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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LUIS J. BOTERO[1]

Appeal 2018-004008
Application 13/649,521
Technology Center 2100

Before MICHAEL J. STRAUSS, NABEEL U. KHAN, and PHILLIP A. BENNETT, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] According to Appellant, the real party in interest is Dell Products L.P. *See* App. Br. 1.

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a rejection of claims 1, 4–7, 10–13, and 16–18. Claims 2, 3, 8, 9, 14, and 15 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.[2]

THE INVENTION

The claims are directed to a responsive images service. Spec., Title. Claim 1, reproduced below, is representative of the claimed subject matter:

> 1. A computer-implementable method for automating the management of a device description repository (DDR), the DDR comprising a repository of data associated with properties of a user device, comprising:
>
> receiving a first user-agent identifier and a request for a first image, the first user-agent identifier comprising identification information that can be used to identify client software originating the request for the first image;
>
> receiving a first set of device properties associated with the first user-agent identifier;
>
> using the first user-agent identifier to search the DDR for a second user-agent identifier, the first user-agent identifier matching the second user-agent identifier;
>
> processing the first set of device properties to initiate the provision of the first image if the second user-agent identifier is not found, the first image compatible with the first set of device properties;
>
> indexing the first user-agent identifier to the first set of device properties and to the first image; and
>
> storing the indexed first user-agent identifier and the first set of device properties in the DDR so as to provide automatic management of the DDR; and wherein

[2] We refer to the Specification, filed October 11, 2012 ("Spec."); the Final Office Action, mailed March 29, 2017 ("Final Act."); Appeal Brief, filed August 24, 2017 ("Br."); and the Examiner's Answer, mailed December 14, 2017 ("Ans.").

the first user-agent identifier and the request for the first image is received from a web browser processing a web page;
the first set of device properties is provided by a device detection script embedded in the web page, the execution of the device detection script initiated by the processing of the web page by the web browser;
the second user-agent identifier is found in the DDR; and
the second user-agent identifier is associated with a second set of device properties stored in the DDR.

REFERENCES

The following prior art is relied upon by the Examiner in rejecting the claims on appeal:

Watson	US 2004/0049574 A1	Mar. 11, 2004
Hanson	US 8,555,384 B1	Oct. 8, 2013

REJECTION

The Examiner rejects claims 1, 4–7, 10–13, and 16–18 under 35 U.S.C. § 103(a) as being unpatentable over Watson and Hanson.

ANALYSIS

Appellant's contentions are unpersuasive of reversible Examiner error. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 2–10, Ans. 3–9) and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellant's Appeal Brief (Ans. 9–14) and concur with the conclusions reached by the Examiner. We highlight the following for emphasis, adopting the Examiner's issue designation numbering appearing in the Answer for consistency of reference.

1a – The Device Description Repository (DDR) Definition

Appellant contends the Device Description Repository (DDR) of claim 1 would have been understood to be "a standard interface and an initial core vocabulary of device properties of the user device as defined by the Mobile Web Initiative Device Description Working Group." Br. 3. Appellant argues Watson fails to disclose or suggest such a DDR. *Id.* The Examiner responds that Appellant's asserted definition is not found in the Specification and that, under a broad but reasonable interpretation, Watson's device policy tables 40 teach or suggest the disputed DDR. Ans. 10.

Appellant's contention is not persuasive. As explained by the Examiner, the Specification fails to evidence that the DDR of the claims is limited to the argued definition of the Mobile Web Initiative Device Description Working Group. Nor does Appellant provide other persuasive evidence supporting the argument that one skilled in the art, at the time of the invention, would have understood a DDR as requiring limitations imposed by the asserted standard. To the contrary, the Specification discloses "[a]s used herein, a DDR 212 broadly refers to a repository of data associated with the properties of a target device, such as user devices 204." Spec. ¶ 17. Thus, the Specification discloses the DDR as merely a repository of data, not a particular machine or functionality defined as per the argued Mobile Web Initiative Device Description Working Group standard. Appellant's argument is further unpersuasive for failure to identify particular features or functions of the argued DDR that distinguish it over Watson's device policy tables 40 of memory 22.

1b – Automating Management of the DDR

Appellant contends Watson fails to disclose automating management of a DDR. Br. 3. The Examiner responds, explaining Watson's database 19 stores data objects that are automatically selected to allow a determination of whether a user device is capable of receiving and displaying a data object. Ans. 10. The Examiner finds the described functionality teaches or suggests automating management of the DDR as claimed. *Id.* Appellant does not reply.

Appellant's contention is not persuasive for lack of sufficient explanation of what features of the recited automated management of the DDR are absent from Watson. Merely reciting a claim limitation and asserting it is not present falls short of identifying an error in the Examiner's rejection as required on appeal. Arguments must address the Examiner's action. 37 C.F.R. § 41.37(c)(1)(iv) ("The arguments shall explain why the examiner erred as to each ground of rejection contested by appellant."); *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) ("[T]he Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art"). Therefore, under a broad but reasonable interpretation, we agree with the Examiner that Watson's component logic software module provides functionality teaching or suggesting the disputed limitation.

1c – Receiving a Request for a First Image

Appellant contends Watson's extraction of a device type for identifying a remote user device fails to disclose a request for a first image or that the user-agent identifier comprises identification information that can

be used to identify client software originating the request for the first image. Br. 4. The Examiner responds that Watson discloses a request for a webpage that results in the return of versions of image objects to be displayed within the webpage thereby teaching or suggesting a request for a first image. Ans. 11. The Examiner further explains Watson's extraction of a device type identifier by retrieving the name of the user-agent of the device originating the request teaches or suggests identification information that can be used to identify client software originating the request for the first image. Ans. 12. Appellant does not reply.

Appellant's contention is unpersuasive because it fails to adequately address the Examiner's findings. In particular, Appellant's argument lacks sufficient explanation of why the name of the user-agent does not teach or suggest to one skilled in the art that it could be used to identify client software. 37 C.F.R. § 41.37(c)(1)(iv). Therefore, in the absence of persuasive evidence or argument to the contrary, we agree that one skilled in the art would have understood that a user-agent identifier would have been sufficient to identify the associated software.

1d – Using a 1st User-Agent ID to Search DDR for a 2nd User-Agent ID

Appellant contends Watson's temporary update message, which provides a nearest appropriate existing device type identifier when an exact match cannot be found, fails to disclose using a first user-agent identifier to search a DDR for a second user-agent identifier. Br. 4. The Examiner responds, explaining:

> Watson discloses the determination of a remote user device of a new type, e.g. a latest version of a mobile telephone with different display capabilities [Watson, para 119]. Watson discloses that when it is determined that a device type identifier cannot be extracted from the request message (because it is a

> new unstored device type and therefore an unknown identification stream) [para 121], a temporary update message is generated to provide production server with a nearest appropriate device type identifier (second user agent identifier) that is capable of being interpreted and displayed by the device [para 129].

Ans. 12.

Appellant's contention is unpersuasive of Examiner error. Although asserting "using a first user-agent identifier to search a DDR for a second user-agent identifier is patentably distinct from the disclosed process of Watson when a request message contains an unknown identification stream" (Br. 4), Appellant fails to explain why Watson's nearest appropriate type identifier is not equivalent to, or at least suggests, the claimed second-user agent identifier.

1e – Storing 1st User Agent ID and Device Properties in DDR

The Examiner finds Watson's database 19 stores data objects by indexing device type identifiers to device capabilities to allow automatic selection of an appropriate data object version and determination of whether a given user device is capable of receiving and displaying the data object. Final Act. 5–6. Therefore, according to the Examiner, Watson teaches or suggests the limitation of "storing the indexed first user-agent identifier and the first set of device properties in the DDR so as to provide automatic management of the DDR." *Id.* Appellant contends Watson fails to disclose or suggest the disputed limitation. Br. 4. However, other than the naked assertion that Watson is deficient, Appellant fails to address the Examiner's findings. As explained above, such conclusory argument is insufficient to persuade us of Examiner error. 37 C.F.R. § 41.37(c)(1)(iv).

1f – Device Description Script Embedded in Web Page

The Examiner finds the combination of Watson and Hanson teaches or suggests the limitation of the first set of device properties is provided by a device detection script embedded in the web page, the execution of the device detection script initiated by the processing of the web page by the web browser. Final Act. 6–7. According to the Examiner, Watson teaches providing the first set of device properties (*id.*) and Hanson teaches providing or collecting data using a script embedded in a web page (*id.* at 7). Appellant contends

> [N]owhere within . . . Hanson . . . is there any disclosure or suggestion of a first set of device properties being provided by *a device detection script* ***embedded in the web page***, much less the execution of the ***device detection script initiated by the processing of the web page by the web browser***, as required by claims 1, 7 and 13.

Br. 5.

Appellant's contention is unpersuasive because, other than alleging Hanson is deficient, Appellant fails to address the Examiner's findings and, in particular, explain why Hanson's fraud detection applet fails to teach or suggest the disputed web page having with embedded script. Therefore, in the absence of sufficient evidence or argument, we are unpersuaded of Examiner error.

Accordingly, we sustain the rejections of independent claim 1 and, for the same reasons, independent claims 7 and 13 under 35 U.S.C. § 103(a) over Watson and Hanson together with the rejection of dependent claims 4–6, 10–12, and 16–18 not argued separately.

DECISION

We affirm the Examiner's decision to reject claims 1, 4–7, 10–13, and 16–18 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED