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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte REZA JALILI and GREGORY J. CLARY

Appeal 2018-005917
Application 14/169,851
Technology Center 2400

Before JUSTIN BUSCH, LINZY T. McCARTNEY, and
BETH Z. SHAW, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 10–17, 20–28, and 30–47, which constitute all the claims pending in this application. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Gregory J. Clary, a co-inventor. Br. 1.

CLAIMED SUBJECT MATTER

Appellant's disclosure relates to transmission of data as a continuous stream in which the recipients can interact with and influence the content. Spec. 2, Abstract. Embodiments of the disclosed invention allow multiple users to receive the same streamed content simultaneously (e.g., similar to a radio or television broadcast), but provide two-way communication so that the users can interact with the provider in ways that may influence the subsequent content in the data stream. Spec. 5–6. Claims 10, 22, 31, and 38 are independent claims. Claim 10 is reproduced below:

10. An apparatus comprising:

a device configured to receive a data stream including content data from a data server, the data server being configured to provide the same data stream to one or more other devices for presentation of the same content data by the respective one or more other devices,

wherein the device is configured to present the content data of the data stream to a user, the content data including a plurality of visual elements, the device being configured to present the content data including being configured to scroll or slide the visual elements arranged in a position on a screen,

wherein the device is configured to receive an indication of a user action, or an indication of user interaction with the content data of the data stream, including the device being configured to receive a location identifier reflecting a geographic location for the user,

wherein the device is configured to transmit data associated with the user action or user interaction, the data server being configured to adjust the content data of the data stream per the user action or user interaction, the adjusted content data including different visual elements or the same visual elements arranged in a different position, the data including the location identifier, and the data server being configured to adjust the content data of the data stream to add the location identifier to the content data, the adjusted content data including the added location identifier, and

wherein the device being configured to receive a data stream includes being configured to receive the data stream further including the adjusted content data, and being configured to present the content data includes being configured to further present the adjusted content data, the data server being configured to provide the same data stream to only those of the one or more other devices in proximity of the user as indicated by the location identifier for further presentation of the same adjusted content data by the respective one or more other devices.

REJECTIONS

Claims 10–14, 16, 17, 22–25, 27, 28, 30–34, 36–41, 43, 44, and 47 stand rejected under 35 U.S.C. § 103 as obvious in view of Morrison (US 2008/0065507 A1; Mar. 13, 2008), Altman (US 2007/0281689 A1; Dec. 6, 2007), and Conrad (US 2006/0212442 A1; Sept. 21, 2006). Non-Final Act. 4–20.

Claims 15, 26, 35, and 42 stand rejected under 35 U.S.C. § 103 as obvious in view of Morrison, Altman, Conrad, and Odinak (US 2005/0065779 A1; Mar. 24, 2005). Non-Final Act. 20–22.

Claim 20 stands rejected under 35 U.S.C. § 103 as obvious in view of Morrison, Altman, Conrad, and Moore (US 2008/0244091 A1; Oct. 2, 2008). Non-Final Act. 22–24.

Claim 21 stands rejected under 35 U.S.C. § 103 as obvious in view of Morrison, Altman, Conrad, and Saunders (US 7,778,874 B1; Aug. 17, 2010). Non-Final Act. 24–27.

Claims 45 and 46 stand rejected under 35 U.S.C. § 103 as obvious in view of Morrison, Altman, Conrad, and Smith (US 2010/0118025 A1; May 13, 2010). Non-Final Act. 27–30.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments that the Examiner erred. In reaching this decision, we have considered all evidence presented and all arguments Appellant made. Arguments Appellant could have made, but chose not to make in the Briefs, are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellant argues the rejection of all pending claims as a group and refers to claim 10 as representative. *See* Br. 10–11 (asserting (1) independent claims 22, 31, and 38 “recite subject matter similar to independent Claim 10, and the rejection of these claims depends on the above errors”; (2) the rejection of claims 11–17, 20, 21 23–28, 30, 32–37, and 39–47, which depend from one of claims 1, 22, 31, and 38, was in error due to this dependency). We select claim 10 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds the combination of Morrison, Altman, and Conrad teaches or suggests every limitation recited in representative claim 10. Non-Final Act. 4–9. Of particular note, the Examiner finds: Morrison teaches user devices configured to receive and present content (including adjusted content) from a data stream and configured to receive and transmit an indication of a user action or interaction with the content; Morrison teaches a data server “configured to adjust the content data of the data stream per the user action or user interaction”; Morrison teaches the media service can use location based services to select which consumers receive portions of the content or to provide content particularly relevant to certain users in a geographic area; and Altman discloses user devices configured to determine their location and transmit a location identifier and data associated with user action or interaction to a data server, and a data server that adjusts

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content data including the location identifier and provides that content only to users within a certain proximity to the user. Non-Final Act. 5–6 (citing Morrison ¶¶ 15, 41–43, 47, 49–50, 60–61, 68–69, 71, Figs. 1A, 6, 13A–13E), 7–8 (citing Altman ¶¶ 36, 42, 60, 70–71); Ans. 2–8 (additionally citing Altman ¶ 46, Figs. 4B, 11). The Examiner also provides a rationale for combining Altman’s with Morrison’s cited teachings. Non-Final Act. 8; Ans. 4–10.

Appellant argues Altman fails to teach or suggest sending location information in a data stream because (1) Altman only discloses synchronizing data by sending information to an updated device, but does not stream data and (2) Altman attempts to minimize network traffic, sending updated data to more active users more frequently than less active users. Br. 7–8. Appellant also argues the proposed combination of Morrison and Altman and the asserted motivation for combining Morrison and Altman are deficient. Br. 8–9.

We are not persuaded by Appellant’s arguments that Altman fails to teach sending information in a data stream because this argument does not address the Examiner’s findings. Specifically, the Examiner finds Morrison teaches sending information in a data stream and relies on Altman only to teach or suggest “combining location data with messaging content data at the server, and transmitting each user’s location data to the other users based on user-defined filters.” Non-Final Act. 4–5; Ans. 2–3 (citing Morrison ¶ 7; Altman ¶¶ 60, 70–71). We agree; as the Examiner notes, Appellant’s argument does not address the Examiner’s rejection, which is based on a combination of Morrison and Altman. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981); see *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (the test for obviousness is whether the combination of references, taken as a

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whole, would have suggested the patentee's invention to a person having ordinary skill in the art); *see* Ans. 3.

Appellant also asserts the Examiner cites to Altman's disclosure of synchronizing updated information to teach adjusting data stream content. Br. 8. Appellant argues the Examiner does not explain how the proposed combination would work because Altman's purpose of sending updated information is to cache critical data with normal device updates, and Altman does not disclose using location information to filter the updated information it sends to group members. Br. 8–9.

Contrary to Appellant's argument, *see* Br. 8, the Examiner does find Altman teaches filtering updated information to group members based on location. Non-Final Act. 7–8 (citing Altman ¶¶ 42, 60, 70–71); Ans. 4–5. We agree. Altman discloses specifying a “radius of the group members relative to the user's mobile communication device” that can be used to send messages or alerts to “members who are within a certain proximity to the user,” which “takes advantage of the geographic location information.” Altman ¶ 42. Altman discloses this location information also may “be employed by the *client computer* 106 when it accesses the database.” Altman ¶ 42 (emphasis added). Therefore, we agree with the Examiner that Altman teaches or suggests filtering updated information to group members based on location because Altman discloses a server transmitting messages or alerts to only those users within a certain proximity of the user.

Additionally, as noted above, the Examiner does not find Altman's synchronization feature teaches adjusting data stream content. Moreover, although certain of Altman's portions the Examiner cites relate to the synchronization feature, we disagree with Appellant's characterization that Altman's “*purpose* of the updated information is used in ‘an intelligent

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caching and synchronization function that caches critical data with normal updates to each mobile communication device in the network.” Br. 8–9 (quoting Altman ¶ 69, emphasis added). Altman’s purpose is to integrate location information into mobile phone communication, including providing an interactive map display on mobile devices depicting the location of various individuals in a social network. *See* Altman ¶¶ 2, 4, 26–29, Abstract. Given Altman’s disclosure of filtering which information is provided to users based on another user’s location, Appellant fails to explain persuasively why, even assuming all embodiments of Altman include this synchronization feature, “one skilled in the art would not in fact modify Morrison in view of Altman to filter updated information to group members by radius.” *See* Br. 9.

Finally, we also are unpersuaded by Appellant’s assertions that the Examiner’s proposed modification and reason for combining the teachings from Altman and Morrison are deficient. *See* Br. 8–10. Appellant argues the Examiner fails to provide a supported reason for combining Morrison and Altman because all benefits allegedly attained from the proposed combination are present in Altman alone. Br. 9. Appellant contends “the Examiner’s purported combination would be satisfied by Altman alone, and would not require any modification of Morrison” and “[f]or both the alleged combination and motivation for that combination, one skilled in the art need not look beyond Altman.” Br. 9.

However, this argument fails to apprise us of Examiner error. The Examiner provides a reason with a rational underpinning for combining the teachings from Morrison and Altman. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Specifically, the Examiner determines it would have been obvious to include Altman’s transmission of individual users’ location

identifiers to other users within a certain proximity of the user to allow all users to share information and experiences based on each user's established filters and preferences relating to location information. Non-Final Act. 8 (citing Altman ¶¶ 28, 42, 60); Ans. 4–8 (additionally citing Altman ¶¶ 36, 41, 46, 68, 70–71, Figs. 4B, 11; Morrison ¶¶ 7, 15, Abstract), 9–10.

The Examiner further explains that Altman's cited sections disclose sending messages and alerts only to members within a certain proximity of a user and Morrison teaches using location based services to select which users will receive particular content portions in order to customize content so that it is particularly relevant to users in a certain location. Ans. 5–6. The Examiner notes Morrison fails to explicitly disclose providing the location identifier in the content, but Altman teaches providing the location information to facilitate location-based social interaction. Ans. 6–7, 9.

The Examiner finds Morrison teaches transmitting "secondary content such as images, video, text, SMS messages, MMS messages, etc.," along with primary content to multiple users and combining Altman's teachings with Morrison "provides an additional degree of communication filtering that takes advantage of the geographic location information." Ans. 6–7, 9. The Examiner further explains that the proposed combination would allow users to select recipients of a message, which would be incorporated into Morrison's secondary content, based on the whether the other users are within a specific proximity based on the location information received from the other users. Ans. 9–10; *see also* Altman ¶ 42 (disclosing that a client computer may use the location information).

The Examiner explained that Morrison teaches transmitting from combining secondary content (e.g., user messages) with primary content in a data stream and targeting particular users within a certain proximity or

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geographic location of another user using location based services. The Examiner explained the benefits of including the location based information in the data stream taught by Altman and that this technique would have provided similar benefits when integrated with Morrison. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007) (combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results). Appellant did not file a reply brief to respond to the Examiner's further explanation of the rationale for combining Morrison and Altman.

For the above reasons, on this record, we are not persuaded the Examiner erred in rejecting representative claim 10 as obvious in view of the combination of Morrison, Altman, and Conrad. For the same reasons, we are not persuaded the Examiner erred in rejecting claims 11–18, 20–28, and 30–47, not argued separately with particularity.

CONCLUSION

In summary:

Claims Rejected	Basis	Affirmed	Reversed
10–14, 16, 17, 22–25, 27, 28, 30–34, 36–41, 43, 44, 47	§ 103 Morrison, Altman, Conrad	10–14, 16, 17, 22–25, 27, 28, 30–34, 36–41, 43, 44, 47	
15, 26, 35, and 42	§ 103 Morrison, Altman, Conrad, Odinak	15, 26, 35, and 42	
20	§ 103 Morrison, Altman, Conrad, Moore	20	
21	§ 103 Morrison, Altman, Conrad, Saunders	21	
45, 46	§ 103 Morrison, Altman, Conrad, Smith	45, 46	
Overall Outcome		10–17, 20–28, 30–47	

AFFIRMED