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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GREGG WILLIAM RIEDEL, JEFF HESS,
and SCOTT DANAHY

Appeal 2018-008727
Application 14/503,050
Technology Center 2400

Before ALLEN R. MacDONALD, MICHAEL J. ENGLE and
IFTIKHAR AHMED, *Administrative Patent Judges*.

MacDONALD, *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 Appellant identifies the real party in interest as Viacom International Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of the claimed subject matter (emphasis, formatting, and bracketed material added):

1. A method, comprising:
 - [A.] recording, by a first time delayed playback (TDP) device, a first feed ***broadcast to a first audience*** to be used at least partially as a playback of a second feed ***to be broadcast at a later time to a second audience***;
 - [B.] determining, by the first TDP device, whether a failure results in a missed feed portion from the recording of the first feed, the missed feed portion being at a known time and lasting a known time amount in the first feed ***being broadcast to the first audience***;
 - [C.] providing a backup recording corresponding to the missed feed portion from a second TDP device that is recording the first feed in parallel with the first TDP device; and
 - [D.] transmitting to the second audience the playback of the second feed including the backup recording at the known time and lasting the time amount.

REFERENCES²

The prior art relied upon by the Examiner is:

Name	Reference	Date
Musser	US 2005/0102695 A1	May 12, 2005
Scholl	US 2009/0010610 A1	Jan. 8, 2009

² All citations herein are by reference to the first named inventor only.

REJECTIONS

A.

The Examiner rejects claims 1–20 under 35 U.S.C. § 112(a) as failing to comply with the written description requirement. Final Act. 7–8 (Final Office Action, mailed October 30, 2017, “Final Act.”).

As to the § 112(a) written description rejection, we select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv). Appellant does not separately argue claims 2–20. Except for our ultimate decision, we do not discuss the § 112(a) rejection of claims 2–20 further herein.

B.

The Examiner rejects claims 1–20 under 35 U.S.C. § 103 as being unpatentable over the combination of Scholl and Musser. Final Act. 9–13.

As to the § 103 rejection, we select claim 1 as representative. Appellant does not separately argue claims 2–20. Except for our ultimate decision, we do not discuss the § 103 rejection of claims 2–20 further herein.

OPINION

We have reviewed the Examiner’s rejections in light of Appellant’s Appeal Brief and Reply Brief arguments.

A. § 112(a)

Claim 1 recites in-part “recording, by a first time delayed playback (TDP) device, a first feed broadcast to a first audience.” The Examiner determines that as to claim 1, “the present application fails to provide support for the feature of recording the first feed *while* broadcasting the first feed to the first audience.” Final Act. 8 (emphasis added).

Appellant argues this limitation is fully supported in the Specification. We agree with Appellant. Our review determines that to the extent the Examiner requires “recording the first feed while broadcasting the first feed to the first audience,” this is described at the first sentence of paragraph 13 of the Specification.

When functioning as intended with the east coast feed not including any issues, the [time delayed playback] TDP system may record the east coast feed exactly as aired and use the recording as the playback for the west coast feed.

Spec. ¶ 13.

Therefore, based on our review, we determine the Examiner’s analysis fails to demonstrate that claim 1 lacks written description support.

B. § 103

B. 1.

Appellant raises the following argument in contending that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103.

Initially, it is respectfully submitted that the teachings of Scholl are inapplicable to the claims of the present application since Scholl relates only to devices for private time shifting of programs and are in no way related to or useful for **broadcasting** to any audience. Thus, the operations and/or features of Scholl *have no bearing on the operations recited in the claims of the present application. . . .* Scholl is *unrelated to broadcasting of any kind* and relates only to DVR devices each of which is located at a single customer’s premises 116 and which are specifically precluded from broadcasting of any kind. Scholl merely receives a feed that has been broadcast by another entity (e.g., the users of the device are part of the first audience) and *has no capability to in any way impact a feed to be broadcast to another audience* or of addressing any error in a feed for broadcast as required by the claims.

Appeal Br. 7–8 (emphasis added).

We are unpersuaded by Appellant’s argument. First, Appellant’s contention that Scholl is “unrelated” to broadcasting is belied by Appellant then immediately acknowledging that the users in Scholl “are part of the first audience” that “receives a feed that has been broadcast by another entity.”

Appeal Br. 7.

Second, we determine that Appellant is mistaken in contending that Scholl has “no capability to in any way impact a feed to be broadcast to another audience.” Appeal Br. 7–8. For example, Scholl discloses:

[A] customer may request playback of the media content at the first DVR device 304, and, in response to the playback request, the first DVR device 304 may access the recorded media content at the second DVR device 320.

Scholl ¶ 30. Even if Scholl’s multiple DVR devices were limited to a single residential home, Appellant has not sufficiently explained why Scholl has “no capability” for “another audience,” such as a second viewing by a second person (e.g., a spouse, child, or roommate) at a different time on a different device. We note that claim 1 does not particularize how the audiences are required to be different. Also, we determine that Scholl’s form of broadcasting is consistent with Appellant’s Specification. Appellant describes “broadcast” in very broad terms.

A program may be broadcast to viewers in a variety of different manners. For example, a television network may broadcast different programs throughout a broadcast day. In other examples, a web site, a mobile video provider, *etc.* may also broadcast programs at select times during a day.

Spec. ¶ 1 (emphasis added). We determine that an objective observer reading Appellant’s Specification would understand Appellant’s

broadcasting to an audience to include sending content to a viewer from a source via any form of network known to an artisan (wire, coax cable, satellite, optical fiber, “etc.”).

B. 2.

Also, Appellant raises the following argument in contending that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103.

Musser does not disclose or suggest a situation in which first feed (e.g., an east coast feed) is broadcast, recorded, and subsequently used to broadcast a second feed (e.g., a west coast feed) to a second audience.

Appeal Br. 8 (emphasis added).³

[I]t is respectfully submitted that Musser also does not disclose or suggest a first feed broadcast to a first audiences being used to detect a failure and then correcting this failure to provide a corrected feed for broadcast to a second audience, as recited in claim 1.

Appeal Br. 9.

We are unpersuaded by Appellant’s argument. In this argument, Appellant does not address the actual reasoning of the Examiner’s rejection. Instead, Appellant attacks the Musser reference singly for lacking a teaching that the Examiner relied on a combination of Scholl and Musser to show. In particular, the rejection does not rely on Musser for teaching the “first feed,” “second feed,” “recorded,” and “subsequently used” aspects disputed by

³ Although not required by claim 1, Appellant’s argument references the “east coast feed” and “west coast feed” required by subsequent dependent claim 10. At paragraph 67 cited by the Examiner, Musser explicitly teaches an “East-coast feed” and a “West-coast feed.”

Appellant. *See* Final Act. 9 (finding Scholl teaches, “recording, by a first time delayed playback (TDP) device, a first feed to be used at least partially as a playback of a second feed”). The Examiner relies on Musser (paragraph 67 and figures 1 and 5) to show a teaching that the first feed may be “broadcast to a first audience” and the second feed may be “broadcast to a second audience.” Final Act. 10.⁴ One cannot show nonobviousness by attacking references individually when the rejection is based on a combination of references. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *see also In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (explaining the relevant inquiry is whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the *combined teachings* of those references).

CONCLUSION

Appellant has shown the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 112(a) as failing to comply with the written description requirement.

The Examiner has not erred in rejecting claims 1–20 as being unpatentable under 35 U.S.C. § 103.

⁴ We view this teaching of Musser as redundant to the first and second audiences described in Scholl. We determine Musser is only required if “broadcast” is read as limited to an over-the-air type broadcast. As noted *supra*, we read “broadcast” more broadly based on Appellant’s own Specification.

The Examiner's rejection of claims 1–20 under 35 U.S.C. § 112(a) is **reversed**.

The Examiner's rejection of claims 1–20 as being unpatentable under 35 U.S.C. § 103 is **affirmed**.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–20	112(a)	Written Description		1–20
1–20	103	Scholl, Musser	1–20	
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).

AFFIRMED