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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SRIHARI V. ANGALURI, GARY D. CUDAK,
CHRISTOPHER J. HARDEE,
LUKE D. REMIS, and ADAM ROBERTS

Appeal 2018-005221
Application 14/827,581[1,2]
Technology Center 2100

Before DENISE M. POTHIER, CATHERINE SHIANG, and
CARL L. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–3, 5–9, and 11, which constitute the only claims pending. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] Appellants identified International Business Machines, Inc. as the real party in interest. App. Br. 2.

[2] The current Application is a continuation application of U.S. Patent Application No. 14/324,190, in which an appeal (Appeal 2018-005209) has been filed. App. Br. 2.

STATEMENT OF THE CASE

The invention relates to modifying and ranking searches with actions based on prior search results and actions. Abstract; Spec. ¶¶ 1, 23, and 24. Claim 1, reproduced below, is exemplary of the subject matter on appeal (emphasis added):

1. A method comprising:

using at least one processor and memory for:

determining a first action input by a user of the computing device;

determining a second action associated with web content, wherein the second action comprises a plurality of action types;

receiving user input identifying search criteria;

presenting a biased list of search parameters based at least in part on an application type of a previously executed application;

determining whether the search criteria is associated with the web content;

in response to determining that the search criteria is associated with the web content, prioritizing at least one of the plurality of action types over another of the at least one of the plurality of action types;

presenting recommended search results based on the prioritized plurality of action type; and determining the recommended search results based on the identified search criteria.

App. Br 10 (Claims Appendix).

THE REJECTIONS[3]

Claims 1–3, 5–9, and 11 are rejected on the ground of nonstatutory double patenting as being unpatentable over claims 11–13, 15–19, and 21 of U.S. Pub No. 2016/0004698. Final Act. 5.

Claim 1–3 and 5–9 are rejected under 35 U.S.C. § 103 as being unpatentable over Johnson et al. (US 2012/0310922 A1; pub. December 6, 2012) ("Johnson") in view of Wu et al. (US 2012/0173520 A1; pub. July 5, 2012) ("Wu"). Final Act. 5–12.

Claim 11 is rejected under 35 U.S.C. § 103 as being unpatentable over Johnson, Wu, and Andersson et al. (US 2013/0066853 A1; pub. March 14, 2013) ("Andersson"). Final Act. 13–16.

ANALYSIS

The double patenting rejection

In the double patenting rejection, the Examiner finds that, although the claims at issue are not identical, they are not patentably distinct from each other because claims 1–3, 5–9, and 11 of the current application are

[3] The 35 U.S.C § 112 rejection of claims 1–3, 5–9, and 11 is withdrawn. *See* Final Act. 2–3; Ans. 2.

system claims that perform the same steps that are described in claims 11–13, 15–19, and 21 of US. Pub. No. 2016/0004698 A1.[4] Final Act. 5.

We note that Appellants present no rebuttal in the Appeal Brief or Reply Brief; nor do we find evidence that a terminal disclaimer was filed.

Therefore, we *pro forma* sustain the double patenting rejection of claims 1–3, 5–9, and 11.

The 35 U.S.C. § 103 Rejections

Appellants argue that the Examiner errs in finding Wu teaches the claim 1 limitation "presenting a biased list of search parameters based at least in part on an application type of a previously executed application." App. Br. 6–8. Appellants argue Wu teaches ranking identified applications, not presenting a biased list of search parameters, and Wu does not teach such a list based at least in part "*on an application type of a previously executed application*." *Id.* at 6 (emphasis added). According to Appellants:

> Wu states that "the method 200 may determine that the ORBITZ application should be ranked higher than the FLIGHTSTATS application." (Wu at para. [0034]). That is, Wu purports to suggest raking [sic] one travel application higher than another travel application. In another example, Wu describes ranking applications (not presenting a biased list of search parameters) as follows: "[T]he method 200 may rank applications based on predetermined application quality, authoritativeness, or various other metadata parameters associated with the applications." (Wu at para. [0034]).
>
> As is evident from these passages, Wu suggests ranking applications, not presenting a biased list of search parameters as claimed. Therefore, Wu fails to suggest presenting a biased list of search parameters, much less presenting a biased list of search parameters based on an application type of a previously executed application.

[4] Application US 14/324,190, filed July 6, 2014, is the application for Angaluri et al., US 2016/0004698 A1; pub. Jan. 7, 2016.

Id. at 7.

In the Final Action, the Examiner finds the combination of Johnson and Wu teaches the limitations of independent claim 1, and relies on Wu for teaching the disputed limitation. Final Act. 5–9. In the Answer, the Examiner refers to the Specification's description of search parameter 504 as including search queries, search strings, search terms or search phrases. Ans. 3–4 (citing Spec. ¶¶ 23, 24, and Fig. 5). The Examiner finds Wu discloses search string "flight bas to lax" is entered and the terms "flight" "to," "bas," "lax" of the search string are extracted. *Id.* at 4 (citing Wu ¶ 26). Referring to Wu, the Examiner finds:

> The system identifies and ranks at least two applications: ORBIT and FLIGHTSTATS based on the search string. The type of each identified application is different. ORBIT application is for "purchase plane tickets" and FLIGHTSTATS is for "check flight arrival/departures times" in [0033] and [0034]. Also, the ORBIT application is ranked higher than the FLIGHTSTATS because the ORBIT application is utilized, used, or executed more frequently than the FLIGHTSTATS application. After identifying and ranking, the applications are displayed as in figure 4.
>
> Here, search terms or search parameters "bos" and "lax" are presented in field From and field To in ORBIT application in fig. 4.

Id. at 4–5.

The Examiner then finds Wu teaches the disputed limitation because "[c]learly, search parameters or search terms 'bos' and 'lax' are presented based on an application type of a previously executed application (i.e., ORBIT application is a type of application for purchasing plane ticket and FLIGHTSTAT application is a type of application for checking light

arrival/departure time . . .[)],” and “[b]oth applications are ranked based on its previously used or executed[].” *Id.* at 5.

The Examiner additionally refers to Wu, paragraphs 26, 33, 34, and Figure 4, to show how the Wu system operates. *Id.* at 5–7.

In the Reply Brief, Appellants argue Wu’s mapping to applications is done without regard to whether the application was previously executed. Reply Br. 2–3. Appellants further argue the Specification describes “[w]ith continued reference to FIG. 5, the biased list of presented search parameters **504** may also be determined based on previously executed applications on the computing device **102**.” *Id.* at 3 (citing Spec. ¶ 24). Appellants reference the examples set forth in the Specification and argue:

> Based on these passages, it is clear that the present application describes presenting the biased list of search parameters based on a type of a previously executed application that the user executed on the user's device "a few minutes prior to conducting a search." To interpret the claims any broader, such as to encompass presenting a biased list of search parameters based on a rank/popularity of applications, is unreasonable and unsupported by the present application.

Id. at 4 (citing Spec. ¶ 24).

We are not persuaded by Appellants’ arguments and agree, instead, with the Examiner’s findings regarding the combination of Johnson and Wu and claim interpretation of claim 1’s disputed limitation. Appellants present no persuasive arguments the Examiner’s findings and claim interpretation are unreasonable, overbroad, or inconsistent with the Specification. Claim terms in a patent application are given the broadest reasonable interpretation consistent with the Specification, as understood by one of ordinary skill in

the art. *In re Crish*, 393 F.3d 1253, 1256 (Fed. Cir. 2004). Our reviewing court states that "the words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (citations omitted).

Here, the broadest reasonable interpretation of "a previously executed application" includes the ranking of ORBIT and FLIGHTSTATS, which is based on using (executing) the applications. *See* Wu, ¶¶ 33, 34. We note the claim recites "a previously executed application," not "a previously executed application on the user's computer device a few minutes prior to conducting a search."

In view of the above, we sustain the rejections of claim 1, and dependent claims 2, 3, 5–9, and 11 as these claims are not argued separately. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We affirm the Examiner's decision rejecting claims 1–3, 5–9, and 11 for obviousness-type double patenting.

We affirm the Examiner's decision rejecting claims 1–3, 5–9, and 11 under 35 U.S.C. § 103.

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