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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HISAO CHANG, MARK HUBSCHER, and
CARLTON LIGAR BROWN

Appeal 2018-003169
Application 11/751,445¹
Technology Center 2400

Before JASON V. MORGAN, MICHAEL J. STRAUSS, and
CARL L. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 6–8, 10–20, and 37–43, which constitute all pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

Appellants' invention relates to methods and apparatus for communicating through a multi-fidelity gateway. Abstract; Spec ¶¶ 17–20; Figs. 1, 2. Claim 6 is exemplary of the matter on appeal (emphasis added):

¹ The real party in interest is AT&T Intellectual Property I, L.P. App. Br. 2.

6. A method comprising:

receiving a communication at a multi-fidelity audio gateway of a media system located in a residence from a device associated with the residence;

determining whether the communication is a speech command;

when the communication is the speech command, selecting, via a processor, a high fidelity communication path within the multi-fidelity audio gateway for the communication;

when the communication is not the speech command:

identifying, via the processor, audio fidelity information associated with the device; and

selecting, via the processor, a communication path within the multi-fidelity audio gateway for the communication based on the audio fidelity information associated with the device.

App. Br. 19 (Appendix A).

THE REJECTION²

Claims 6–8, 10–20, and 37–43 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Slotznick (US 2001/0055951 A1; pub. Dec. 27, 2001) (“Slotznick”) in view of Forslow (US 2003/0039237 A1; pub. Feb. 27, 2003) (“Forslow”). Final Act. 3–8.

² This Appeal is closely related to Appeal 2012-008857 (Application 11/751,445) in which the Board’s Decision affirmed the rejection of all claims. We refer to the prior Board Decision as “Decision” or “Dec.”

We note Appellants’ Appeal Brief does not identify the Appeal 2012-008857 in its statement of Related Appeals and Interferences. App. Br. 3. We direct Appellants to 37 C.F.R. § 41.37(c)(ii) (2016), which states that Related Appeals should be identified in the Appeal Brief.

ANALYSIS

Appellants argue the Examiner errs in finding Forslow teaches the claim 6 limitations:

identifying, via the processor, audio fidelity information associated with the device; and

selecting, via the processor, a communication path within the multi-fidelity audio gateway for the communication based on the audio fidelity information associated with the device.

App. Br. 10–13; Reply Br. 2–5. (emphasis added).

According to Appellants, Forslow does not teach “identifying, via the processor, audio fidelity information associated with the device” because the Forslow teaches optimizing associated applications; not devices. App. Br. 10 (citing Forslow ¶ 54). According to Appellants:

The cited portions of Forslow describe that the choice between a circuit switched and a packet-switched bearer is made based on a requested quality of service for a specific application flow. An application flow is defined in ¶ [0015] of Forslow as “An application flow corresponds to a stream of data packets distinguishable as being associated with a particular host application. An example application flow is an electronic mail message from the mobile host to a fixed terminal. Another example application flow is a downloaded graphics file from a web site” (emphasis added). In other words, the requested quality of service is **based on** the application requesting the communication, not the audio fidelity information associated with the device, as set forth in claim 1. In fact, there is no indication that Forslow identifies the audio fidelity information associated with the calling device. As such, Forslow does not teach or suggest identifying, via the processor, audio fidelity information associated with the device.

Id. at 11 (emphasis in original).

Appellants argue Forslow does not teach “selecting . . . a communication path . . . for the communication based on the audio fidelity information associated with the device” because, although Forslow selects between circuit switching or packet-switching based on quality of service, the quality of service is not based on the audio fidelity information associated with the device (calling device) from which the communication is received. *Id.* at 11–13. According to Appellants, the quality of service is based on the type of communication (e.g., voice communication, video communication, the sending of data) and is not based on the audio fidelity information associated with the calling device. *Id.* at 12. Appellants refer to Forslow:

Forslow sets forth “A circuit-switched bearer is better suited to carrying real time services like voice and video that require low delay and/or small jitter. Traditional Internet data applications such as WWW, file transfer, e-mail, and telnet are better served by packet-switched bearers which are better suited to fast channel access and bursty data transfer” (see ¶ [0052] of Forslow). In other words, the quality of service required for a voice call from a cell phone would be **different** in Forslow than an email sent from the same cell phone. Thus, the voice call from the cell phone would use a circuit-switched bearer and an email sent from the same cell phone would use a packet-switched bearer. As such, the communication path in Forslow is not selected based on the audio fidelity information associated with the **device**.

Id. (citing Forslow ¶ 52). (emphasis in original).

The Examiner finds that Forslow teaches the limitation “identifying . . .” by identifying quality of service. Final Act. 4. (citing Forslow ¶ 54). The Examiner finds Forslow teaches “selecting . . . based on the audio fidelity information associated with the device” by selecting, based on

quality of service, circuit-switched or packet switched bearer. *Id.*
According to the Examiner, in Forslow, applications running on a mobile station may specify a requested quality of service, and with this information, select the type of bearer to be employed when transferring the application flow through the network. Ans. 3–4 (citing Forslow ¶ 27). The Examiner finds Forslow identifies various application flows: an audio application flow, a video application flow, and a conferencing application flow. *Id.* at 4 (citing Forslow ¶ 66). The Examiner finds quality of service includes peak bit rate and per packet delay, based on which a circuit-switched or a packet-switched bearer is selected to carry the specific application flow. *Id.* (citing Forslow ¶ 54). The Examiner explains, “[t]hus the quality of service required by the applications, e.g., audio, video, conferencing, running on the mobile station constitutes the fidelity information associated with the device.” *Id.*

The Examiner notes that Appellants’ argument relying on audio information associated with the “calling device” is unpersuasive because “calling device” is not cited in the claim. *Id.* (citing App. Br. 12).

Regarding “selecting . . . a communication path . . . for the communication based on the audio fidelity information associated with the device,” the Examiner finds Forslow describes that a circuit-switched bearer is better suited to carrying real time services like voice and video that require low delay and/or small jitter. *Id.* at 4–5 (citing App. Br.12; Forslow ¶ 52). The Examiner then finds “[i]n Forslow, applications running on the mobile station, i.e., device, require certain quality of service, i.e., fidelity

information, based on which a bearer is selected for that application, i.e., selecting a communication path.” *Id.* at 5.

Appellants reply to the Examiner’s response with arguments similar to those presented in the Appeal Brief. Reply Br. 2–5.

Regarding the Examiner’s statement that “calling device” is not recited in claim 6 (Final Act. 4), we note that the claim recites “receiving a communication . . . from a device,” “identifying . . . associated with the device,” and “selecting . . . based on . . . the device.” Therefore, it is not unreasonable for Appellants to refer to the device as a “calling device” (App. Br. 11) in making their argument as it is understood to refer to the device associated with the residence as claimed.

We are not persuaded of Examiner error by Appellants’ argument that Forslow does not teach “identifying, via the processor, audio fidelity information associated with the device” communication” because Appellants have not shown that the Examiner’s interpretation of “associated” is unreasonably broad or inconsistent with the Specification. That is, we agree with the Examiner that Forslow’s quality of service required by the applications run on the mobile station constitutes fidelity information *associated* with the device. A claim in a patent application is given the broadest reasonable interpretation consistent with the Specification, as understood by one of ordinary skill in the art. *In re Crish*, 393 F.3d 1253, 1256 (Fed. Cir. 2004). Great care should be taken to avoid reading limitations of the Specification into the claims. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

For similar reasons, we are not persuaded by Appellants' argument that Forslow does not teach "selecting . . . a communication path . . . for the communication based on the audio fidelity information associated with the device" because Forslow teaches quality of service is not based on the audio fidelity information associated with the device (calling device) from which the communication is received and instead is based on the type of communication (e.g. voice communication, video communication, the sending of data.). As discussed *supra*, as broadly but reasonably interpreted, Forslow teaches identifying audio fidelity information associated with the device, and the selection of a communication path is based on the fidelity information associated with the device.

Additionally, we are not persuaded by Appellants' argument, discussed *supra*, that the quality of service required for a voice call made from a cell phone would be different in Forslow than an email sent from the same cell phone wherein the voice call from the cell phone would use a circuit-switched bearer and an email sent from the same cell phone would use a packet-switched bearer. Appellants' conclusion that the communication path in Forslow is not selected *based* on the audio fidelity information associated with the device is not commensurate with the scope of the limitation which does not require that the communication path be selected based solely on the device.

In view of the above, we sustain the rejection of claim 6, and, for the same reasons, independent claim 12 in which Appellants argue Forslow does not teach "selecting a . . . communication path . . . based on the audio fidelity information associated with the device," and independent claims 37

and 40 which additionally recite “identifying audio fidelity information associated with the device.” We also sustain the rejection of dependent claims 7, 8, 10, 11, 13–17, 19, 20, 38, 39, and 41–43 as these claims are not argued separately. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2016).

Appellants argue the Examiner errs in finding the combination of Slotznick and Forslow teaches dependent claim 18 (which depends indirectly from independent claim 12) which recites “wherein the service module is to be received by the media system while the media system is operating.” App. Br. 14–15. Appellants argue the Examiner’s reference to Figure 5 and paragraph 128 of Slotznick is mistaken because paragraph 128 describes Figure 3. *Id.* at 15. According to Appellants, the Examiner’s citation of Slotznick does not mention a service module and does not mention any device being installed while the Slotznick system is in operation. *Id.* (citing Slotznick, Fig. 5, TV phone 321, ¶ 128).

The Examiner responds that paragraph 128 of Slotznick describes the components of Figure 3, which is the basis for Figure 5, and both Figures 3 and 5 are relied upon in the rejection. Ans. 6. The Examiner finds, as in the rejection of independent claim 6, the Slotznick TV phone 321 constitutes the use of the speech recognition module to translate spoken words into data commands, corresponding to processing when the communication is the speech command. *Id.* (citing Slotznick ¶ 132; *see* Final Act. 3). The Examiner finds Slotznick, Figures 3 and 5, depict communications among the components/modules of TV phone 321, thus disclosing the service module (speech recognition module) being received by the media system while the media system is operating. *Id.* The Examiner additionally notes

that Appellants' argument that relies on a device being *installed* while the system is in operation is not recited in dependent claim 18. *Id.*

Appellants reply, arguing that Slotznick teaches that the TV phone incorporates a speech recognition module 351 as an input device in addition to a keypad and “[i]ncorporating a speech recognition module does not teach or suggest **receiving** the speech recognition module while the TV phone is operating.” Reply Br. 5–7 (citing Slotznick, Figs. 3, 5; ¶ 132). According to Appellants, Slotznick teaches communication paths among different modules incorporated in a TV phone and this does not teach or suggest receiving modules into the TV phone during operation of the phone. *Id.* at 6. Appellants argue Slotznick does not mention the speech recognition module 351 being received while the system of Slotznick is in operation. *Id.*

We are not persuaded by Appellants' arguments and agree, instead, with the Examiner's findings. In particular, Slotznick's speech recognition module constitutes the service module and one of ordinary skill in the art would understand that the module would be in operation while the media system is working so as to enable the module to perform its function of speech recognition while the media system is operating. Therefore, we sustain the rejection of claim 18.

DECISION

We affirm the Examiner's decision rejecting claims 6–8, 10–20, and 37–43.

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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