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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JYRI PARTANEN

Appeal 2018-007589
Application 14/254,929
Technology Center 2100

Before JEAN R. HOMERE, MICHAEL J. STRAUSS, and
NABEEL U. KHAN, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the
Examiner's decision to reject claims 1–18 and 21. Final Act. 1. Claims 19

¹ We refer to the Specification, filed April 17, 2014 (“Spec.”); Final Office Action, mailed October 5, 2017 (“Final Act.”); Appeal Brief, filed December 28, 2017 (“App. Br.”); Examiner’s Answer, mailed May 18, 2018 (“Ans.”); and Reply Brief, filed July 18, 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 Rovio Entertainment Ltd. App. Br. 1.

and 20 are canceled. App. Br., Claims App.. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

The claimed subject matter relates to parameter modification. Spec., Title. Claim 1, reproduced below with a disputed limitation emphasized in *italics*, is illustrative of the claimed subject matter:

1. An apparatus comprising at least one processing core and at least one memory including computer program code, the at least one memory and the computer program code being configured to, with the at least one processing core, cause the apparatus at least to:

cause a first parameter value set comprising at least one first parameter value to be provided to a first set of devices, wherein the first set of devices are provided with the same first parameter value set;

obtain a fitness value associated with the first parameter value set in the first set of devices;

determine, based at least in part on the fitness value and an optimization algorithm, at least one second parameter value set comprising at least one second parameter value, and cause the at least one second parameter value set to be provided to the first set or a second set of devices.

REFERENCES³

The prior art relied upon by the Examiner is:

³ All citations herein to these references are by reference to the first named inventor only.

Kropaczek	US 2007/0179919 A1	Aug. 2, 2007
Mohr	US 9,525,582 B1	Dec. 20, 2016

REJECTIONS

Claims 1–5, 7, 8, 10–14, 16, 17, and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kropaczek and Mohr. Final Act. 3–6.

Claims 6, 9, 15, and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kropaczek and Mohr in view of official notice. Final Act. 6–7.

ANALYSIS

Appellant’s contentions are unpersuasive of reversible Examiner error. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 2–9; Ans. 3–8) and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellant’s Appeal Brief (Ans. 8–17) and concur with the conclusions reached by the Examiner. We highlight the following for emphasis.

The Examiner finds Kropaczek discloses all limitations of claim 1 except for the requirement that the first set of devices are provided with the same first parameter value set (the “same first parameter value” limitation). Final Act. 3–4. The Examiner finds the limitation is taught by Mohr’s disclosure of “provisioning (and reprovisioning) each and every device in a set of devices with a single set of parameters selected from a ranked list of multiple sets of parameters.” *Id.* at 4.

Appellant argues Mohr discloses retrieved parameters are retained in local memory of a single piece of customer premises equipment (CPE), not a set of devices are recited by claim 1. App. Br. 8. Appellant further argues Mohr discloses providing a customized set of parameters to a particular CPE device based upon a hierarchical list retrieved by an individual CPE device, not providing each CPE device with the same parameter value set as required by claim 1. *Id.* at 9–10.

Interpreting the limitation broadly, the Examiner finds the limitation of providing the first set of devices with the same first parameter value set is satisfied by making the parameter value set available without requiring the set be distributed or delivered. Ans. 11. “Put differently, every device ‘is provided with the same parameter value set’ because each device retrieves the same instructions for obtaining the values in the parameter value set.” *Id.* The Examiner also disagrees Mohr’s parameter values are for a single CPE device. *Id.*, *cf.* App. Br. 9. Instead, the Examiner finds “Mohr is directed toward configuring the operating parameters of multiple consumer premise equipment (CPE) devices, e.g., set top boxes connected to a cable network.” Ans. 11 (citing Mohr, col. 1, ll. 12–23; col. 2., ll. 13–26.) The Examiner further disagrees Mohr fails to teach providing the same parameter value set to *multiple* CPE devices. The Examiner explains “Mohr’s hierarchical parameter source lists are intended for distribution to many CPE devices” and “initial [CPE] provisioning would yield the same results for all initialized devices.” Ans. 13, 15. The Examiner thusly reasons, as disclosed by Mohr, “every CPE device that, upon initialization, is provided with the ‘hierarchical list’ of ‘parameter sources’ is thereby provided with the same set of parameter values.” *Id.* at 15.

Appellant's contentions are unpersuasive of reversible Examiner error. During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Under the broadest reasonable interpretation standard, claim terms are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). However, a particular embodiment appearing in the written description must not be read into the claim if the claim language is broader than the embodiment. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (“[L]imitations are not to be read into the claims from the specification.”). Construing claims broadly during prosecution is not unfair to the applicant, because the applicant has the opportunity to amend the claims to obtain more precise claim coverage. *Acad. of Sci. Tech Center*, 367 F.3d at 1364. *See, also In re Skvorecz*, 580 F.3d 1262, 1267–68 (Fed. Cir. 2009) (“Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified.” (quoting Manual of Patent Examining Procedure § 2111)).

As discussed above, we agree with the Examiner in finding the prior art teaches plural devices. *See* Ans. 11–12. Additionally, because each device retrieves the same instructions for obtaining the values in the parameter value set, each has access to the same parameter value, i.e., “a first parameter value set comprising at least one first parameter value.” *See id.* at 12. That is, by providing instructions and a hierarchical list of

parameter sources, the corresponding set of parameters are effectively also provided.

We are unpersuaded by Appellant's argument the disputed requirement of providing the same first parameter value list to the first set of devices requires pushing the parameter values to the devices. *See* Reply Br. 3 (“**The specification clarifies that ‘provided’ denotes parameter[] values being ‘pushed’.**”). Although the Specification discloses “computer 110 may cause the changed parameter values to be *pushed to mobiles*” (Spec. ¶ 30), this statement does not amount to a definition of what is meant by providing a parameter value set. As explained above, it is improper to read limitations from the Specification into the claims. We also find unhelpful the disclosed alternative embodiment wherein “[t]he changed parameter value set may be provided as a response to such a query” (*id.*) as it does not define a specific action taken in response to a query other than describe the action using the term in question, i.e., the parameter value set may be *provided*.

Furthermore, even if interpreted to require that the parameter value set be supplied, there is no requirement that the apparatus of claim 1 provide the parameter values set directly to the first set of devices without intervening devices or steps. Still further, even if narrowly interpreted to require direct transmission of a parameter value set to a set of devices without intervening devices or steps, one skilled in the art would have understood the combination of Kropaczek and Mohr teaches or suggests such a configuration.

For the reasons discussed above, Appellant's arguments in connection with the rejection of claim 1 are unpersuasive of reversible Examiner error. Appellant's arguments in connection with independent claims 10 and 21 are

repetitious of those found unpersuasive in connection with independent claim 1. No separate substantive argument is presented in connection with the rejection of dependent claims 2–5, 7, 8, 11–14, 16, and 17. Accordingly, we sustain the rejection of independent claim 1 and, for the same reasons, the rejection of independent claims 10 and 21 under 35 U.S.C. § 103 as being unpatentable over Kropaczek and Mohr. Furthermore, we sustain the rejections of dependent claims 2–5, 7, 8, 11–14, 16, and 17 that are not argued separately with particularity.

In connection with the rejection of dependent claims 6, 9, 15, and 18, Appellant additionally argues “the facts asserted were not properly Officially Noticed and not properly based on common knowledge.” App. Br. 12, 14, 18, 20. The Examiner responds “[o]fficial Notice was first invoked for the rejections of these claims in the Non-Final Office Action mailed 10/25/2016. Appellants did not adequately traverse that use of Official Notice and thereby acquiesced to its use.” Ans. 16 (citing MPEP § 2144.03).

We agree with the Examiner that Appellant’s challenge to the Examiner’s Official Notice in these claims is untimely (Ans. 8) because the Examiner took Official Notice in three separate and previous Actions. Specifically, the Examiner took Official Notice and provided support for the Official Notice in the October 25, 2016 Non-Final Action (Oct. 25, 2016 Non-Final Act. 6, 7), May 4, 2017 Final Action (May 4, 2017 Final Act. 6, 7), and July 13, 2017 Non-Final Act (July 13, 2017 Non-Final Act. 6–7). None of Appellant’s responses to those Actions refuted that Official Notice (*see* January 11, 2017 Response Under 37 C.F.R. § 1.111 12–13; June 6, 2017 Response Under 37 C.F.R. § 1.116 11–12; and August 28, 2017 Response Under 37 C.F.R. § 1.111 14–15) and are now, accordingly,

untimely. We also agree with the Examiner that Appellant's traversal, even if timely filed, is inadequate for failing to state why the noticed facts are not considered to be common knowledge or well-known in the art. Accordingly, the Examiner did not err in taking Official Notice in rejecting the claims. As such, Appellant's challenge to the Examiner's Official Notice is unpersuasive. Accordingly, we also sustain the rejection of dependent claims 6, 9, 15, and 18.

DECISION

We affirm the Examiner's rejections under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

Claims Rejected	Basis	Affirmed	Reversed
1-5, 7, 8, 10-14, 16, 17, 21	35 U.S.C. § 103 Kropaczek, Mohr	1-5, 7, 8, 10-14, 16, 17, 21	
6, 9, 15, 18	35 U.S.C. § 103 Kropaczek, Mohr, Official Notice	6, 9, 15, 18	
Overall Outcome		1-18, 21	

AFFIRMED