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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/856,466	08/13/2010	Eli CHEN	NETF/0026	2182

108911 7590 02/04/2019

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EXAMINER
MCADAMS, BRAD

ART UNIT	PAPER NUMBER
2456	

NOTIFICATION DATE	DELIVERY MODE
02/04/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ELI CHEN and GREG PETERS

Appeal 2018-003883
Application 12/856,466[1]
Technology Center 2400

Before BRADLEY W. BAUMEISTER, JAMES B. ARPIN, and IRVIN E. BRANCH, *Administrative Patent Judges*.

BRANCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–18 and 20–23, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Technology

The application relates to "synchronizing playback of digital content on two or more different content players." Spec. Abstract.

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[1] According to Appellants, the real party in interest is Netflix, Inc. App. Br. 3.

Illustrative Claim

Claim 1 is reproduced below for reference with the argued limitations emphasized:

> 1. A method for playing a digital content title synchronously across a plurality of endpoint devices, the method comprising:
>
> transmitting, to a content server, a playback session identifier that uniquely identifies a session of two or more sessions, of which each session facilitates synchronous playback of the digital content title across multiple endpoint devices;
>
> *transmitting, from a first endpoint device and to the content server, an event request that includes a playback command and a specified time for executing the playback command, wherein the first endpoint device and the content server comprise different machines coupled to one another via a communications network;*
>
> *receiving, by the first endpoint device and from the content server, an event command that includes the playback command and the specified time for executing the playback command*; and
>
> scheduling, by the first endpoint device, the playback command for execution at the specified time based on a local time signal that has been synchronized to a time reference signal.

References and Rejection[2]

Claims 1–18 and 20–23 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Bradley (US 2007/0250761 A1; publ. Oct. 25,

[2] Rather than repeat the Examiner's positions and Appellants' arguments in their entirety, we refer to the above-mentioned Appeal Brief filed August 17, 2017 ("App. Br."), as well as the following documents for their respective details: the Final Office Action mailed May 18, 2017 ("Final Act."), the Examiner's Answer mailed December 26, 2017 ("Ans."), and Appellants' Reply Brief filed February 26, 2018 ("Reply Br.").

2007) and Schmidt (US 2009/0249222 A1; publ. Oct. 1, 2009). Final Act. 3–8.

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellants' arguments. We have considered in this Decision only those arguments Appellants actually raised in the Briefs. Any other arguments Appellants 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).

Because Appellants argue the claims collectively (*see* App. Br. 10–12), our decision with respect to claim 1 is dispositive of all issues on appeal.

Appellants argue error in the Examiner's rejection of claim 1 based on the limitations emphasized above. *Id.* More specifically, Appellants argue that the references do not teach or suggest a client device both transmitting and receiving the same playback command. *Id.*; *see* Reply Br. 3–4.

Appellants acknowledge that "Bradley discloses that a user can start synchronized playback across multiple client devices 50 through the user interface of the media application 22 executing on the host 20" and that "the host device 20 sends a command to each client device 50 to initiate playback." App. Br. 10 (citing Bradly ¶ 45). Appellants do not dispute that Schmidt discloses "client devices send[ing] timed playback requests to the server device." Reply Br. 3 (restating the Examiner's response to Appellants' arguments (Ans. 9–10)); *see* Schmidt ¶ 23. Appellants' argue error because neither reference *individually* discloses the same playback command being transmitted and then received. App. Br. 10–12; Reply Br. 3–4.

Appellants' arguments are unpersuasive because they are directed to the references individually. *Id.* "Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references." *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). As such, Appellants' arguments do not persuasively establish error in the Examiner's rejection, which is based on the *combined* teachings of the references.

Accordingly, we sustain the Examiner's rejection of claim 1, and claims 2–18 and 20–23, which Appellants argue therewith. *See* App. Br. 12.

DECISION

For the reasons above, we affirm the Examiner's decision rejecting claims 1–18 and 20–23.

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. § 41.50(f).

AFFIRMED