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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THIBAUT LABARRE, YIWEN CHANG, and MARION HELENE DESMAZIERES

Appeal 2018-004976
Application 14/625,933
Technology Center 2400

Before ERIC B. CHEN, BARBARA A. BENOIT, and PHILLIP A. BENNETT, *Administrative Patent Judges.*

BENNETT, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant,[1] Amazon Technologies, Inc., appeals from the Examiner's decision to reject claims 1–20. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

[1] We use the word "Appellant" to refer to "Applicant" as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Amazon Technologies, Inc. App. Br. 1.

CLAIMED SUBJECT MATTER

The claims relate to synchronizing a client device with media content for scene-specific notifications. Spec., Title. Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A non-transitory computer-readable medium having program code stored thereon executable by at least one computing device that, when executed by the at least one computing device, causes the at least one computing device to:
>
> synchronize a client application of a mobile client device with media content being rendered by a media device using at least one of an audio signal or a video signal captured by the mobile client device during a playback of the media content, the audio signal or the video signal embodying a captured portion of the media content;
>
> in response to the client application being synchronized with the media content being rendered by the media device, cause a display of a first user interface that comprises a plurality of tags describing content of a plurality of upcoming scenes associated with the media content;
>
> receive a selection of at least one of the plurality of tags as selected in the client application;
>
> determine a current scene of the media content being rendered by the media device during the playback by comparing the audio signal or the video signal to at least one digital fingerprint stored in a data store;
>
> identify content in the plurality of upcoming scenes of the media content being rendered by identifying and analyzing a portion of the plurality of tags from the data store descriptive of the content in the plurality of upcoming scenes, the plurality of upcoming scenes to be rendered after the current scene in the playback of the media content, the at least one of the plurality of tags being submitted by individual ones of a plurality of users and being associated with a metric indicating a reliability that the at least one tag is descriptive of the content in the plurality of upcoming scenes;
>
> determine whether the content in at least one of the plurality of upcoming scenes satisfies criteria predefined in the

client application of the client device by comparing the at least one of the plurality of tags as selected in the client application to the portion of the plurality of tags as identified from the data store; and

in response to the content in the at least one of the plurality of scenes satisfying the criteria, cause a display of a second user interface that comprises a countdown timer in anticipation of the at least one of the plurality of scenes satisfying the criteria, wherein the client application displays the second user interface within a predefined temporal range of the at least one of the plurality of upcoming scenes.

App. Br. 29–30 (Claims Appendix).

REFERENCES

The prior art relied upon by the Examiner is:

Green	US 2009/0037961 A1	Feb. 5, 2009
Kandekar	US 2009/0288131 A1	Nov. 19, 2009
Thomas	US 2011/0078736 A1	Mar. 31, 2011
Elliott	US 2014/0215535 A1	Jul. 31, 2014
Lee	US 2015/0019976 A1	Jan. 15, 2015
Conte	US 2015/0245103 A1	Aug. 27, 2015

REJECTIONS[2]

Claims 1, 3–6, 8–10, 12, 13, 19, and 20 are rejected under 35 U.S.C. § 103 as being unpatentable over Kandekar, Elliot, and Thomas. Final Act. 2–6.

[2] Although identified as rejected on the Office Action Summary page, the Examiner does not set forth any basis for rejecting claim 16. Based on the Summary page, we consider claim 16 to stand rejected, and we do not sustain the rejection of claim 16. It is the Examiner's burden in the first instance to provide the basis for rejecting a claim, and the Examiner has not done so here. *Hyatt v. Dudas*, 492 F.3d 1365, 1369–70 (Fed. Cir. 2007) ("In the prosecution of a patent, the initial burden falls on the PTO to set forth the basis for any rejection, i.e., a prima facie case.") (internal citations omitted).

Claims 2, 7, 17, and 18 are rejected under 35 U.S.C. § 103 as being unpatentable over Kandekar, Elliot, Thomas, and Conte. Final Act. 6–8.

Claim 11 is rejected under 35 U.S.C. § 103 as being unpatentable over Kandekar, Elliot, Thomas, and Green. Final Act. 8–9.

Claims 14 and 15 are rejected under 35 U.S.C. § 103 as being unpatentable over Kandekar, Elliot, Thomas, and Lee. Final Act. 9–10.

ISSUES

First Issue: Has the Examiner erred in finding the cited references teach or suggest "in response to the client application being synchronized with the media content being rendered by the media device, cause a display of a first user interface that comprises a plurality of tags describing content of a plurality of upcoming scenes associated with the media content," as recited in claim 1?

Second Issue: Has the Examiner erred in finding the cited references teach or suggest "the at least one of the plurality of tags being submitted by individual ones of a plurality of users and being associated with a metric indicating a reliability that the at least one tag is descriptive of the content in the plurality of upcoming scenes," as recited in claim 1?

Third Issue: Has the Examiner erred in finding that a person of ordinary skill in the art would have had a reason to combine the teachings of Kandekar, Elliot, and Thomas?

Fourth Issue: Has the Examiner erred in finding the cited references teach or suggest "generate or update the metric based at least in part on a vote submitted by individual ones of the plurality of users made through the network site user interface" and "determine that the metric associated with the at least one tag exceeds a predefined reliability threshold indicating that

the at least one tag is descriptive of the at least one of the plurality of upcoming scenes," as recited in dependent claim 2?

Fifth Issue: Has the Examiner erred in finding the cited references teach or suggest "wherein monitoring, by the client device, the user of the client device further comprises tracking, by the client device, an eye movement of the user using a camera associated with the client device," as recited in claim 15?

ANALYSIS

First Issue

The Examiner rejects claim 1 as obvious over Kandekar, Elliot, and Thomas. Relevant to this issue, the Examiner finds that Kandekar teaches the limitation "in response to the client application being synchronized with the media content being rendered by the media device, cause a display of a first user interface that comprises a plurality of tags describing content of a plurality of upcoming scenes associated with the media content." Final Act. 3 (citing Kandekar ¶¶ 31–32).

Appellant argues the Examiner has erred because Kandekar does not teach that any display of a first interface is "in response to the client application being synchronized with the media content." App. Br. 14. More specifically, Appellant argues Kandekar "merely discusses synchronizing a 'media item with [a] script or lyrics,' which is not synchronizing 'a client application of a mobile client device with media content being rendered by a media device.'" App. Br. 15; Reply Br. 3–4 (citing Kandekar ¶ 43). Appellant asserts Kandekar's client device pairs with the set top box using a local wireless connection such as Bluetooth, which obviates the need for synchronization. App. Br. 15 (citing Kandekar ¶¶ 28–29). Appellant further

contends that claim 1 does not require any such wireless connection because "a current scene of media content must first be determined using an audio or video sample collected in an environment, the device must be synchronized with the playing content, and upcoming scenes must be determined after synchronization." Reply Br. 5.

We are not persuaded by Appellant's argument. Appellant does not appear to dispute that Kandekar teaches "caus[ing] a display of a first user interface that comprises a plurality of tags describing content of a plurality of upcoming scenes associated with the media content." Instead, Appellant argues that Kandekar's display does not meet the requirement in claim 1 that the display of the tags be "in response to the client application being synchronized with the media content being rendered by the media device."

In evaluating the patentability of claims, "the PTO gives a disputed claim term its broadest reasonable interpretation." *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004). Appellant's Specification does not provide a definition for "synchronize." One dictionary defines "synchronize" as "cause to occur at the same time or rate." *Synchronize*, New Oxford American Dictionary 1761 (3d. ed. 2010). The Examiner finds that Kandekar's mobile device synchronizes with the media content being rendered because it presents alerts to the user "during playback of a media item" and displays tags which "may be associated with a point in time or a time segment during playback of the media item that includes potentially objectionable content." Final Act. 3 (citing Kandekar ¶¶ 31–32). We agree with the Examiner because the system described in Kandekar allows for alerts to be generated at the "same the time or rate" as (i.e, synchronized with) the playback of the media content. Kandekar ¶ 37. That is, Kandekar

teaches that the alerts correspond to "a point in time or a time segment" (Kandekar ¶ 32) within the media item, and are therefore "in response to the client application being synchronized with the media content" as claimed.

Appellant further argues that Kandekar does not teach synchronization because the client device is directly coupled to the media player. App. Br. 15. However, the language of claim 1 does not preclude such a connection. Under the broadest reasonable interpretation of "synchronize", the claim encompasses configurations both with and without a direct coupling between the media player and client device. As such, Kandekar's connection between the client device and the media player is encompassed by the argued limitation, and we are not persuaded by Appellant's argument.

Second Issue

Appellant also asserts the Examiner erred in finding the cited references teach or suggest the limitation "the at least one of the plurality of tags being submitted by individual ones of a plurality of users and being associated with a metric indicating a reliability that the at least one tag is descriptive of the content in the plurality of upcoming scenes," recited in claim 1. The Examiner finds this limitation taught by Thomas. Final Act. 5 (citing Thomas ¶¶ 127–129).

Appellant argues Thomas does not teach this limitation because:

> [N]othing in Thomas describes "a metric indicating a reliability that the at least one tag is descriptive of the content in the plurality of upcoming scenes," as set forth in claim 1. While the Office Action (p. 5) indicates that a "server accounts for accuracy using an internal metric," the word "metric" fails to appear in Thomas, and nothing similar to a metric appears in at least the portions of Thomas cited in the Office Action.

App. Br. 17.

We are not persuaded of error. Thomas teaches that users among a collection of contributors may submit "modification[s] to the media asset description information." Thomas ¶ 127. We agree with the Examiner that these submissions correspond to "tags being submitted by individual ones of a plurality of users." Thomas further teaches that the submissions are "conditioned on whether the first user is authorized to modify the particular field" and "a user may only receive updates/modification on media asset description information made by certain users (e.g., users with a reliable reputation, official producers of media content, users with certain authorization levels, users belonging to a community, etc.)." Thomas ¶¶ 128–129. Thus, Thomas teaches that the tags submitted by users are associated with the reliability of the person submitting the update. Appellant argues that Thomas is deficient because it does not use the term "metric." However, Thomas makes clear that the reliability of the submission is measured by considering the person making the submission as compared with other users. *Id.* The claim does not require that the metric be displayed with the tag. Rather, it merely requires that tag be "associated with a metric." Because the content updates in Thomas are associated with the determined reliability of the submitter, we agree with the Examiner that Thomas teaches or suggests this limitation.

Third Issue

Appellant also argues the Examiner failed to provide a sufficient rational for combining Kandekar, Elliot, and Thomas because "the Office Action relies on information gleaned solely from Appellant's specification and claims." App. Br. 18. More specifically, Appellant argues:

> Kandekar describes the ability to pair a mobile device with a set top box using Bluetooth®. One having ordinary skill in the art would not take the system of Kandekar, where a mobile device is directly pair to a set top box using Bluetooth®, with Elliot, which describes a system for sending audio samples to a server. For instance, if a mobile device in Kandekar can already identify content being played through Bluetooth® communication with the set top box, there is no motivation for audio or video samples to be performed to determine content being played. In other words, there is no motivation to perform audio or video sampling if a set top box device is already aware of the content being watched.

App. Br. 19. We disagree.

Elliot describes synchronizing content between two devices using audio sampling. Elliot ¶ 15. Elliot recognizes the benefits of content synchronization between a primary device and a secondary device. Elliot ¶ 3. Elliot teaches that such synchronization may be achieved using audio sampling, which allows for synchronization among any two devices. Elliot ¶ 15. A person of ordinary skill in the art would have appreciated that Kandekar could be improved by utilizing Elliot's audio sampling because doing so would allow a Kandekar to avoid the need for a direct coupling while still allowing for timely display of the tags. Accordingly, we are not persuaded the Examiner erred in combining the teachings of Kandekar and Elliot.

Appellant also argues the combination of Thomas with Kandekar is improper. App. Br. 19. The Examiner finds that "it would have been obvious to [a person] of ordinary skill in the art . . . to have provided metadata updated by users as taught by Thomas to the system of Kandekar to allow for low cost corrections to metadata." Final Act. 5 (citing Thomas ¶ 129). Appellant contends that there is nothing in Kandekar that would

have prompted an ordinarily skilled artisan "to seek additional references 'to allow for low cost corrections to metadata.'" App. Br. 20 (quoting Final Act. 5).

Appellant's argument, in essence, is that the Kandekar does not provide a specific motivation for a person of ordinary skill in the art to look to Thomas. However, this argument it does not account for the expansive and flexible nature of the obviousness inquiry. *Eurand, Inc. v. Mylan Pharms., Inc. (In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litig.)*, 676 F.3d 1063, 1069 (Fed. Cir. 2012) ("obviousness inquiry must be expansive and flexible").

Kandekar teaches that the metadata tags can be user generated. Kandekar ¶ 33 ("[T]he metadata may include annotations provided by the user 14, other users that have consumed (i.e., viewed, listened to, etc.) the media item, a producer of the media item, or the like."). The Examiner explains that "Thomas is relied upon for teaching merely an ability for users to update/modify metadata. This provide[s] additional utility to the supplemental data of Kandekar and Elliot of more accurate metadata." Ans. 9. We agree with the Examiner's reasoning. A person of ordinary skill in the art would have known from Kandekar that metadata can be user generated. Possessing the teachings of Thomas, we agree with the Examiner that a person of ordinary skill in the art would have understood that the user provided tags from Kandekar could be made more accurate by considering the reliability of the user making the update, as taught by Thomas. Thomas ¶ 129. Accordingly, we are not persuaded the Examiner erred in combining Thomas with Kandekar and Elliot.

Fourth Issue

Appellant also challenges the Examiner's findings with respect to claim 2. Claim 2 recites the limitation "determine that the metric associated with the at least one tag exceeds a predefined reliability threshold indicating that the at least one tag is descriptive of the at least one of the plurality of upcoming scenes." App. Br. 31 (Claims Appendix). The Examiner cites Conte, finding that its disclosure of crowdsourcing metadata renders obvious this limitation. Final Act. 8 (citing Conte ¶ 66). Appellant argues that:

> The Office Action (pp. 7–9) appears to take the position that the discussion of a visual indicator in Conte shows or suggests "at least one tag [descriptive of the content in the plurality of upcoming scenes]," as set forth in claim 2. Appellant respectfully submits, however, that a visual indicator of an item of interest is not the same as "at least one tag [*descriptive* of the content in the *plurality of upcoming scenes*],"as set forth in claim 2. Therefore, a threshold number of user modifying a visual indicator of an item of interest cannot show or suggest "determin[ing] that…the at least one tag is *descriptive* of the at least one of the *plurality of upcoming scenes*" of the media content being rendered. That is, Conte relates to describing an item of interest, but Conte fails to show or suggest "determin[ing] that…the at least one tag *is descriptive* of the at least one of the *plurality of upcoming scenes*," as set forth in claim 2.

App. Br. 22–23. We are not persuaded by Appellant's argument.

In the Answer, the Examiner explains:

> Kandekar, Elliot, Thomas are relied [upon] teaching the structure and system of providing, synchronizing main content data with supplemental data regarding upcoming scenes/data. Conte is only relied upon for teaching a plurality of users providing "votes" to improve the accuracy of a particular metadata (i.e. tag as claimed). Conte clearly discloses a feature where metadata is

> improvable through crowdsourcing data. Therefore, in combination with Kandekar, Elliot, and Thomas, Conte does indeed teach the claimed limitations of claim 2.

Ans. 10. Appellant does not address this explanation in the Reply Brief, and we agree with the Examiner's explanation. As noted in the rejection of claim 1, Kandekar teaches the use of tags that are descriptive of upcoming scenes (Kandekar ¶ 32) and that Thomas describes user submission of tags as well as reliability metrics associated with those tags (Thomas ¶¶ 128–29). Conte is relied upon only to show that it was known in the art to improve the accuracy of metadata by crowdsourcing. Conte ¶ 66 ("If the user is a trusted user . . . the addition or modification of a visual indicator can be automatically approved . . . [and] [i]n some implementations, the answers to requests can be crowd-sourced."). Appellant's argument attacks Conte individually, while the rejection of claim 2 was based on the combination of references. Accordingly, we are not persuaded the Examiner erred in rejecting claim 2.

Fifth Issue

Claim 15 recites "wherein monitoring by the client device, the user of the client device further comprises tracking, by the client device, an eye movement of the user using a camera associated with the client device." The Examiner finds this limitation taught by Lee. Final Act 10 (citing Lee ¶ 81). Appellant argues Lee merely teaches using a sensor to determine whether a user is looking at a portable terminal. App. Br. 25. Appellant contends that Lee does not track eye movement of the user. *Id.* Appellant also contends Lee is improperly combined with the remaining references. App. Br. 26.

The Examiner explains that the detection of the user's eyes, as taught by Lee, is sufficient to teach the recited "tracking" because Lee "makes a determination of whether or not his eyes are looking at the screen or looking elsewhere (i.e., not at the screen). Ans. 11. We agree. In order to determine whether a user is looking at a screen, the camera follows the eye movement of the user. We also agree with the Examiner's stated rationale:

> Kandekar discloses the use of a portable device and Lee discloses a function which would enhance the use of a portable device. The camera of Lee will determine whether or not the user is looking at the device and provides additional utility in determining user presence data.

Ans. 12. Appellant does not respond to this determination in the Reply Brief, so it stands uncontested in the record. Accordingly, we are not persuaded the Examiner erred in rejecting claim 15.

Remaining Claims

Regarding the rejection of claims 3–14 and 17–20, because Appellant has either not presented separate patentability arguments or has relied upon substantially the same arguments as those previously discussed above, claims 3–14 and 17–20 fall therewith. See 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

We affirm-in-part the Examiner's decision to reject the claims. More specifically:

(1) We affirm the Examiner's decision to reject claims 1–15 and 17–20; and

(2) We reverse the Examiner's decision to reject claim 16.

DECISION SUMMARY

Claims Rejected	Basis	Affirmed	Reversed
1–15, 17–20	§ 103	1–15, 17–20	
16	None stated in Final Office Action		16

FINALITY AND RESPONSE

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-IN-PART