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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK THOMPSON, ROBERT M. LUPA,
and PHILIP A. MUNIE

Appeal 2018-004283
Application 12/782,404
Technology Center 2400

Before ALLEN R, MacDONALD, CAROLYN D. THOMAS, and DAVID CUTITTA, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from a Final Rejection of claims 1–32. Appeal Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

[1] Appellant identifies the real party in interest as Hunter Systems Group, Inc., Ltd. Appeal Br. 1.

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of the claimed subject matter (emphasis, formatting, and bracketed material added):

> 1. A mug shot acquisition system for acquiring mug shot images of a subject posed in front of a background, including a processor and a storage device including instructions configured to run on the processor, comprising:
>
> [A.] an image acquisition interface operative to receive digital mug shot images from an imaging device that is positioned to acquire images of the subject posed in front of the background,
>
> [B.] a user interface presented on a display and responsive to system user input, including:
>
> [i.] a control to cause a mug shot image to be acquired by the imaging device,
>
> [ii.] an image viewing display responsive to the image acquisition interface and operative to display the received digital mug shot images,
>
> [ii.] one or more standards-based image adjustment software tools
>
> [a.] ***operative to provide feedback to the user*** about compliance of acquired images to at least one predetermined mug shot uniformity standard, and
>
> [b.] operative to prevent the user from exporting the digital mug shot images that fail to meet the predetermined mug shot uniformity standard, and
>
> [c. operative] to allow the user to adjust the digital mug shot images to meet the predetermined mug shot image uniformity standard,
>
> [C.] a software interface constructed to allow a transfer of control to the mug shot acquisition system from another application that is running on an operating system platform and wherein the software interface also includes a user

interface presented on the same display and also responsive to system user input, and

[D.] an image export interface operative to export digital mug shot images adjusted based on the standards-based image adjustment software.

REFERENCES[2]

The prior art relied upon by the Examiner is:

Name	Reference	Date
Lawrence	US 2004/0024694 A1	Feb. 5, 2004
Xiong	"Mugshot Database Acquisition In Video Surveillance Networks Using Incremental Auto-Clustering Quality Measures;" Proceedings of the IEEE Conference on Advanced Video and Signal Based Surveillance (AVSS'03).	2003

REJECTIONS

The Examiner rejects claims 1–3, 8, 17, 18, 20, 22, and 24–30 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Xiong and Lawrence. Non-Final Act. 3–7. We select claim 1 as the representative claim for this rejection. The contentions discussed herein as to claim 1 are determinative as to this rejection.

The Examiner rejects claims 4–7, 9–16, 19, 21, 23, 31, and 32 under 35 U.S.C. § 103(a) as being unpatentable over various combinations of Xiong, Lawrence, and numerous other references. Non-Final Act. 7–10.

[2] All citations herein to the references are by reference to the first named inventor/author only.

The contentions discussed herein as to claim 1 are determinative as to these rejections.

Therefore, except for our ultimate decision, we do not address claims 2–32 further herein.

OPINION

We have reviewed the Examiner's rejections in light of Appellant's arguments that the Examiner has erred. Appellant's contentions we discuss are determinative as to the rejections on appeal. Therefore, Appellant's other contentions are not discussed in detail herein.

A.

We determine that the Examiner's June 29, 2016, non-final rejection is silent as to the "operative to provide feedback to the user" limitation of claim 1.

B.

Appellant contends that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) because:

> Lawrence discloses using images from cameras to assess risk and Xiong discloses automatic evaluation of mug shot candidates. Neither of them discloses 1) "one or more standards-based image adjustment software tools o***perative to provide feedback to the user*** about compliance of acquired images to at least one predetermined mug shot uniformity standard[.]"

Appeal Br. 5 (emphasis added).

C.

The Examiner responds:

> Xiong teaches one or more standards-based image adjustment software tools ***operative to provide feedback to the***

> ***user*** about compliance of acquired images to at least one predetermined mug shot uniformly standard (**Section 1 last paragraph**, "as mug shot candidates with high intrinsic value are produced, they are only added to the mugshot database if, by doing so, the overall quality of the database is increased . . ." . . . (**abstract**; **sections 1, 5 and 6**). Therefore, this argument is not persuasive.

Ans. 14 (additional emphasis added).

D.

As articulated by the Federal Circuit, the Examiner's burden of proving non-patentability is by a preponderance of the evidence. *See In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) ("preponderance of the evidence is the standard that must be met by the PTO in making rejections"). "A rejection based on section 103 clearly must rest on a factual basis[.]" *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). "The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis." *Id.* We conclude the Examiner's analysis fails to meet this standard because the rejections do not adequately explain the Examiner's findings of fact.

Particularly, we agree with Appellant that the language of claim 1 requires the software tools be "operative to provide feedback to the user," and we disagree with the Examiner's belated reasoning in the Answer that Xiong alone without more is sufficient to show such a feedback function. Ans. 4. Our concern is that we find nothing in the Examiner's reasoning that even arguably shows the Xiong reference describes "feedback to the user."

We conclude, consistent with Appellant's arguments, that there is insufficient articulated reasoning to support the Examiner's finding that

Xiong teaches, "standards-based image adjustment software tools operative to provide feedback to the user," as required by claim 1.

Therefore, we conclude that there is insufficient articulated reasoning to support the Examiner's final conclusion that claim 1 would have been obvious to one of ordinary skill in the art at the time of Appellant's invention.

CONCLUSION

The Appellant has demonstrated the Examiner erred in rejecting claims 1–32 as being unpatentable under 35 U.S.C. § 103(a).

The Examiner's rejections of claims 1–32 as being unpatentable under 35 U.S.C. § 103(a) are **reversed**.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–32	103(a)	Xiong, Lawrence		1–32
Overall Outcome				**1–32**

REVERSED