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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RAYMOND C. BONTEMPI

Appeal 2018-009094
Application 11/207,979
Technology Center 2400

Before MAHSHID D. SAADAT, JASON V. MORGAN, and
JOHNNY A. KUMAR, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–7 and 17–19, which are all the claims pending in this application.² 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. Appellant identifies the real party in interest as Google, LLC. Appeal Br. 1.

² Claims 8–16, 20, and 21 have been canceled previously. *See* Appellant’s after-final amendment filed Nov. 29, 2017 (canceling claims 8–16, 20, and 21, which was indicated as entered in an Advisory Act. mailed Dec. 15, 2017).

STATEMENT OF THE CASE

Introduction

Appellant's invention relates to selective recording for digital video recorders using implicit correlation. Spec. ¶ 1.

Claim 1 is illustrative of the invention and reads as follows:

1. A method of identifying programming estimated to meet a preference of a user, the method comprising:

receiving, from a remote device, a user recording log comprising implicit data associated with programs recorded by the user over a time period, the implicit data comprising data indicative of recorded program viewing history including a percentage of a particular recorded program viewed by the user, the percentage of the particular recorded program being less than a full length of the particular recorded program;

estimating a similarity of the user recording log of the user to each user recording log of user recording logs corresponding to a plurality of other users, the similarity of the user recording log of the user to the user recording log of a given other user being based on a number of program IDs concurrently contained in the user recording log of the user and the user recording log of a given other user and the percentage of the particular recorded program corresponding to the program ID viewed by the user and a percentage of the particular recorded program viewed by the given other user;

creating a preference profile for the user based on a set of user recording logs for other users having at least a threshold similarity to the user recording log of the user, the preference profile including one or more programs identified from the set of user recording logs; and

identifying a program, from the preference profile, for recording from content to be broadcast in the future.

The Examiner's Rejection

The Examiner rejected claims 1–7 and 17–19 under 35 U.S.C. § 103(a) as being unpatentable over Robarts et al. (US 2005/0278741 A1;

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pub. Dec. 15, 2005) and Leurs (US 2006/0101490 A1; pub. May 11, 2006).
Final Act. 7–12.

Prior Board's Decision on Appeal

In the Decision on Appeal dated September 24, 2015 (“Decision”), we affirmed the rejection of claims 1–20 as being unpatentable over Robarts and Leurs. Claim 1 on appeal is substantially similar to claim 1 in the prior Decision. To the extent Appellant’s arguments are similar to those presented in the prior Decision, we will not repeat our analysis and will refer to the prior Decision.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments that the Examiner has erred. We disagree with Appellant’s conclusions. The Examiner has provided a comprehensive response, supported by sufficient evidence, to each of the contentions raised by Appellant. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellant’s Appeal Brief (*see* Ans. 12–21). However, we highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

In rejecting claim 1, the Examiner relies on Robarts as disclosing the recited receiving, estimating, creating, and identifying steps, but not “the implicit data comprising data indicative of recorded program viewing history including a percentage of a particular recorded program viewed by the user, the percentage of the particular recorded program being less than a full

length of the particular recorded program.” Final Act. 7–10. The Examiner relies on Leurs as disclosing the missing limitation. Final Act. 10 (citing Leurs ¶¶ 36, 39, 42, 44, 55). With respect to the reason for the combination, the Examiner concludes

Therefore in light of the teaching in Leurs it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Robarts by including in a viewing history an indication that shows a percentage of an entire record program which is viewed in order to indicate to the user how much time of programme can be presented currently and perform necessary changes on the selection list as desired by the user by showing the remaining amount to be viewed.

Final Act. 11.

Discussion

First Issue

Appellant contends:

First Robarts, either alone or in combination with Leurs, does not teach or suggest a similarity based on “based on a number of program IDs concurrently contained in the user recording log of the user and the user recording log of a given other user . . .” This is because Roberts and Leurs, when combined, only teach the identification of programs that match search criteria for a set of respective queries generated for users. But the matching of search results (programs) to queries is not a similarity “based on a number of program IDs concurrently contained in the user recording log of the user and the user recording log of a given other user.” For example, two logs may have multiple matching programs, but a query may only identify a single matching program.

Appeal Br. 2 (emphasis omitted). By referring to paragraphs 79, 92, and 93 of Robarts, Appellant asserts “this teaching of Roberts is only for generating queries for the viewer to identify programs the viewer is likely to watch

based on ‘viewing preferences of the viewer,’” but “does not take into account the similarity features of other users as claimed.” Appeal Br. 3–4 (emphasis omitted); *see also* Reply Br. 2.

The Examiner responds by pointing to paragraph 94 of Robarts indicating that some programs satisfy both a single query and more than one query such that a search for “Seinfeld” by one user and another query for “comedies” by another user are combined to find a program that meets the family parameters. Ans. 14 (citing Robarts ¶¶ 93, 94). The Examiner further finds Robarts discloses the viewing preferences based on comedies or a particular comedy program are determined based on similarities of the user recording logs and a correlation factor, such as a percentage. (Ans. 14 citing Robarts ¶ 77).

We agree with the Examiner’s finding that Robarts’ combined queries are based on estimating a similarity of user recording logs among different users. We also agree with the Examiner that, consistent with Appellant’s Specification (*see* Spec. ¶ 23 specifying: “viewing history 127 is illustratively shown in FIG 1 as part of viewer recording log 125 to show an alternative or optional arrangement”), the user’s recording log includes the viewing history or list of the recorded programs. *See* Ans. 14–15. This interpretation is also consistent with and supported by Appellant’s disclosure stating that “[i]mplicit data, as used here, means that data which is inherently associated with a program” and “at a minimum comprises data to uniquely identify the program *such as title or unique program ID.*” Spec. ¶ 16 (emphasis added). Additionally, as stated previously in our Decision, searching for favorite programs meets the recited “estimating a similarity” among users’ recording logs based on the program title. *See* Decision 4.

Second Issue

Appellant contends the combination of the references does not teach or suggest the estimating step that is based on “the percentage of the particular recorded program corresponding to the program ID viewed by the user and a percentage of the particular recorded program viewed by the given other user.” Appeal Br. 4–5. According to Appellant, Robarts assigns a percentage of the entire viewing period to each channel to indicate viewer preference, but does not teach a similarity based on this data. Appeal Br. 5 (citing Robarts ¶¶ 79, 93). With respect to Leurs, Appellant argues the disclosed sorting of available content based on a duration of the content fails to teach comparison between profiles. Appeal Br. 5–6 (citing Leurs ¶ 56).

In response, the Examiner explains that the step of estimating a similarity based on a percentage of the particular recorded program that is less than the full length of the program is disclosed in Leurs. Ans. 17. We agree. The Examiner further explains that, in addition to Robarts’ disclosing a query based on the percentage of the portion watched in the viewer’s preferred program compared to the entire viewing period, which indicates the program most watched, Leurs also teaches selecting a program based on the percentage of the program watched. Ans. 17–18 (citing Robarts ¶¶ 78, 79; Leurs ¶¶ 36–39). As such, Leurs teaches that the duration of the recorded program watched by a viewer is among the data associated with programs recorded by a user over a time period, as recited in claim 1. *See also* Leurs ¶¶ 41–44 (explaining the relative duration as the percentage of a program remaining, which may be stored with the content item to show how much of the program has been viewed). We also agree with the Examiner that, because the rejection is based on the combination of the references,

Appellant’s arguments that are against references individually are not persuasive of error. Ans. 17 (citing *In re Keller*, 642 F.2d 413 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091 (Fed. Cir. 1986)).

Third Issue

Lastly, Appellant argues the proposed combination does not teach or suggest the creating step of claim 1 because the cited portions of Robarts relate to a merged query that combines queries in personal folders of each family member. Appeal Br. 6–7 (citing Robarts ¶¶ 92–94). Additionally, Appellant asserts the predefined personalized queries in Robarts are not the same as the recited “‘recording logs’ comprising ‘data indicative of recorded program viewing history.’” Appeal Br. 8 (citing Robarts ¶ 19).

We disagree. As the Examiner points out, paragraphs 92–94 of Robarts describe personal folders for each family member which can be merged or combined to create a family query that either has at least one program in common or satisfies all the family members’ criteria. *See* Ans. 18–19. That is, personalized folders including queries specific to a particular family member (*see* Robarts Table 1) meet the claim “recording logs” which, as discussed above, encompasses the viewing history of a user. *See* Spec. ¶ 23.

Summary

For the above-stated reasons, we are not persuaded by Appellant’s arguments that the Examiner erred in finding the disclosures of Robarts and Leurs teaches or suggests the disputed features of claim 1. Therefore, we sustain the 35 U.S.C. § 103(a) rejection of claim 1, as well as the remaining claims which are not argued separately or with sufficient specificity.

CONCLUSION

We affirm the Examiner's decision to reject claims 1-7 and 17-19.

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).

In summary:

Claims Rejected	Basis	Affirmed	Reversed
	§ 103	1-7 and 17-19	
Overall Outcome		1-7 and 17-19	

AFFIRMED