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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AZFAR INAYATULLAH and SANJAY MACWAN

Appeal 2018-006820
Application 14/854,173
Technology Center 2400

Before JENNIFER S. BISK, LARRY J. HUME, and
JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

HUME, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant,¹ NBCUniversal Media, LLC, appeals from the Examiner’s decision rejecting claims 1–20, which are all claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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 NBCUniversal Media LLC. Appeal Br. 2.

STATEMENT OF THE CASE²

Appellant’s disclosed embodiments and claimed invention “relate[] generally to the field of digital content for the delivery of video, audio and multi-media content, and more particularly to techniques for the receiving [of] digital content according to user-defined preferences.” Spec. ¶ 2.

Claim 1, reproduced below, is representative of the subject matter on appeal (*emphasis* added to dispositive prior-art limitation):

Exemplary Claim

1. A method, comprising:
 - using a processor of a personal computing device to:
 - receive one or more rules, conditions, or both related to receiving digital content, wherein the one or more rules indicate preferences for receiving the digital content;
 - determine one or more current operating conditions of the personal computing device corresponding to the one or more rules, conditions, or both;
 - identify one or more desired characteristics of the digital content, based on the one or more rules, conditions, or both and the current operating conditions;
 - identify a data channel from two or more available data channels, based upon the one or more rules, conditions or both;*
 - configure the personal computing device to receive the digital content via the identified data channel; and

² Our decision relies upon Appellant’s Appeal Brief (“Appeal Br.,” filed Dec. 21, 2017); Reply Brief (“Reply Br.,” filed June 18, 2018); Examiner’s Answer (“Ans.,” mailed Apr. 16, 2018); Final Office Action (“Final Act.,” mailed May 31, 2017); and the original Specification (“Spec.,” filed Sept. 15, 2015) (claiming benefit of US 62/186,209, filed June 29, 2015).

receive the digital content via the identified data channel, wherein the received digital content comprises the one or more desired characteristics.

Prior Art

The Examiner relies upon the following prior art as evidence in rejecting the claims on appeal:

Gordon et al. (“Gordon”)	US 2009/0290644 A1	Nov. 26, 2009
Walker et al. (“Walker”)	US 8,655,307 B1	Feb. 18, 2014
Son et al. (“Son”)	US 2015/0296259 A1	Oct. 15, 2015
James et al. (“James”)	US 2016/0134906 A1	May 12, 2016
Rehan et al. (“Rehan”)	US 016/0192296 A	June 30, 2016

Rejections on Appeal

R1. Claims 1, 3, 5–13, 15, and 17–20 stand rejected under 35 U.S.C. § 102(a)(2) as being anticipated by Rehan. Final Act.3.

R2. Claim 2 stands rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Rehan and Gordon. Final Act. 12.

R3. Claim 4 stands rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Rehan and Walker. Final Act. 13.

R4. Claim 14 stands rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Rehan and James. Final Act. 14.

R5. Claim 16 stands rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Rehan and Son. Final Act. 15.

ISSUES AND ANALYSIS

For essentially the same reasons argued by Appellant (*see generally* Appeal Br. 7–11) we reverse the Examiner’s rejection of independent

claim 1, and also the rejection of independent claims 11 and 17, which recite the dispositive limitation in commensurate form. For the same reasons, we also reverse the rejections of all claims 2–10, 12–16, and 18–20 that depend therefrom.³

Principles of Law

Anticipation of a claim under 35 U.S.C. § 102 occurs when each claimed element and the claimed arrangement or combination of those elements is disclosed, inherently or expressly, by a single prior art reference. *Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1325, 1332 (Fed. Cir. 2010). A reference inherently discloses an element of a claim “if that missing characteristic is *necessarily* present, or inherent, in the single anticipating reference.” *Schering Corp. v. Geneva Pharms.*, 339 F.3d 1373, 1377 (Fed. Cir. 2003) (citation omitted) (emphasis added). “Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *Therasense*, 593 F.3d at 1332 (citing *Cont’l Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264,1269 (Fed. Cir. 1991)).

During prosecution, claims must be given their broadest reasonable interpretation when reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Under this standard,

³ Because we agree with at least one of the dispositive arguments advanced by Appellant, we need not reach the merits of Appellant’s other arguments. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984) (finding an administrative agency is at liberty to reach a decision based on “a single dispositive issue”).

we interpret claim terms using “the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

Analysis

1. § 102(a)(2) Rejection R1 of Claims 1, 3, 5–13, 15, and 17–20

Issue 1

Appellant argues (Appeal Br. 6–12; Reply Br. 2–4) the Examiner’s rejection of claim 1 under 35 U.S.C. § 102(a)(2) as being anticipated by Rehan is in error. These contentions present us with the following issue:

Did the Examiner err in finding the cited prior art discloses a method that uses a processor to, *inter alia*, “identify a data channel from two or more available data channels, based upon the one or more rules, conditions or both,” as recited in claim 1?

Analysis

Appellant argues, “each of the independent claims includes identification of a data channel for content transmission from two or more available data channels.” Appeal Br. 8–9.

The Examiner cites Rehan’s disclosure of “media content representations at various bitrates,” as disclosing the recited “two or more available data channels” in claim 1. Final Act. 4 (citing Rehan ¶¶ 18, 33, 37, 44, 45, 51, 52, 55, 61, 73, 75).

The Examiner further responds by finding “[i]t is the Examiner’s position that the claims do not define the scope of a ‘data channel’ [in] sufficient detail as to preclude the teaching of Rehan. [In] particular, Rehan discloses transmitting media content representation at various bitrates (as described in at least Paragraphs [0048, 0051, 0061, 0066]), such that each content representation at a particular bit rate would constitute a different ‘data channel.’” Ans. 3.

We are persuaded the Examiner’s conclusion is in error. While the Examiner’s claim construction is broad, we conclude it is unreasonable in light of the Specification, discussed below, and in consideration of the specific disclosure of Rehan, which is directed to accounting for power consumption considerations related to different bit rates or quality levels of what appears to be the same content, i.e., a single channel.

A power consumption level can be calculated for receiving the streaming media content at each of a plurality of media content representations that are described in the [media presentation description] MPD. A media content representation can be selected from the plurality of media content representations based on: the power consumption level associated with receiving the streamed media content at the media content representation; and power status information for the UE, using the one or more processors of the UE. The streaming media content can be received at the selected media content representation, at the UE, in accordance with the streaming interval.

Rehan (Abstract). Rehan further teaches, “[t]he MPD can describe a plurality of media content representations that are available to be received at the UE. For example, each media content representation can be associated

with a corresponding bitrate and/or quality level.” Rehan ¶ 18. From this, we determine Rehan does not disclose that for which the Examiner offers it.

We conclude the Examiner’s construction of “data channel” is also unreasonable in light of the Specification. For example:

In particular, the content delivery system may utilize a plurality of data channels 20 to distribute the digital content 14. For example, in certain embodiments, the content delivery systems 18 may utilize a variety of data channels 20 that each utilize a different data communications protocol. In the illustrated embodiment, a long-term evolution (e.g., LTE) channel 47, a wireless local area network (e.g., WiFi) channel 48, a Bluetooth low energy (e.g., BLE) channel 50, an ultra high frequency (e.g., UHF) channel 52, and a near field communication (e.g., NFC) channel 54 are depicted. However, it should be noted that any number of data channels 20 utilizing any type of data communications protocol may be utilized within the system 10.

Spec. ¶ 23. We determine that Appellant’s disclosure shows multiple channels of different content, and not adjustable bit-rates for a given content. Therefore, we are persuaded the Examiner erred in citing Rehan as being anticipatory. In particular, we are persuaded by Appellant’s argument that:

Rehan relates to transmitting data at different bit rates and adjusting a media content representation from a plurality of media content representations based on a remaining amount of time for the streaming media content; the power consumption level associated with receiving the streamed media content at the media content representation; power consumption preference information from a user associated with the user equipment; and power status information for the user equipment. *See* Rehan, paragraph [0075].

In contrast, a particular bit rate is not equivalent to the recited data channel. That is, the number of bits used per unit of playback time is not a data channel. Moreover, selecting media

representations is not analogous to selecting channels with which to receive media.

Reply Br. 2 (emphasis in original).

Therefore, based upon the findings above, on this record, we are persuaded of at least one error in the Examiner's reliance on the cited prior art to disclose the dispositive limitation of claim 1, such that we find error in the Examiner's resulting finding of anticipation.

Accordingly, we do not sustain the Examiner's anticipation rejection of independent claim 1, nor do we sustain the anticipation rejection of independent claims 11 and 18 which recite the dispositive limitation in commensurate form. For the same reasons, we also do not sustain the Examiner's anticipation Rejection R1 of dependent claims 3, 5–10, 12, 13, 15, and 18–20 which variously depend from independent claims 1, 11, and 17.

2. Obviousness Rejections R2–R5 of Claims 2, 4, 14, and 16

In light of our reversal of anticipation Rejection R1 of independent claims 1, 11, and 17, *supra*, we also reverse obviousness Rejections R2 through R5 under § 103 of claims 2, 4, 14, and 16, which variously and ultimately depend from independent claims 1, 11, and 17. On this record, the Examiner has not shown how the additionally cited Gordon, Walker, James, and Son references overcome the aforementioned deficiencies with Rehan, as discussed above regarding claim 1.

CONCLUSIONS

(1) The Examiner erred with respect to anticipation Rejection R1 of claims 1, 3, 5–13, 15, and 17–20 under 35 U.S.C. § 102(a)(2), and we do not sustain the rejection.

(2) The Examiner erred with respect to obviousness Rejections R2 through R5 claims 2, 4, 14, and 16 under 35 U.S.C. § 103(a) over the cited prior art combinations of record, and we do not sustain the rejections.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Basis / References	Affirmed	Reversed
1, 3, 5–13, 15, 17–20	102(a)(2)	Anticipation Rehan		1, 3, 5–13, 15, 17–20
2	103	Obviousness Rehan, Gordon		2
4	103	Obviousness Rehan, Walker		4
14	103	Obviousness Rehan, James		14
16	103	Obviousness Rehan, Son		16
Overall Outcome				1–20

REVERSED