimed subject matter:

21. A method for provisioning of media items, the method comprising:

receiving, by a media backend server from a network-enabled stationary media device via an electronic network, a first signal, the first signal having information that indicates that a plurality of client devices are in a vicinity of the network-enabled stationary media device;

determining, by the media backend server, a plurality of preferences related to consumption of media items, the plurality of preferences associated with users of the plurality of client devices;

weighting, by the media backend server and based on the plurality of preferences, each of a plurality of available media items; and

selecting, by the media backend server and based on results of the weighting, at least one of the plurality of available media items.

REJECTIONS²

Claims 21, 22, 26–29, 33–36, 40, and 41 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Martin et al. (US 2009/0210415 A1, published Aug. 20, 2009) in view of Hjelmeland Almas et al. (US 2008/0301737 A1, published Dec. 4, 2008) (“Hjelmeland”).

Claims 23–25, 30–32, and 37–39 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Martin in view of Hjelmeland Almas and Chatterjee (US 2011/0142016 A1, published June 16, 2011).

OPINION

Independent claim 21 recites the limitation of “receiving, by a media backend server from a network-enabled stationary media device via an electronic network, a first signal, the first signal having information that indicates that a plurality of client devices are in a vicinity of the network-enabled stationary media device.” The Examiner finds this limitation is taught by a combination of Martin and Hjelmeland. Final Act. 8–9 (citing Martin ¶¶ 71, 139–141, Fig. 25), 11 (citing Hjelmeland ¶¶ 62, 65, Fig. 3).

Specifically, the Examiner finds that Martin teaches “a plurality of client devices are in a vicinity” by disclosing a server receiving a Bluetooth signal indicating that a plurality of client devices are in the vicinity of the server and adding the devices to a proximal device list. Final Act. 8–9 (citing Martin ¶¶ 139–141). The Examiner further finds that Martin teaches “receiving, by a media backend server . . . information that indicates that a

² Throughout this Decision we have considered the Final Rejection mailed Dec. 30, 2016 (“Final Act.”), the Appeal Brief filed July 3, 2017 (“Appeal Br.”), and the Examiner’s Answer mailed Nov. 2, 2017 (“Ans.”).

plurality of client devices are in a vicinity,” by disclosing a server process, located on a server or a third-party server accessible by the devices through a communication network and building a playlist based on previously collected data associated with the devices on the proximal device list. *Id.* at 9 (citing Martin ¶¶ 71, 139–141); *see also* Ans. 7–8. The Examiner states that Martin does not explicitly disclose that the server receives the Bluetooth signal from a network-enabled stationary media device via an electronic network. *Id.* However, the Examiner finds that Hjelmeland discloses a portable communications device 10, an intermediary device 104 (television) and/or 106 (coupler device), and a server 108 where the intermediary device discovers devices in proximity and communicates the identification to the server. *Id.* at 11 (citing Hjelmeland ¶¶ 59–66, Fig. 3); Ans. 14–16 (citing Hjelmeland ¶¶ 37, 59–66, 73, 88–89, 94, Fig. 3). The Examiner further finds that based upon discovering a device in proximity, the server may provide a content recommendation that is presented to the user on television 106. *Id.* at 15 (citing Hjelmeland ¶ 94). The Examiner makes the same findings with respect to independent claims 28 and 35, which recite substantially similar subject matter.

First, Appellant argues that Martin fails to teach or suggest “‘the first signal having information that indicates that a plurality of client devices are in a vicinity’ is received ‘by a media backend server’ ‘from a network-enabled stationary media device via an electronic network.’” Appeal Br. 6. Appellant further argues that Martin fails to teach a first signal that “‘indicates that a plurality of client devices are in a vicinity of the network-enabled stationary media device.” *Id.*

We are not persuaded by Appellant’s argument. When assessing an obviousness rejection, the test is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991). In this case, the Examiner’s obviousness rejection is based on the collective teachings of Martin and Hjelmeland. The Examiner first relies on Martin to teach a backend server receiving a signal identifying a group of devices in proximity to a device. Final Act. 8–9 (citing Martin ¶¶ 71, 139–141); Ans. 5–8. Because Martin clearly discloses a mechanism for detection of proximal users (Martin ¶ 141) as well as a third-party server accessible to the media player devices through a communication network that builds a playlist using information about the proximal users (Martin ¶ 71), we are persuaded that the Examiner has presented sufficient evidence to support a finding that Martin teaches the disputed limitation except for the claimed network-enabled stationary media device. Because the Examiner has not relied upon Martin to teach the claimed network-enabled stationary media device, we are not persuaded by Appellant’s argument that Martin fails to teach this element.

Appellant further argues that Hjelmeland fails to teach “‘information that indicates that a plurality of client devices are in a vicinity of the network-enabled stationary media device’ . . . is conveyed by ‘a non-portable media device (e.g., element 106 and/or 104)’ . . . to the ‘network-enabled stationary media device’ . . . to the ‘server 108.’” Appeal Br. 7. More specifically, Appellant argues that Hjelmeland does not disclose transmitting information from a user device, to the television, and then to the server (Appeal Br. 8) and that Hjelmeland does not register a plurality of

devices, but instead registers a single a user device to a television (Appeal Br. 6–10).

Again, Appellant has failed to consider the collective teachings of Martin and Hjelmeland. First, we are unpersuaded by Appellant’s argument that Hjelmeland does not register a plurality of devices, but instead registers a single a user device to a television, because the argument fails to consider the collective teachings of Martin and Hjelmeland. *See* Appeal Br. 6–10. Rather than Hjelmeland, the Examiner has relied upon Martin to teach the discovery of a plurality of client devices in a vicinity. Final Act 8–9 (citing Martin ¶ 141). The Examiner has further relied upon Hjelmeland to disclose a network-enabled stationary media device (a television 104 or coupler device 106) detecting a client device within a vicinity. *Id.* at 11 (citing Hjelmeland ¶¶ 59–66, Fig. 3). Taking these teachings together, we are persuaded that the Examiner has presented sufficient evidence to support a finding the combination of Martin’s detection of a plurality of client devices in proximity of a device, in combination with Hjelmeland’s network-enabled stationary media device teaches the claimed plurality of client devices in the vicinity of the network-enabled stationary media device.

We are also unpersuaded by Appellant’s argument that Hjelmeland fails to teach transmitting information from a user device, to the television, and then to the server. Appeal Br. 8. Here, as above, the Examiner relies upon the combined teachings of Martin and Hjelmeland. First, the Examiner finds that Martin discloses a backend server in the form of a server or third-party server accessible through a communications network as well as discovery and transmission of information that indicates a plurality of client devices are in the vicinity of a device. Ans. 8–9 (citing Martin ¶¶ 71, 139–

141). The Examiner relies on Hjelmeland to teach the network-enabled stationary media device by disclosing an intermediary device that can automatically register devices in proximity to the intermediary device and notify a backend server. Final Act. 11 (citing Hjelmeland ¶¶ 59–66, Fig. 3).

Further, as noted by the Examiner, Hjelmeland discloses transmission of signals from the television 104 to the server 108 by stating “[a]t block 350, a user activates and/or controls the user’s television set 104 using a mobile telephone 10. . . . The television 104 may display a listing of the user's favorite television programs and/or a listing of contacts to enable the user to chat (instant messaging).” Ans. 17 (citing Hjelmeland ¶ 92).

Hjelmeland further discloses that “when the instant message application is executed (e.g., by turning on the television with the mobile telephone 10), the messaging client attempts to connect to the messaging server. The messaging server (e.g., server 108) verifies the username and password and logs the client on.” *Id.* (citing Hjelmeland ¶ 93). Taking these teachings together, we are persuaded that the Examiner has presented sufficient evidence to support a finding that Martin’s detection of a plurality of client devices in proximity of a device and transmission of the detection indication to a server, in combination with Hjelmeland’s television detecting a client and detecting and attempting to connect to a server to login the client, teaches the claimed “receiving, by a media backend server from a network-enabled stationary media device via an electronic network, a first signal, the first signal having information that indicates that a plurality of client devices are in a vicinity of the network-enabled stationary media device.”

For the reasons discussed, we affirm the Examiner’s rejection of claim 21, and affirm the rejection of independent claims 28 and 35, which recite

similar limitations, and dependent claims 22–27, 29–34, and 36–41, which depend therefrom.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
21, 22, 26–29, 33–36, 40, 41	103	Martin and Hjelmeland	21, 22, 26–29, 33–36, 40, 41	
23–25, 30–32, 37–39	103	Martin, Hjelmeland, Chatterjee	23–25, 30–32, 37–39	
Overall Outcome			21–41	

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