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Garlick & Markison (PST)
100 Congress Avenue, Suite 2000
Austin, TX 78701

EXAMINER	
GUYTON, PHILIP A	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GARY W. GRUBE and TIMOTHY W. MARKISON

Appeal 2018-008923
Application 12/850,606
Technology Center 2100

Before JOHNNY A. KUMAR, CATHERINE SHIANG, and KAMRAN JIVANI, *Administrative Patent Judges*.

JIVANI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] seeks our review under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of claims 1–6 and 11–16,[2] which are all the claims pending in the present application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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[1] We use the word "Appellant" to refer to "Applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies International Business Machines Corporation as the real party in interest. Appeal Br. 2.

[2] Claims 7–10 and 17–20 are cancelled. Appeal Br. 16, 18.

STATEMENT OF THE CASE

The present application relates to data storage solutions. Spec. 1:15.

Claim 1 is illustrative and reproduced below with disputed limitations emphasized.

> 1. A method for execution by a processing module of a computing device, the method comprises:
>
> generating data for storage;
>
> selecting a plurality of dispersed storage (DS) units as target DS units, wherein the plurality of DS units selected as target DS units is limited to *a subset of available DS units estimated to meet requirements associated with a current storage sequence*;
>
> transmitting a solicitation message to the target DS units, the solicitation message soliciting the target DS units to store encoded data slices of the data;
>
> receiving favorable responses from at least some of target DS units;
>
> selecting DS units from the at least some of the target DS units providing a favorable response to produce a set of selected DS units;
>
> determining an error coding dispersal storage function for the set of selected DS units;
>
> encoding a data segment of the data in accordance with the error coding dispersal storage function to produce a plurality of encoded data slices; and
>
> outputting the plurality of encoded data slices to the set of selected DS units for storage therein.

The Rejections

Claims 1–5 and 11–15 stand rejected under 35 U.S.C. § 103(a) over Ejiri et al. (US 2006/0036820 A1; publ. Feb. 16, 2006), Gladwin et al. (US 2007/0079083 A1; publ. Apr. 5, 2007), and Wu et al. (US 2007/0250604 A1; publ. Oct. 25, 2007).

Claims 6 and 16 stand rejected under 35 U.S.C. § 103(a) over Ejiri, Gladwin, Wu, and de la Torre et al. (US 7,636,724 B2; issued Dec. 22, 2009).

ANALYSIS

Independent claim 1 states, in relevant part, wherein the plurality of DS units is limited to a subset of available DS units estimated to meet requirements associated with a current storage sequence. Appeal Br. 14. Independent claim 11 recites a commensurate limitation.[3] *Id.* at 16. The Examiner relies on the combination of Wu and Ejiri as teaching this limitation because "Ejiri teaches selecting target units according to a storage size requirement, and Wu teaches selecting a subset of available memory nodes according to a proximity requirement." Ans. 4. We understand the Examiner to rely on Ejiri for selecting target units according to a storage size requirement (i.e., requirements associated with a current storage sequence) and Wu for selecting a subset of available memory nodes according to a proximity requirement (i.e., a subset of available DS units estimated to meet requirements). *Id.* (citing Ejiri ¶¶ 58–59, 78–79; Wu ¶ 10).

Appellant contends the Examiner errs because "Ejiri does not disclose selecting 'target units', but instead discloses broadcasting a solicitation

[3] Based on Appellants' arguments, we decide the appeal on the basis of representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2012).

message to the network, and making a final selection of which storage unit to use based on responses to the broadcast." Reply Br. 4 (citing Ejiri ¶¶ 13–14). Appellant continues, "at best, Ejiri's disclosure corresponds to [Appellant's] final selection of storage units based on responses to solicitation messages—not the selection of target DS units." *Id.* at 5.

We agree with Appellant. The plain language of claim 1 requires that only those available units estimated to meet the requirements associated with a current storage sequence may be selected as target DS units. The claimed solicitation message is then transmitted to these selected target DS units. The cited disclosure of Ejiri, however, is directed to transmitting the solicitation message as a broadcast to all units, not the initial selection of units to receive the solicitation based on their estimated ability to meet requirements. Ejiri ¶ 79 ("[a]t first, when the user broadcasts target search information, the search response unit in each target receives the target search information and decides whether the relevant data is possible to save in the own data storage unit."). The Examiner, thus, has not shown in the record before us how Ejiri teaches selecting "as target DS units . . . a subset of available DS units estimated to meet requirements associated with a current storage sequence" before sending these the solicitation message, as claimed.

Accordingly, based on the record before us, we reverse the Examiner's rejections of independent claims 1 and 11, and their dependent claims 2–6 and 12–16.

DECISION

We reverse the Examiner's decisions rejecting claims 1–6 and 11–16.

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–5, 11–15	103	Ejiri, Gladwin, Wu		1–5, 11–15
6, 16	103	Ejiri, Gladwin, Wu, de la Torre		6, 16
Overall Outcome				**1–6, 11–16**

REVERSED