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BakerHostetler / Comcast Cira Centre, 12th Floor 2929 Arch Street Philadelphia, PA 19104-2891			CORBO, NICHOLAS T	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEPHEN ALLINSON, BENNY PRUDEN,
JEFFREY WANNAMAKER, and DERIK YARNELL

Appeal 2018-007173
Application 14/862,772
Technology Center 2400

Before JOHNNY A. KUMAR, JOHN A. EVANS, and
JOHN P. PINKERTON, *Administrative Patent Judges*.

KUMAR, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Final Rejection of claims 1–20. 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 (2017). Appellant identifies the real party in interest as Comcast Cable Communications, LLC. Appeal Br. 1.

Exemplary Claim

Independent claim 1 illustrates the invention as follows:

1. A method comprising:
 - receiving, by one or more computing devices, content from a first storage medium for playback, wherein the received content comprises a stored first portion of a transport stream;
 - causing, by the one or more computing devices, playback of at least a portion of the received content;
 - determining, by the one or more computing devices, a playback position of the at least the portion of the received content relative to a live position of the transport stream;
 - storing, by the one or more computing devices, a second portion of the transport stream to the first storage medium if the determined playback position of the at least a portion of the received content does not satisfy a threshold proximity to the live position; and
 - storing, by the one or more computing devices, the second portion of the transport stream to a second storage medium if the determined playback position of the at least a portion of the received content satisfies the threshold proximity to the live position.

Rejections

The Examiner has rejected:

Claims 1–4, 6, and 7 are rejected under 35 U.S.C. § 103 as being unpatentable over Shaool et al., (US 2015/0181273 A1, published June 25, 2015) (hereinafter “Shaool”) in view of Walker et al. (US 2012/0321278 A1, published Dec. 20, 2012) (hereinafter “Walker”). Final Act. 4.

Claim 5 is rejected under 35 U.S.C. § 103 as being unpatentable over Shaool in view of Walker, and further in view of Morris et al. (US 2008/0229353 A1, published Sept. 18, 2008) (hereinafter “Morris”). Final Act. 7.

Claims 8–12 and 15 are rejected under 35 U.S.C. § 103 as being unpatentable over Shaool in view of Walker, and further in view of Patel et al. (US 2009/0193486 A1, published July 30, 2009) (hereinafter “Patel”).
Final Act. 7.

Claims 13 and 16–19 are rejected under 35 U.S.C. § 103 as being unpatentable over Shaool in view of Walker, Patel, and further in view of Molaro et al. (US 2008/0168108 A1, published July 10, 2008) (hereinafter “Molaro”). Final Act. 9.

Claim 14 is rejected under 35 U.S.C. § 103 as being unpatentable over Shaool in view of Walker, Patel, and further in view of Morris et al. (US 2008/0229353 A1, published Sept. 18, 2008) (hereinafter “Morris”). Final Act. 11.

Claim 20 is rejected under 35 U.S.C. § 103 as being unpatentable over Shaool in view of Walker, Patel, Molaro, and further in view of Morris.
Final Act. 12.

ANALYSIS

Independent claim 1 recites, *inter alia* (emphasis added),

storing, by the one or more computing devices, a second portion of the transport stream to the first storage medium *if* the determined playback position of the at least a portion of the received content does not *satisfy a threshold proximity to the live position*; and storing, by the one or more computing devices, the second portion of the transport stream to a second storage medium *if* the determined playback position of the at least a portion of the received content *satisfies the threshold proximity to the live position.*² (hereinafter “threshold proximity” limitation).

² Claims 8 and 16 recite similar subject matter.

The Examiner relied upon the wording of “may” in Shaool and finds “Appellant also ignores the fact that Shaool states specifically that packets ‘may be stored in the transport stream buffer’ in Paragraph 0055 of Shaool. This is most certainly not an explicit teaching of ‘always storing.’” Ans. 3 (boldface omitted).

Appellant argues Shaool does not teach the claimed threshold proximity limitation. Appeal Br. 3–5; Reply Br. 2.

In particular, Appellant argues, and we agree,

However, Shaool teaches *unconditionally* storing the transport stream packets in the transport stream buffer before sending the transport stream packets to the CAM. *See* Shaool para. [0055]. Moreover, Shaool does not teach the storing being based on the condition recited in claim 1: whether “the determined playback position of the at least a portion of the received content satisfies the threshold proximity to the live position.” The Examiner has not provided particular findings as to the reason a skilled artisan, with no knowledge of the claimed invention, would have modified Shaool to condition the storing on “the determined playback position of the at least a portion of the received content” satisfying “the threshold proximity to the live position,” as [recited] in claim 1.

Reply Br. 2.

We agree with Appellant’s interpretation of the disclosure of Shaool. *See* Appeal Br. 3–5; Reply Br. 2. We also agree that Walker does not cure the deficiencies of Shaool. *See* Appeal Br. 6–7; Reply Br. 3. We conclude that the Examiner’s findings are not supported by Shaool and Walker for the reasons set forth by Appellant.

Therefore, on this record, we find the weight of the evidence supports the positions articulated by Appellant in the briefs. Accordingly, as such, we cannot sustain the Examiner’s rejection of claims 1, 8, and 16. Because we

reverse the rejection of independent claims 1, 8, and 16 on appeal, we also reverse the rejections of dependent claims 2–7, 9–15, and 17–20 which depend on claims 1, 8, or 16 respectively.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–4, 6, 7	103	Shaool, Walker		1–4, 6, 7
5	103	Shaool, Walker, Morris		5
8–12, 15	103	Shaool, Walker, Patel		8–12, 15
13, 16–19	103	Shaool, Walker, Patel, Molaro		13, 16–19
14	103	Shaool, Walker, Patel, Morris		14
20	103	Shaool, Walker, Patel, Molaro, Morris		20
Overall Outcome				1–20

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Application 14/862,772

DECISION

The Examiner's decision to reject claims 1–20 is reversed.

REVERSED