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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN SIDNEY STEWART

Appeal 2018-006944
Application 15/114,560
Technology Center 2400

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

BISK, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

Pursuant to 35 U.S.C. § 134(a), Appellant[2] appeals from the Examiner's decision to reject claims 1–22, which are all claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Throughout this Decision we have considered the Specification filed July 27, 2016 ("Spec."), the Final Rejection mailed December 10, 2017 ("Final Act."), the Appeal Brief filed March 8, 2018 ("Appeal Br."), the Examiner's Answer mailed April 27, 2018 ("Ans."), and the Reply Brief filed June 26, 2018 ("Reply Br.").

[2] 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 Thomson Licensing. Appeal Br. 3.

BACKGROUND

Appellant's disclosed embodiments and claimed invention relate to "synchronizing audio and video respectively received by two different receiving devices." Spec. 2:1–6. Claim 1, reproduced below, is illustrative of the subject matter on appeal:

> 1. A method for synchronizing playback of a program including a video and associated first audio at a first electronic device with playback of a second audio associated with the program at a second electronic device that also receives the video, the method comprising:
>
> decoding, by a video decoder in the second electronic device, the video, and outputting the decoded video;
>
> decoding, by an audio decoder in the second electronic device, the second audio and outputting the decoded second audio for playing back by the second electronic device;
>
> receiving a user command to synchronize the playback of the video at the first electronic device and playback of the second audio at the second electronic device;
>
> responsive to the user command, the method further comprising:
>
> capturing, by a capturing device in the second electronic device, the playback of the video at the first electronic device;
>
> determining, by the second electronic device, an offset between the outputted decoded video and the captured video; and
>
> adjusting outputting of the decoded second audio according to the offset, so that the playback of the first audio at the first electronic device is synchronized with the playback of the second audio at the second electronic device.

Appeal Br. 16 (Claims App.).

REJECTIONS

Claims 1–4 and 6–11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of US 2015/0120953 A1, published April 30, 2015 ("Crowe") and WO 2012/038506 A1, published March 29, 2012 ("Bichot"). Final Act. 4–10.

Claims 5 and 12–22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Crowe, Bichot, and US 2013/0124664 A1, published May 16, 2013 ("Fonseca"). Final Act. 10–15.

ANALYSIS

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). To the extent Appellant has not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. 37 C.F.R. § 41.37(c)(1)(iv). Appellant argues all the rejected claims together. Appeal Br. 14. As permitted by 37 C.F.R. § 41.37, we decide the Appeal for the rejection of all rejected claims based on claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We have considered all of Appellant's arguments and any evidence presented. We highlight and address specific findings and arguments for emphasis in our analysis below.

Rejection of Claims Under 35 U.S.C. § 103

The Examiner cites to Crowe as teaching the bulk of the limitations of claim 1, including "determining, by the second electronic device, an offset between the outputted decoded video" and reference data. *Id.* at 5–6 (citing

Crowe ¶¶ 24, 40–45, 49). Because "Crowe does not clearly teach capturing, by a capturing device in the second electronic device, the playback of the video at the first electronic device," the Examiner relies on Bichot for this limitation (*id.* at 6 (citing Bichot Fig. 4, 10:8–20)), as well as for "determining, by the second electronic device, an offset between the outputted decoded video *and the captured video*" (*id.* (emphasis added) (citing Bichot 7:22–33)) (the "determining offset limitation").

Appellant argues the cited references do not teach or suggest the determining offset limitation. First, Appellant contends that "Crowe's technique is based on 'using the playback latencies,' which is different" from what is claimed in the determining offset limitation. Appeal Br. 10. Second, Appellant asserts that Bichot "never discloses, teaches[,] or suggests determining an offset between the outputted decoded video and the captured video," instead only mentioning "comparing and synchronizing." *Id.* at 11.

In response, the Examiner explains that "the claims do not provide any indication as to what an 'offset' entails" and that Crowe discloses an "adjusted offset," which is "determined using the difference between the playback latencies of each media playback device." Ans. 16 (citing Crowe ¶ 43). According to the Examiner, Crowe's adjusted offset is encompassed by the claimed offset. Ans. 16. The Examiner adds that "Bichot teaches a second device captures video frames from the displayed video content and compares the video frames to reference data, wherein the reference data may be a video frame from the video flow" and "[a]ny offset that is generated between the renderings of the two flows is thereby compensated by delaying a flow to a receiving device." Ans. 16–17 (citing Bichot 9:28–33, 10:12–27). According to the Examiner, Bichot's delay is also encompassed by the

claimed offset. Ans. 17. Thus, the Examiner finds that both Crowe and Bichot teach a portion of the determining offset limitation and the combination teaches its entirety.

We agree with the Examiner's reading of Crowe and Bichot as teaching or suggesting the claimed offset, and we also agree with the Examiner's conclusion that the combination of Crowe and Bichot teach or suggest the determining offset limitation. Moreover, Appellant does not respond to the Examiner's findings in the Answer (*see* Reply Br. 1–7), and consequently, does not show error in them.

Appellant also argues that the Examiner has not provided a proper rationale to combine Crowe and Bichot. Appeal Br. 12–13; Reply Br. 2–5. According to Appellant, "[t]he blanket motivation statement that the combination provides 'a more accurate synchronization' . . . falls short of the proper analysis necessary for an obviousness finding." Appeal Br. 12. Moreover, Appellant contends that, because "Crowe already claims to solve the problem of synchronization," the motivation of "a more accurate synchronization cannot be obtained." *Id.* at 12–13; Reply Br. 2–3. Finally, Appellant argues that "Bichot relies on a comparison between captured video frames and reference data," which one of ordinary skill in the art would have recognized takes time such that in Bichot's system "sound will always lag behind the video" and, therefore, "Bichot provides a synchronization that is **less** accurate than Crowe's." Appeal Br. 13; Reply Br. 3.[3]

[3] In the Reply Brief, Appellant additionally argues that "Bichot actually impairs Crowe because Crow[e] does not require the devices to be within line of sight." Reply Br. 4–5. Because Appellant does not explain what "good cause" there might be to consider this new argument, it is untimely.

In response, the Examiner explains that "the Bichot reference provides a method of capturing and comparing video frames in order to provide an offset for synchronization and, therefore, provides 'a more accurate synchronization' than the methods of Crowe." Ans. 18. In addition, the Examiner points to Bichot as providing an additional reason to combine its disclosed subject matter with Crowe by stating that its purpose is to "overcome the aforementioned disadvantages which makes it possible to synchronize two audio and/or video flows provided by different sources or transmitted via different transport protocols to a single receiving device and/or intended to be rendered by different rendering devices." *Id.* at 18–19 (citing Bichot, 2:31–3:2). Finally, the Examiner adds that the combination of Bichot and Crowe is an example of "the use of a known technique to improve similar devices (methods, or products) in the same way." *Id.* at 19 (citing *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007)).

We are not persuaded of error in the Examiner's findings. Appellant responds to the Examiner's Answer by explaining that, because "Bichot was filed before Crowe," the "disadvantages" discussed by Bichot cannot be referring to anything in Crowe. Reply Br. 4. An express teaching, suggestion, or motivation in the prior art is not, however, a requirement for an obviousness determination. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418–19 (2007). Indeed, the disadvantages referred to in Bichot are the same

See 37 C.F.R. 41.41(b)(2). Moreover, this argument is not commensurate with the claim language because nothing in the claim requires the devices to be within line of sight. *See* Appeal Br. 16 (Claims App.) (requiring only that "a capturing device in the second electronic device" capture the playback of the video).

as those referred to in Crowe and in the Specification. *Compare* Bichot 2:17–26 (describing synchronization problems between "audio and/or video flows" that are "performed by different rendering devices"); *with* Crowe ¶¶ 12–14 (discussing issues of unsynchronized presentation "across multiple media playback devices"); *and* Spec. 2:1–6 ("[W]hen two electronic devices respectively receiving a video stream and an audio stream, the synchronization between the respective playbacks cannot be achieved easily.").

Moreover, Appellant does not contend the Examiner's proposed modifications are beyond the level of skill of one of ordinary skill in the art, and Appellant does not assert the modifications are more than the use of known elements to yield predictable results. Appellant states that a more accurate synchronization cannot be obtained over Crowe's system (Appeal Br. 12–13; Reply Br. 2–3) and "Bichot provides a synchronization that is **less** accurate than Crowe's" (Appeal Br. 13; Reply Br. 3). However, Appellant does not provide any evidence to support these assertions or explain why the Examiner's statement to the contrary is incorrect. *See* Ans. 18 ("As stated, the Bichot reference provides a method of capturing and comparing video frames in order to provide an offset for synchronization and, therefore, provides 'a more accurate synchronization' than the methods of Crowe."); Appeal Br.13 (explaining that in Bichot "the sound always will lag behind the video" with no citations to Bichot or any other evidence of record). Indeed, contrary to Appellant's unsupported assertion that in Bichot "the sound always will lag behind the video," Bichot itself states that its method for processing multimedia data results in synchronous sound and video. Bichot 3:26–28 ("Moreover, the data of the

two multimedia flows are synchronized so that their rendering by a display device and/or audio device is synchronous.").

Accordingly, Appellant does not persuade us of error in the Examiner's factual findings or ultimate legal conclusion of obviousness of claim 1 over the combination of Crowe and Bichot. We sustain the Examiner's obviousness rejection of independent claim 1 and claims 2–22, which fall with claim 1.

CONCLUSION

We affirm the Examiner's rejection of claims 1–22 under 35 U.S.C. § 103.

DECISION SUMMARY

Claims Rejected	**35 U.S.C. §**	**References/Basis**	**Affirmed**	**Reversed**
1–4, 6–11	103	Crowe, Bichot	1–4, 6–11	
5, 12–22	103	Crowe, Bichot, Fonseca	5, 12–22	
Overall Outcome			1–22	

AFFIRMED