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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAUL LAGASSEY

Appeal 2018-008455
Application 14/157,715
Technology Center 3600

Before ERIC B. CHEN, JEREMY J. CURCURI, and DAVID J. CUTITTA II, *Administrative Patent Judges*.

CURCURI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 21–36 and 39–41. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

Claims 21–36 and 39–41 are rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Bandy (US 6,625,464 B1; Sep. 23, 2003) and Howard (US 2005/0132420 A1; Jun. 16, 2005). Final Act. 8–13.

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[1] The term "Appellant" is used herein to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Tamiras Per Pte. Ltd., LLC. Appeal Br. 3.

We affirm.

STATEMENT OF THE CASE

Appellant's invention relates to "presentation of interactive advertisements." Spec. 1:12. Claim 21 is illustrative and reproduced below:

21. A method comprising:

displaying at least one program display of a computer program and interactive advertisements on a user interface of a user device;

the user device accessing at least one commands configuration file that comprises speech-to-text commands related to the advertisements, wherein the at least one commands configuration file is hosted by a distributor computing device remotely located from the user device;

facilitating user interaction with the displayed advertisement and the user device using the speech-to-text commands to process the user interaction with the displayed advertisement;

wherein the display of the user interface is updated in response to the user interaction; and

identifying an advertising sponsor of the displayed advertisement by specifying a path for the at least one commands configuration file used by the distributor computing device to facilitate collection of revenue to subsidize costs related to the computer program.

PRINCIPLES OF LAW

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).

ANALYSIS

The Examiner finds Bandy and Howard teach all limitations of claim 21. Final Act. 8–10; *see also* Ans. 4–6. The Examiner finds Bandy teaches most limitations of claim 21. Final Act. 8–9. The Examiner finds Howard

teaches "facilitating user interaction with the displayed advertisement and the user device using the speech-to-text commands to process the user interaction with the displayed advertisement" as recited by claim 21. Final Act. 9. The Examiner further finds Howard teaches "identifying an advertising sponsor of the displayed advertisement by specifying a path for the at least one commands configuration file used by the distributor computing device" as recited by claim 21. Final Act. 9. The Examiner reasons

> [i]t would have been obvious for one having ordinary skill in the art at the time of the invention, to have modified Bandy, which teaches detecting and communicating wirelessly for displaying messages in view of Howard, to efficiently apply the analysis of advertising to include transforming of spoken and textual language.

Final Act. 10.

Appellant presents the following principal arguments:

i. "[W]hile the pagers of Bandy receive messages, Bandy fails to disclose (1) a 'interactive advertisement' or (2) a 'user device using the speech-to-text commands,' as recited in claim 21. Appeal Br. 15. "Nowhere does Bandy disclose a 'user device accessing at least one commands configuration file that comprises speech-to-text commands related to the advertisements' or that the 'commands configuration file is hosted by a distributor computing device remotely located from the user device,' as recited in claim 21." Appeal Br. 15.

> Opting to receive messages is not analogous to: (1) "displaying ... [an] interactive advertisement; (2) "accessing at least one commands configuration file that comprises speech-to-text commands related to the advertisement; or (3) a "commands configuration file [that] is hosted by a distributor computing

> device remotely located from the user device," as recited in claim 21.

Appeal Br. 15; *see also* Reply Br. 1–3.

ii. "One of skill in the art would not modify Bandy to 'display ... a computer program and interactive advertisement on a user interface of a user device,' as recited in claim 21." Appeal Br. 16; *see also* Reply Br. 3.

iii.

> Though Howard discloses "capturing and processing speech and other sounds of the human voice in order to effect commands on the interactive television system," (¶ [0009], 1.2–4), it fails to disclose a "commands configuration file [that] is hosted by a distributor computing device remotely located form the user device" and "identifying an advertising sponsor of the displayed advertisement by specifying a path for the at least one commands configuration file used by the distributor computing device to facilitate collection of revenue," as recited in claim 21.

Appeal Br. 16. "[N]owhere does Howard discuss remuneration or collecting revenue from advertising sponsors." Appeal Br. 16; *see also* Reply Br. 4.

iv. "Neither reference is directed to tracking or remuneration from advertising sponsors, let alone using file paths to identify advertising sponsors to facilitate collection of revenue to subsidize costs related to the computer program." Appeal Br. 17; *see also* Reply Br. 5–6.

v. Howard "teaches away from such a configuration by employing a peer-to-peer network configuration where the data is stored on customer premises." Appeal Br. 17.

We do not see any error in the contested findings of the Examiner. We concur with the Examiner's conclusion of obviousness.

Regarding Appellant's argument (i), these arguments do not show any error in the Examiner's findings because Appellant's arguments are directed

to Bandy but do not address the Examiner's findings for the particularly argued limitations that are based on Howard.

In particular, the Examiner finds Howard teaches "facilitating user interaction with the displayed advertisement and the user device using the speech-to-text commands to process the user interaction with the displayed advertisement" as recited in claim 21. Final Act. 9 (citing Howard ¶¶ 39, 46, 52). We adopt this finding as our own. Thus, based on this finding, Howard's device accesses at least one commands configuration file that comprises speech-to-text commands related to the interactive advertisements. *See* Final Act. 9 (citing Howard ¶¶ 39, 46, 52); *see also* Howard ¶ 39 ("interactive television content ... speech recognition processor 306 ... available commands based on the context of the interactive television content being displayed"). Regarding the "commands configuration file is hosted by a distributor computing device remotely located from the user device" as recited in claim 21," Howard teaches centralized speech recognition, and thus teaches this claim limitation. *See* Howard Fig. 4a ("Multiple Simultaneous Speech Recognition System"). Thus, Appellant's argument (i) does not persuade us of any error.

Regarding Appellant's argument (ii), this argument does not show any error in the Examiner's findings and conclusion of obviousness because the Examiner has provided a reason to combine the references that is rational on its face and supported by evidence drawn from the record. *See* Final Act. 10 (citing Howard ¶¶ 49, 54, 55). Appellant have not presented any particularized arguments as to why this reasoning is incorrect. Thus, we adopt the Examiner's reasoning as our own. Thus, Appellant's argument (ii) does not persuade us of any error.

Regarding Appellant's argument (iii), this argument does not show any error in the Examiner's findings because Howard's centralized speech recognition teaches the "commands configuration file is hosted by a distributor computing device remotely located form the user device" as recited in claim 21. *See* Howard Fig. 4a ("Multiple Simultaneous Speech Recognition System").

Regarding "identifying an advertising sponsor of the displayed advertisement by specifying a path for the at least one commands configuration file used by the distributor computing device" as recited in claim 21, the Examiner finds this limitation is taught by Howard. Final Act. 9–10 (citing Howard ¶¶ 9, 33, 36) ("Howard teaches that the interactions between a user and an interactive application will cause the generation of several different optional steps, including the interaction with advertiser/sponsor, which the Examiner is interpret these options as different paths. Furthermore, Howard discloses that these steps can be executed and control remotely through the service provider."). We agree. Regarding "facilitat[ing] collection of revenue" as recited in claim 21, the Examiner finds this limitation is taught by Brandy. Final Act 9 (citing Brandy col. 12, ll. 6–33). We agree. Appellant's arguments are only directed to Howard and do not address the Examiner's findings based on the combined teachings of Brandy and Howard. Again, the Examiner has provided a reason to combine the references that is rational on its face and supported by evidence drawn from the record. *See* Final Act. 10 (citing Howard ¶¶ 49, 54, 55). Appellant had not presented any particularized arguments as to why this reasoning is incorrect. Thus, Appellant's argument (iii) does not persuade us of any error.

Regarding Appellant's arguments (iv) and (v), these arguments do not show any error in the Examiner's findings. We agree with and adopt the Examiner's finding as our own:

> Howard teaches that the interactions between a user and an interactive application will cause the generation of several different optional steps, including the interaction with advertiser/sponsor, which the Examiner is interpret these options as different paths. Furthermore, Howard discloses that these steps can be executed and control remotely through the service provider.

Final Act. 9–10; *see also* Howard ¶¶ 9, 33, 36, Brandy col. 12, ll. 6–33.

Regarding teaching away, although an alternative may be inferior to or less desirable than another, that alone is insufficient to teach away from the inferior alternative unless the disclosure criticizes, discredits, or otherwise discourages that alternative. *In re Fulton*, 391 F.3d 1195, 1200–01 (Fed. Cir. 2004). Here, Howard's disclosure of a peer-to-peer network does not criticize, discredit, or otherwise discourage a distributor device. *See* Howard ¶ 35.

We, therefore, sustain the Examiner's rejection of claim 21.

We also sustain the Examiner's rejection of claims 22–29, 39, and 40, which depend from claim 21, and are not separately argued with particularity.

Regarding claim 30, Appellant presents arguments for claim 30, but these arguments are the same as the arguments presented for claim 21. *See* Appeal Br. 17–18. Thus, we find these arguments unpersuasive of any error for the same reasons discussed above when addressing claim 30.

We, therefore, sustain the Examiner's rejection of claim 30.

We also sustain the Examiner's rejection of claims 31–36 and 41, which depend from claim 30, and are not separately argued with particularity.

ORDER

The Examiner's decision rejecting claims 21–36 and 39–41 is affirmed.

CONCLUSION

In Summary:

Claim(s) Rejected	Basis	Affirmed	Reversed
21–36, 39–41	§ 103(a)	21–36, 39–41	
Overall Outcome		21–36, 39–41	

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).

AFFIRMED