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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MUMIN RANSOM and
PHILIP JOHN STROFFOLINO

Appeal 2018-003659
Application 14/570,243¹
Technology Center 2400

Before ERIC S. FRAHM, JENNIFER S. BISK, and JAMES W. DEJMEK,
Administrative Patent Judges.

Opinion for the Board filed by FRAHM, *Administrative Patent Judge.*

Concurring Opinion filed by DEJMEK, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's final decision rejecting claims 1–20 (Br. 1). We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ According to Appellants, the real party in interest is Comcast Cable Communications, LLC (App. Br. 1).

Appellants' Invention

The invention generally relates to providing content control in digital media systems using trick play operations, for example, a fast forward request or fast rewind request, when consuming content (Title; Spec. ¶ 1). More specifically, Appellants disclose and claim a method to allow consumers to view advertisements during media control by (i) providing simultaneous display of advertisements and programming (i.e., the recited first and second content) (Spec. ¶¶ 3–5, 55–68; Figs. 4, 5; claims 1, 11); or (ii) displaying second content items when the second content item duration is equal to or less than the duration of the first content item using a requested viewing speed for, and a duration of, the first content items (Spec. ¶¶ 6, 73–79; Fig. 6; claim 18).

Representative Claim

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method comprising:
 - receiving, by a content management device and from a user device, a first media control request while a first content item is being outputted for display, *the first media control request comprising an identifier that identifies the first content item;*
 - determining, by the content management device, a time point of the first content item associated with the first media control request;
 - determining, by the content management device, a second content item based on:
 - the time point of the first content item associated with the first media control request, the first content item, and
 - a requested viewing speed associated with the first media control request; and

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causing, by the content management device,
simultaneous display of the first content item and the second
content item by the user device.

Rejections on Appeal

Claims 1–7 and 10–20 stand rejected under 35 U.S.C. § 102(a)(1) as being anticipated by Carlucci (US 2004/0103429 A1; May 27, 2014). Final Act. 2–7.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Carlucci and Stern (US 2011/0243533 A1; published Oct. 6, 2011). Final Act. 8.

Claim 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carlucci and Bhogal (US 2015/0067714 A1; published March 5, 2015). Final Act. 9.

ANALYSIS

Anticipation

The Examiner finds (Final Act. 2–7; Ans. 2–7) Carlucci discloses all the limitations of independent claims 1, 11, and 18, including a “control request comprising an identifier that identifies the first content item” (claims 1 and 11), as well as “a first content item identifier” (claim 18). Appellants contend Carlucci’s I-frame identifier, sent with a fast-forward message and relied upon by the Examiner as disclosing a content item identifier, fails to disclose a content identifier because the I-frame identifier does not identify a content item (App. Br. 4–8; Reply Br. 2–3). We are persuaded by Appellants’ arguments.

We note that, in general, claim terms should be given their ordinary and customary meanings. *See CCS Fitness, Inc. v. Brunswick Corp.*, 288

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F.3d 1359, 1366 (Fed. Cir. 2002). But where the Specification sets forth “with reasonable clarity, deliberateness, and precision” a definition for a term that differs from the ordinary and customary meaning, that definition will control the interpretation of the term as it is used in the claim. *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994); *see also Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1478 (Fed. Cir. 1998) (“When the specification explains and defines a term used in the claims, without ambiguity or incompleteness, there is no need to search further for the meaning of the term.”).

Here, Appellants’ Specification provides that a media control request such as a fast forward request contains “a content item [which] can comprise playable content (e.g., video, images, audio, and combinations thereof) and content metadata” which may include a “content identifier (e.g., content id)” (Spec. ¶ 28). Appellants further disclose that the recited “first content item identifier can comprise any unique code that uniquely identifies a first content item” (Spec. ¶ 73).

As shown above, the Specification provides a description of a content item as a unique code that identifies a content item. This description is also supported by the ordinary and customary meaning attributed to “a content item identifier,” which is an identifier of, or for, a content item (where a content item is playable content as disclosed in paragraph 28 of the Specification).

Carlucci teaches (i) a “the user may issue a fast-forward command . . . by pressing a fast-forward key on the remote control, to fast-forward the program;” (ii) then in response Carlucci’s terminal 158-1 issues a fast-forward message; and (iii) “[t]his fast-forward message includes a fast-forward initiation command, the fast-forward speed specified by the user,

[and] the last I-frame identifier registered” (Carlucci ¶ 72). “After processor 119 reads the received fast-forward message, processor 119 retrieves the record associated with set-top terminal 158-1” and uses the record to know “the identity of the program being transmitted” (Carlucci ¶ 73). Then, “based on the last I-frame identifier in the received fast-forward message, processor 119 determines whether the fast-forward command is issued by the user during a show segment (e.g., 231, 233, 235) or a commercial segment (e.g., 221, 227)” (Carlucci ¶ 73). In other words, Carlucci’s *record* is a content item identifier as recited in the claims on appeal, and the last I-frame identifier is used to determine the location of the program content position. Furthermore, Carlucci’s record (i.e., the recited content item identifier) is not part of the fast-forward message sent by the user’s device input as required by each of independent claims 1, 11, and 18.

In this light, we agree with Appellants’ contentions that (i) “it is clear that the last I-frame identifier registered by the terminal does not identify a content item because the system of *Carlucci* retrieves the record AFTER receiving the fast-forward message” (App. Br. 6); (ii) “while *Carlucci* discloses a fast-forward message, *Carlucci* fails to disclose that the fast-forward message includes any content identifier” (App. Br. 7); and (iii) “the I-frame identifier does not identify the content item” (Reply Br. 2, 3).

We are, therefore, constrained by the record to find the Examiner erred in rejecting as anticipated independent claims 1, 11, and 18, as well as dependent claims 2–7, 10, and 12–20 for the same reasons.

Obviousness

The Examiner (*see* Final Act. 8–9; Ans. 14–16) has not shown the Stern or Bhogal references cure the deficiency of Carlucci discussed above with respect to claim 1, from which claims 8 and 9 ultimately depend.

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Accordingly, we are also constrained by the record to find the Examiner erred in rejecting claims 8 and 9 as obvious.

CONCLUSIONS

Under 35 U.S.C. § 102(a)(1), the Examiner erred in rejecting claims 1–7 and 10–20.

Under 35 U.S.C. § 103(a), the Examiner erred in rejecting claims 8 and 9.

DECISION²

We reverse the Examiner’s decision to reject claims 1–10.

REVERSED

² Our finding is directed to a determination of whether or not Carlucci has been shown to anticipate the invention set forth in claims 1, 11, and 18. The Patent Trial and Appeal Board is a review body, rather than a place of initial examination. Should there be further prosecution of claims 1–7, we leave to the Examiner to consider the appropriateness of further rejection(s) of independent claim 1 and its respective dependent claims under 35 U.S.C. § 103(a) over the cited reference applied differently or in combination with additional references. Although we do not find Carlucci to be an anticipatory disclosure with respect to the control request including a first content item identifier recited in claims 1, 11, and 18, the Examiner may wish to consider Carlucci’s disclosure of, including but not limited to, an IP/MAC address being included with the last I-frame identifier in the fast-forward message (Carlucci ¶¶ 73, 74), under an obviousness analysis in the event of further prosecution of this application.

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Before ERIC S. FRAHM, JENNIFER S. BISK, and
JAMES W. DEJMEK, *Administrative Patent Judges*.

DEJMEK, *Administrative Patent Judge*.

CONCURRING OPINION

Although I concur with the Majority in reversing the Examiner's decision to reject claim 1, *inter alia*, under 35 U.S.C. § 102(a)(1), I write separately because I find the Examiner has not set forth persuasive evidence or reasoning that Carlucci discloses the disputed limitation of "receiving, by a content management device and from a user device, a first media control request while a first media content item is being outputted for display, the first media control request comprising an identifier that identifies the first content item," as recited in claim 1.

Similar to Appellants' disclosed and claimed invention, Carlucci generally relates to presenting an alternate commercial when a user attempts

to fast-forward over a commercial present within a program stream.

Carlucci ¶ 13, Abstract. Carlucci describes a program stream compliant with the Moving Pictures Experts Group 2 (MPEG-2) standard in which “video data may be compressed based on a sequence of groups of pictures (GOPs), made up of three types of picture frames—intra-coded picture frames (‘I-frames’), forward predictive frames (‘P-frames’) and bilinear frames (‘B-frames’).” Carlucci ¶¶ 2–3. In a disclosed embodiment, Carlucci describes a user viewing programming content may issue a fast-forward command to skip over commercials in the programming content. Carlucci ¶ 29. Depending on the selected fast-forward speed (e.g., 2x or 10x), an alternate commercial suitable for the selected speed is presented to the user. Carlucci ¶ 29.

Figure 3 of Carlucci is illustrative and is reproduced below:

FIG. 3

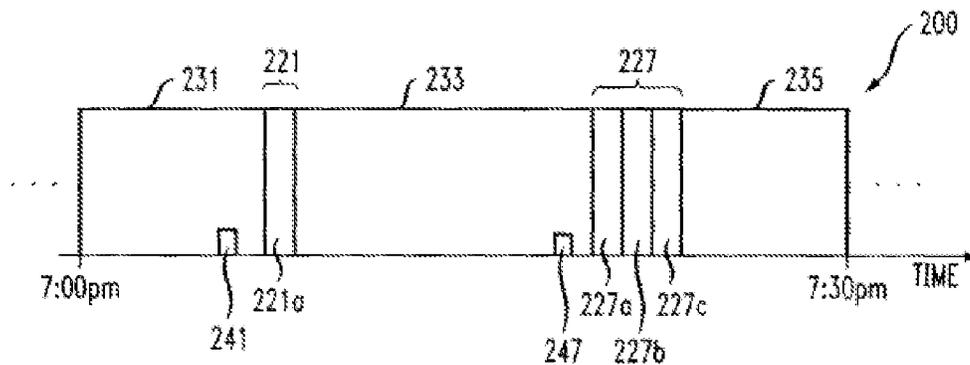


Figure 3 of Carlucci illustrates a television program stream (200) comprising three show segments (231, 233, and 235) interleaved with two commercial segments (221 and 227). Carlucci ¶¶ 18, 37. Carlucci describes the first commercial segment (221) as comprising commercial (221a) and the second commercial segment (227) as comprising commercials (227a, 227b, and 227c). Carlucci ¶ 37. Also illustrated are two digital cue messages (241 and

247). Carlucci ¶ 39. Each digital cue message is associated with an upcoming commercial segment (e.g., digital cue message (241) is associated with commercial segment (221)). Carlucci ¶ 39. The digital cue message contains information about the upcoming commercials in the commercial segment including the identities of the commercials (e.g., 221a), the duration of the commercials, and the beginning and last I-frame of each commercial. Carlucci ¶ 39. Carlucci discloses that commercials may be identified by different codes. Carlucci ¶ 39. Further, Carlucci describes that in response to a digital cue message, a play list manager (located within the headend) generates a commercial branch table for each commercial in the upcoming commercial segment. Figure 4 of Carlucci is illustrative of a commercial branch table and is reproduced below:

FIG. 4
300

COMMERCIAL 221a BEGINNING I-FRAME: 11003 ENDING I-FRAME: 12501		
SPEED (DURATION)	FAST-FORWARD	REWIND
10X (3 sec.)	A1	B1
6X (5 sec.)	A2	B2
3X (10 sec.)	A3	B3
2X (15 sec.)	A4	B4

Figure 4 of Carlucci illustrates a commercial branch table (300) corresponding to commercial (221a). Carlucci ¶ 40. As shown, the commercial branch table comprises alternate commercial content codes (A1, A2, A3, A4, B1, B2, B3, and B4) corresponding to the command (i.e., fast-

forward or rewind) and selected speed of the operation (i.e., 2x, 3x, 6x, and 10x). Carlucci ¶ 42. As is also shown, the play list manager also populates the beginning and ending I-frames of the commercial (221a). Carlucci ¶ 42.

As an example of operation, Carlucci describes if a user issues a fast-forward command at 2x speed, instead of playing commercial (221a) at 2x speed (which, Carlucci describes, would render the commercial unintelligible), an alternate commercial, identified by A4, would be substituted to be played. Carlucci ¶ 41. Similarly, if the user issued a fast-forward command and a speed of 10x, alternate commercial A1 would be presented to the user. Carlucci ¶ 41.

Carlucci further describes that when a user issues a fast-forward command, a fast-forward message is sent from the local device (e.g., a set-top box) to a processor at the headend. Carlucci ¶ 72, *see also* Carlucci, Fig. 2. Carlucci discloses the fast-forward message includes “the fast-forward initiation command, the fast-forward speed specified by the user, the last I-frame identifier registered by . . . [the local device], and the IP address (and/or MAC address) identifying . . . [the local device].” Carlucci ¶ 72. Carlucci further discloses:

After processor **119** reads the received fast-forward message, processor **119** retrieves the record associated with set-top terminal **158-1** identified by the received IP address (and/or MAC address). Knowing from the record the identity of the program being transmitted, and based on the last I-frame identifier in the received fast-forward message, processor **119** determines whether the fast-forward command is issued by the user during a show segment (e.g., **231, 233, 235**) or a commercial segment (e.g., **221, 227**), as indicated at step **1003** in **FIG. 10**.

Carlucci ¶ 73. Regarding the “record” referenced in paragraph 73 of Carlucci, Carlucci discloses when an initial request to watch a desired

program stream is received from the user (e.g., play program channel 2), the “[p]rocessor (119) keeps, for terminal 158-1 [(i.e., the local device)], a record identified by the IP (and/or MAC) address of terminal 158-1, and tracks the program being transmitted to terminal 158-1 and its I-frame progress.” Carlucci ¶ 56.

In other words, the IP (and/or MAC) address is associated with, *and used to identify*, the record of the program being presented to the user, whereas the last I-frame identifier is used to determine how far the program stream has progressed. Because the IP (and/or MAC) address and last I-frame are sent as part of a media control request (i.e., fast-forward command), I would find Carlucci discloses a media control request comprising an identifier that identifies the content item being presented to the user.³

Instead, the Examiner explains Carlucci’s I-frame identifier is used in conjunction with the record of the program in order to determine the claimed first content item. Ans. 11–12. The Examiner further states that because the I-frame identifier is used as part of the identification process, it is “enough to interpret the I-frame identifier as ‘an identifier that identifies the first content item.’” Ans. 11–12. However, I do not find the Examiner has provided sufficient persuasive evidence and explanation as to how Carlucci discloses using the I-frame identifier, alone or in conjunction with other information, to identify the claimed content item.

³ Although the Board is authorized to reject claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See* Manual of Patent Examining Procedure (MPEP) § 1213.02 (9th ed. Rev. 08.2017, Jan. 2018).

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For the foregoing reasons, I concur with the Majority in reversing the Examiner's decision to reject independent claims 1, 11, and 18 under 35 U.S.C. § 102(a)(1).