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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID SKIBA, ANDREW MAHER, GEORGE ERHART and
VALENTINE C. MATULA

Appeal 2018-007286
Application 14/513,362
Technology Center 2400

Before MICHAEL J. STRAUSS, HUNG H. BUI, and
NABEEL U. KHAN, *Administrative Patent Judges*.

KHAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–20. We have jurisdiction 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(a). Appellant identifies the real party in interest as Avaya Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Appellant describes the invention as follows:

Contact centers often have a significant pool of troubleshooting information related to devices that a customer may own or have access to. Connecting the device to a resource of the contact center presents challenges as customers and device manufacturers are reluctant to provide direct connectivity from the device to a public network, such as the Internet. A customer communication device, such as a smart phone, with an application allows a user to broker a communication between a resource of a contact center and a device. As a benefit, the customer can see and control the types of communication occurring and approve or deny according to their comfort level. When the resource-device session is concluded, the link is terminated and cannot be resumed without again obtaining approval.

Abstract.

Claim 1, reproduced below², is illustrative of the claimed subject matter:

1. A mobile communication device, comprising:
 - a first communication interface;
 - a second communication interface;
 - a third communication interface; and
 - a processor; andwherein the first communication interface is operable to connect, via a communications network, the mobile communication device to a resource of a contact center;

² Claim 1 as quoted in the Claims Appendix contains amendments that the Examiner did not enter. *See* Advisory Act. (Jan. 18, 2018). The version of claim 1 reproduced herein, does not contain those amendments.

wherein the second communication interface is operable to connect, via a physical proximity-required communication, the mobile communication device to a first accessible device;

wherein the processor, initiates a communication with each of the resource of the contact center and the first accessible device via the first communication interface and the second communication interface, respectively;

wherein the third communication interface comprises at least a portion of the first and second communication interfaces and the processor brokers the communication between the resource and the first accessible device, the communication comprising an action, sent by the resource to the first accessible device, to be performed by the first accessible device upon the first accessible device receiving the action; and

wherein the processor causes the third communication interface to selectively either allow or deny the portion of the communication with the action in accordance with a permission for the action.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Ban	US 2007/0118638 A1	May 24, 2007
Stott	US 2008/0117810 A1	May 22, 2008
Balgard	US 2008/0139116 A1	June 12, 2008
Hickie	US 2010/0081417 A1	April 1, 2010

REJECTIONS

1. Claims 1–3, 6, 9–12, and 16–20 stand rejected under 35 U.S.C. § 103 as unpatentable over Ban and Hickie. Final Act. 3–15.
2. Claims 4, 5, 13, and 14 stand rejected under 35 U.S.C. § 103 as unpatentable over Ban, Hickie, and Stott. Final Act. 15–17.

3. Claims 7, 8, and 15 stand rejected under 35 U.S.C. § 103 as unpatentable over Ban, Hickie, and Balgard. Final Act. 17–19.

OPINION

REJECTIONS UNDER 35 U.S.C. § 103

The Examiner relies on Ban as teaching nearly all the limitations of claim 1. Specifically, the Examiner finds Ban’s “information terminal” teaches the claimed “mobile communication device,” Ban’s “server” teaches the claimed “resource of a contact center,” and Ban’s “apparatus” teaches the claimed “first accessible device.” Final Act. 4–5 (citing Ban ¶¶ 90–92, 97–99, 447, 460–461, Figs. 46, 47). The Examiner finds Ban’s information terminal sits between Ban’s server and Ban’s apparatus and brokers the communication between the two. Ans. 5. The Examiner, however, finds that Ban “does not explicitly teach gating” (Final Act. 5) which refers to the last limitation of claim 1 reciting “wherein the processor causes the third communication interface to selectively either allow or deny the portion of the communication with the action in accordance with a permission for the action.” For this last limitation, the Examiner relies on Hickie’s teaching of “white and black lists which check requested operations against access rules and allow for actions to be either allowed or denied” combined with Ban’s aforementioned teachings. Final Act. 6 (citing Hickie ¶¶ 80, 83, 133, 148).

Appellant argues³ “Ban, at the cited locations and elsewhere, teaches no communication *between* server 1000 and apparatus 100. At no point

³ Appellant raises several arguments for the first time in the Reply Brief. For example, Appellant argues the combination of Ban and Hickie does not teach a “mobile communication device” and does not teach that the second communication interface is operable to connect, via a physical proximity-

does Ban's server 1000 address or provide any communication to apparatus 100 nor does apparatus 100 address or provide any communication to server 1000, therefore, no communication exists between server 1000 and apparatus 100. Accordingly, Appellant argues Ban fails to recite the claimed 'third communication interface.'" Appeal Br. 7.

We are unpersuaded by Appellant's argument. First, Appellant's argument is not commensurate with the scope of claim 1. Claim 1 recites that "processor brokers the communication between the resource and the first accessible device, the communication comprising an action, sent by the resource to the first accessible device." Nothing in the claim requires that the communication between the resource and first accessible device be direct. Indeed, the claim indicates that the processor "brokers the communication between the resource and the first accessible device" suggesting that the communication be transmitted via the mobile communication device. Thus, to the extent Appellant argues Ban does not teach communication between Ban's server and apparatus because such communication is not direct, we disagree.

Second, Ban teaches that its information terminal acts as a relay between the server and the apparatus. *See* Ban Figs. 2, 40, ¶¶ 90–95. Thus the apparatus sends anomaly information to the server, via the information terminal, and the server sends back a recovery instruction to the apparatus,

required communication, the mobile communication device to a first accessible device. Reply Br. 2–3. Appellant waived these arguments by not originally presenting them in the Appeal Brief. *See* 37 CFR § 41.41(b)(2) ("Any argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner's answer, including any designated new ground of rejection, will not be considered by the Board for purposes of the present appeal, unless good cause is shown.").

via the information terminal. Therefore, we agree that Ban teaches Appellant's claimed "processor [that] brokers the communication between the resource and the first accessible device, the communication comprising an action, sent by the resource to the first accessible device."

Appellant further argues the cited prior art fails to teach or suggest "wherein the processor causes the third communication interface to selectively either allow or deny the portion of the third communication with the action in accordance with a permission for the action." Specifically, Appellant argues Hickie fails to teach this wherein clause because "even if Hickie did disclose 'gating' . . . what is 'gated' is not taught by the art of record." Appeal Br. 7. Appellant argues "[s]electively 'gating' a resource due the resource being blacklisted/whitelisted fails to teach . . . allowing or denying a portion of a communication comprising action." Appeal Br. 8. Appellant's argument is unpersuasive because it attacks Hickie individually and does not address the Examiner's findings as a whole. The Examiner relies on Ban as teaching the processor, the third communication interface, the communication with an action. Final Act. 4–6. The Examiner relies on Hickie only for the concept of allowing or denying certain operations. Final Act. 6 (citing Hickie ¶¶ 80, 83, 133, 148). Thus, when Ban is modified by Hickie's teachings, the Examiner finds, and we agree, the combination teaches a "processor [that] causes the third communication interface to selectively either allow or deny the portion of the communication with the action in accordance with a permission for the action" as claimed.

Appellant argues that the Examiner's combination requires Hickie to change in order for the rejection to be maintained. Appeal Br. 8. Specifically, Appellant argues Hickie must also have another component in

which it is in communication with in the ‘*third communication.*’” *Id.* This argument is unpersuasive, again because it attacks Hickie individually without addressing the Examiner’s findings as a whole. The Examiner is not relying on Hickie for teaching a third communication, only that certain operations may be allowed or denied based on access rules. Final Act. 6. The Examiner relies on Ban as teaching the three components involved in the communication (i.e. the information terminal, the server, and the apparatus). Thus, Appellant’s arguments that Hickie must disclose one of these components is unpersuasive because Ban discloses each of those components.

Appellant argues

[t]he claimed, “*selectively either allow or deny **the portion of the third communication with the action,***” remains absent from the art of record. The ‘*action,*’ is ‘*to be performed by the first accessible device*’ and stands rejected as being taught by Ban’s server which sends commands to *the terminal* (see, Final Office Action, p. 5). However, Hickie which discloses a remote client attempting to access a resource of an enterprise, is different and fails to disclose that which is necessary to maintain the rejection. While the claimed “action” is to be performed **by** an accessible device, Hickie’s action is to be performed **for** a mobile device and **by** a resource of the enterprise.

Appeal Br. 9. This argument is again unpersuasive for the same reasons as those above, namely it fails to address the Examiner’s findings as a whole. The action that is performed by the accessible device is taught by Ban. See Final Act. 5 (citing Ban ¶¶ 369–370). Thus, even if Hickie’s action is performed for a mobile device rather than by the mobile device, the Examiner’s findings regarding Ban remedy this deficiency.

Appellant argues that no explanation of a motivation to combine the references has been provided by the Examiner. Appeal Br. 10. We disagree.

The Examiner articulates a reason with rational underpinning for combining Ban with Hickie. Final Act. 6. In particular, the Examiner finds that one of ordinary skill would have combined “Ban with the operation-level gating [of Hickie] in order to allow granular access to resources in order to provide remote devices access with the appropriate level of security.” Final Act. 6.

Accordingly, we sustain the Examiner’s rejection of independent claim 1 and independent claims 12 and 18 which are argued together with claim 1 (*see* Appeal Br. 11). We also sustain the Examiner’s rejection of the pending dependent claims which were not argued separately.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–3, 6, 9–12, 16–20	103	Ban, Hickie	1–3, 6, 9–12, 16–20	
4, 5, 13, 14	103	Ban, Hickie, Stott	4, 5, 13, 14	
7, 8, 15	103	Ban, Hickie, Balgard	7, 8, 15	
Overall Outcome			1–20	

TIME PERIOD FOR RESPONSE

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) (2017).

AFFIRMED