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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBB D’EGIDIO, STEVEN LEARDI,
PETER SIMON, MARCUS LOECHNER, and ZHE ZHANG

Appeal 2018-009180
Application 14/708,513
Technology Center 2400

Before MAHSHID D. SAADAT, JOHN P. PINKERTON, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

AMUNDSON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ seeks our review under 35 U.S.C. § 134(a) from a final rejection of claims 1–11 and 14–22, i.e., all pending claims. 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 (2017). Appellant identifies the real party in interest as Comcast Cable Communications, LLC. Appeal Br. 1.

STATEMENT OF THE CASE

The Invention

According to the Specification, the invention relates to “remote control of user permissions by an administrator such as a parent, superior, manger [sic], guardian, etc.” Spec. ¶¶ 2, 8.² The Specification explains that “[c]ontent permissions can allow an administrator to block certain users from accessing certain content,” e.g., permitting “parents to supervise the entertainment content their children can play by setting restrictions on content ratings, content schedule, content channels, and the like.” *Id.* ¶ 1. But the Specification also explains that “using current systems, administrators must establish rules to govern the permissions relating to certain content and cannot address permissions requests in real-time.” *Id.* Hence, the invention endeavors to address “[t]hese and other shortcomings of the prior art.” *Id.*

Exemplary Claim

Independent claim 1 exemplifies the claims at issue and reads as follows:

1. A method, implemented by one or more computing devices, comprising:
 - receiving a request to perform one or more restricted activities, wherein the request comprises at least an identifier of a first user associated with the request and an identification of the one or more restricted activities;

² This decision uses the following abbreviations: “Spec.” for the Specification, filed May 11, 2015; “Final Act.” for the Final Office Action, mailed June 16, 2017; “Advisory Act.” for the Advisory Action, mailed September 19, 2017; “Appeal Br.” for the Appeal Brief, filed January 29, 2018; “Ans.” for the Examiner’s Answer, mailed May 18, 2018; and “Reply Br.” for the Reply Brief, filed July 18, 2018.

determining that the first user is inside a location zone and a second user is outside the location zone;

causing, in response to determining the second user is outside the location zone, presentation of the identifier of the first user associated with the request and the identification of the one or more restricted activities to the second user;

receiving a response to the request comprising information relating to one or more of a grant, denial, or modification of the performance of the one or more restricted activities; and

causing transmission of the response to a source of the request, wherein the transmitted response is configured to be processed by the source to effect grant, denial, or modification of the performance of the one or more restricted activities.

Appeal Br. 10 (Claims App.).

The Prior Art Supporting the Rejection on Appeal

As evidence of unpatentability under 35 U.S.C. § 103, the Examiner relies on U.S. Patent Application Publication No. 2013/0254288 to Harrison, titled “System and Method for Verifying Parental Approval,” filed on February 22, 2013, and published on September 26, 2013 (“Harrison”).

The Rejection on Appeal

Claims 1–11 and 14–22 stand rejected under 35 U.S.C. § 103 as unpatentable over Harrison. Final Act. 4–8.

ANALYSIS

We have reviewed the rejection in light of Appellant’s arguments that the Examiner erred. For the reasons explained below, we concur with the Examiner’s conclusion concerning unpatentability under § 103. We adopt the Examiner’s findings and reasoning in the Final Office Action, Advisory

Action, and Answer. *See* Final Act. 3–8; Advisory Act. 2; Ans. 3–11. We add the following to address and emphasize specific findings and arguments.

Claim 1: Causing Information Presentation “in Response to Determining the Second User Is Outside the Location Zone”

As noted above, the § 103 rejection of claim 1 rests on Harrison. *See* Final Act. 4–5. Appellant argues that the Examiner erred in rejecting claim 1 because Harrison fails to teach or suggest the following limitation in claim 1: “causing, in response to determining the second user is outside the location zone, presentation of the identifier of the first user associated with the request and the identification of the one or more restricted activities to the second user.” *See* Appeal Br. 3–5; Reply Br. 1–3.

According to Appellant, the Examiner acknowledges that Harrison lacks the disputed limitation. Appeal Br. 3 (citing Final Act. 5); *see* Final Act. 5. Appellant asserts that “the Examiner attempts to remedy the deficiency of Harrison by offering” the following reasoning:

it would have been obvious . . . to implement the claimed feature of presenting the child’s request to the parent’s for authorization if the parent is out of the child’s proximity or out of the child’s location zone since it is suggested that the parent is not in the vicinity as the child to monitor the child’s activity and thus to ensure the child in the absence of the parent to protect the child by ensuring the parent is approved of the child’s request.

Appeal Br. 3–4 (alteration by Appellant) (quoting Final Act. 5); *see* Final Act. 3, 5. Appellant then contends that “a suggestion regarding ensuring a child in the absence of a parent is protected by ensuring the parent approves a child’s request is *entirely absent* from Harrison.” Appeal Br. 4 (emphasis by Appellant).

We disagree. Harrison discloses a system that enables “website operators and online service providers to comply with,” among other things, the Children’s Online Privacy Protection Act (“COPPA”). Harrison ¶ 13, code (57); *see id.* ¶¶ 3–5. The COPPA “regulates the online collection of personal information from children less than 13 years of age” and seeks to “give parents control over what information is collected from their children online.” *Id.* ¶ 3; *see* Appeal Br. 4 (citing Harrison ¶¶ 1–13).

With Harrison’s system, a child “starts a registration or sign in process to access a website or online content,” e.g., by “attempting to establish a user name and password for” the website or content provider. Harrison ¶ 52, Fig. 3; *see id.* ¶ 14. Then, a server presents the child “with a page that asks for the name and email address of a parent.” *Id.* ¶ 52, Fig. 3; *see id.* ¶ 14. After the child provides the requested information, the system informs the child that the parent “will receive an email with instructions for granting permission.” *Id.* ¶ 52, Fig. 3. Next, the system sends an email to the parent “informing the parent that the child has requested permission to establish an account on, and provide personal information to,” a website or content provider. *Id.* ¶ 53, Fig. 3; *see id.* ¶ 14. The email may include a hyperlink or URL “to provide the parent with an opportunity to review the site prior to granting or denying permission.” *Id.* ¶ 53, Fig. 3; *see id.* ¶ 14.

To confirm the parent’s identity, the system asks the parent for certain information, e.g., the “parent’s name, address, phone number, date of birth, and last four digits of their social security number.” Harrison ¶ 54, Fig. 3; *see id.* ¶¶ 14, 21. After the parent provides the requested information, the system attempts to validate the parent’s identity, e.g., by “determining whether the personal information of the parent” matches “data for that

identity using one or more commercially available third party data brokers, aggregators, or like information services providers,” such as credit bureaus. *Id.* ¶ 55, Fig. 3; *see id.* ¶ 14; Ans. 10.

If the system validates the parent’s identity, “the parent is informed,” e.g., by “a web page displayed in a browser window on the parent computer system,” that “the child has been approved for the site.” Harrison ¶ 56, Fig. 3; *see id.* ¶¶ 14, 16. Further, if the system validates the parent’s identity, the “child may then register to use or access the site or online content.” *Id.* ¶ 56, Fig. 3; *see id.* ¶ 14. But if the system does not validate the parent’s identity, “the parent is informed” and given an “opportunity to provide additional identification information,” such as “his or her full social security number.” *Id.* ¶ 57, Fig. 3; *see id.* ¶ 14. After the parent provides the additional information, the system again attempts to validate the parent’s identity “using the additional information provided.” *Id.* ¶ 57, Fig. 3.

Hence, contrary to Appellant’s assertion, Harrison discloses ensuring that a child “is protected by ensuring the parent approves a child’s request” to access a website or online content. *See* Harrison ¶¶ 13–14, 52–57, Fig. 3; Final Act. 3, 5; Advisory Act. 2; Ans. 4; *see also* Appeal Br. 4.

In addition, Harrison discloses providing protection based on a parent’s proximity to a child, i.e., “the absence of the parent to protect the child” according to the Examiner’s reasoning. *See* Harrison ¶¶ 26, 59; Final Act. 3, 5; Advisory Act. 2; Ans. 4. Specifically, as another security measure, Harrison’s system (1) determines the parent’s geographic location based on “the IP address of the parent computer system”; (2) determines the child’s geographic location based on “the IP address of the child computer system”; and (3) compares the respective geographic locations. Harrison

¶¶ 26, 59; *see* Final Act. 3, 5; Advisory Act. 2; Ans. 4. If the respective geographic locations of the parent and child are “inconsistent” or “not sufficiently close,” the system does not validate the parent’s identity.

Harrison ¶¶ 26, 59; *see* Final Act. 3, 5; Advisory Act. 2; Ans. 4. If the system does not validate the parent’s identity, “the parent is informed.”

Harrison ¶ 57, Fig. 3.

Thus, as the Examiner properly reasons, if the respective geographic locations of the parent and child are “inconsistent” or “not sufficiently close,” the “parent may not be able to closely monitor the child’s activity.”

Final Act. 3.

Claim 1: “Location Zone”

Appellant advances another reason why Harrison fails to teach or suggest the disputed limitation—Harrison does not determine user location relative to a “location zone.” *See* Reply Br. 2.

We disagree. The Specification explains that a “location zone” includes any of the following: (1) a “residence,” (2) a “geo-fenced area,” and (3) “premises.” Spec. ¶¶ 5, 9, 33. The Specification also explains that “premises” include an “enclosure, house, office, etc.” *Id.* ¶ 18. Harrison’s system determines whether the respective geographic locations of the parent and child are “inconsistent” or “not sufficiently close,” e.g., not within the same residence. Harrison ¶¶ 26, 59; *see* Final Act. 3–5; Advisory Act. 2; Ans. 4. Harrison’s disclosure about determining whether the respective geographic locations of the parent and child are “inconsistent” or “not sufficiently close” within the same residence teaches or suggests determining user location relative to a “location zone.”

An obviousness analysis should assess a reference in its entirety for what it fairly teaches or suggests to those skilled in the art. *See In re Fracalossi*, 681 F.2d 792, 794 n.1 (CCPA 1982); *see also Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989). Here, as discussed above, Harrison discloses (1) informing a parent that a child has requested permission to access a website, (2) giving the parent an opportunity to review the website before granting or denying permission, (3) determining the parent’s geographic location, (4) determining the child’s geographic location, and (5) causing a response if the respective geographic locations are “inconsistent” or “not sufficiently close,” e.g., “the parent is informed.” *See Harrison* ¶¶ 13–14, 26, 52–57, 59, Fig. 3; Final Act. 3–5; Advisory Act. 2; Ans. 4.

“[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification.” *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000). Under that standard, Harrison’s disclosures teach or suggest the disputed limitation, i.e., “causing, in response to determining the second user is outside the location zone, presentation of the identifier of the first user associated with the request and the identification of the one or more restricted activities to the second user.”

As the Examiner properly reasons, “deriving the claimed feature with Harrison’s determination of the parent’s IP address or geolocation information would have been [an] obvious modification” because Harrison “requires the condition of parent’s location needs to be met in order to allow the parent[] to approve or disapprove of the child’s content access.” Ans. 10; *see id.* at 10–11.

Claim 1: Impermissible Hindsight

Appellant asserts that the Specification “discloses ‘remote control of user permissions by an administrator such as a parent, superior, manger [sic], guardian, etc.’” Appeal Br. 4 (alteration by Appellant) (quoting Spec. ¶ 2); *see* Spec. ¶¶ 2, 8. Appellant then contends that “[d]ue to the lack of suggestion of a parent remotely approving a child’s request in Harrison and disclosure of remote control of user permissions by a parent in Appellant’s specification, it logically follows that the finding of obviousness of the identified feature is an exercise of impermissible hindsight.” Appeal Br. 4; *see* Reply Br. 3–4.

We disagree that the Examiner relies on impermissible hindsight to reject claim 1. Like the Specification, Harrison discloses a parent remotely controlling a child’s user permissions. *See* Harrison ¶¶ 13–14, 26, 30, 41, 52–59, code (57), Fig. 3; Final Act. 3–5; Advisory Act. 2; Ans. 4. For example, Harrison explains that the system may include a “parent module” that “associates currently approved content for a plurality of underage users associated with the parent.” Harrison ¶ 30. The “parent module includes a user interface” for receiving parental input “withdrawing a previously granted approval” and “reapproving a previously withdrawn approval.” *Id.* Harrison’s system permits parents to (1) “monitor what sites their children have approval to visit” and (2) “withdraw approval at any time for any site(s) previously approved using the system.” *Id.* ¶ 13, code (57).

“Any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made” without relying on “knowledge

gleaned only from applicant’s disclosure, such a reconstruction is proper.” *In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971). Here, the Examiner relies on “only knowledge which was within the level of ordinary skill at the time the claimed invention was made,” i.e., Harrison’s disclosures, to reject claim 1. *See* Final Act. 4–5; Advisory Act. 2; Ans. 3–4. Hence, the Examiner does not rely on impermissible hindsight to reject claim 1.

Claim 1: Teaching Away

Appellant asserts that “Harrison appears to teach that **close proximity** of a child and parent are **required** to validate a parent identity.” Appeal Br. 6 (emphasis by Appellant) (citing Harrison ¶ 59); *see* Reply Br. 4 (citing Harrison ¶ 59). Appellant then contends that “[s]uch a teaching would clearly lead one of skill in the art away from” presenting information to a parent “in response to determining the second user [parent] is outside the location zone” according to claim 1. Appeal Br. 6; *see* Reply Br. 4–5.

We disagree that Harrison teaches away from claim 1’s subject matter. “A reference does not teach away . . . if it merely expresses a general preference for an alternative invention but does not ‘criticize, discredit, or otherwise discourage’ investigation into the invention claimed.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1327 (Fed. Cir. 2009) (quoting *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004)).

Here, Appellant does not show how Harrison “criticize[s], discredit[s], or otherwise discourage[s]” investigation into claim 1’s subject matter. *See* Appeal Br. 6–7; Reply Br. 4–5. To the contrary, as discussed above, Harrison discloses (1) determining a parent’s geographic location, (2) determining a child’s geographic location, and (3) causing a response

if the respective geographic locations are “inconsistent” or “not sufficiently close.” *See* Harrison ¶¶ 26, 57, 59, Fig. 3; Final Act. 3–5; Advisory Act. 2; Ans. 4. Hence, Harrison does not teach away from claim 1’s subject matter.

Claim 1: Improper Official Notice

Appellant asserts that in the Final Office Action “the Examiner did not provide a citation to the cited art in support of an alleged teaching or suggestion of” the disputed limitation. Appeal Br. 7. Appellant then contends that “the Examiner appears to take Official Notice that the features are allegedly obvious.” *Id.*

We disagree that the Examiner takes official notice of a fact supporting the legal conclusion of obviousness. Rather, in reaching the legal conclusion of obviousness, the Examiner cites evidence of the prior art’s scope and content and does not take official notice of the prior art’s scope or content. *See* Final Act. 3–5 (citing Harrison ¶¶ 13–14, 59); Advisory Act. 2 (citing Harrison ¶¶ 26, 59); Ans. 3–4, 9–10 (citing Harrison ¶¶ 8, 13–14, 59); *see also Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). After citing evidence of the prior art’s scope and content, the Examiner correctly analyzes the differences between the prior art and claim 1’s subject matter before determining that claim 1’s subject matter would have been obvious. *See* Final Act. 5; Advisory Act. 2; Ans. 4, 9–11.

Summary for Claim 1

For the reasons discussed above, Appellant’s arguments have not persuaded us that the Examiner erred in rejecting claim 1 for obviousness based on Harrison. In our view, the claimed subject matter exemplifies the principle that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable

results.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007). Thus, we sustain the § 103 rejection of claim 1.

*Independent Claims 8 and 15 and
Dependent Claims 2–7, 9–11, 14, and 16–22*

Appellant does not argue patentability separately for independent claims 8 and 15 or dependent claims 2–7, 9–11, 14, and 16–22. *See* Appeal Br. 3–8; Reply Br. 1–5. Thus, we sustain the § 103 rejection of these claims for the same reasons as claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

CONCLUSION

We affirm the Examiner’s decision to reject claims 1–11 and 14–22.

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–11, 14–22	103	Harrison	1–11, 14–22	

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)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED