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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEREMY BLACK and PATRICK H. HAYES

Appeal 2019-000868
Application 15/040,124
Technology Center 2100

Before JOHN A. EVANS, JOHN F. HORVATH, and
KIMBERLY McGRAW, *Administrative Patent Judges.*

Opinion for the Board filed by *Administrative Patent Judge* Horvath.

Opinion Concurring filed by *Administrative Patent Judge* McGraw.

HORVATH, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant seeks review of the Examiner's final decision to reject claims 1–11.[1] 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(a). Appellant identifies Universal Electronics, Inc. as the real party in interest. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claimed invention is directed to a "network-capable slave relay station[] installed in conjunction with a universal remote control device." Spec. 1:23–2:1. The slave relay station is "adapted to serve and/or host pages comprising a simplified graphical user interface (GUI) [that] embodies activatable links corresponding to control functions for configured appliances." *Id.* at 2:1–4. For example, slave relay station 100 serves "HTML-formatted[2] pages . . . requested by . . . personal communications devices 400 or 402, thereby allowing such devices to be used as surrogate or additional universal controlling devices." *Id*. at 8:22–9:4.

Personal communication device 402 generates and displays an HTML-based GUI that includes "a series of icons representative of appliance control actions which may be initiated." Spec. 11:12–16. When a user selects one of the displayed icons, personal communication device 402 transmits "a message . . . back to the originating[3] slave relay device, receipt of which causes the desired command(s) to be issued to an appliance." *Id.* at 11:16–20. The message from personal communication device 402 to slave relay device 100 can be a request for a named file, e.g., "an HTTP[4] 'GET' request," for a file named "switch_to_abc.irm." *Id.* at 12:2–9, 20:6–7. When slave relay device 100 receives this request, it "retrieve[s] a stored series of commands operable to change a pre-determined channel tuning device to the ABC broadcast channel." *Id.* at 13:8–13. The stored

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[2] Hyper-Text Markup Language.
[3] The "originating slave relay device" is slave relay device 100, which sent the GUI page to personal communication device 402. *See* Spec. 8:22–9:4.
[4] Hyper-Text Transfer Protocol.

commands can include, for example, an appliance code (e.g., code C1376 to control a Motorola cable set-top box), and the channel (e.g., channel 007) to which the set-top box should be tuned to display ABC media broadcasts. *Id.* at 20:6–9.

Claim 1, the only independent claim on appeal, is reproduced below (bracketed material and formatting added):

> 1[a]. A media access controlling device having a processing device and a non-transitory computer readable media on which is stored instructions which, when executed by the processing device, cause the media access controlling device to perform steps, comprising:
>
> [b] receiving from a personal communication device data that at least identifies by name a one of a plurality of media content sources;
>
> [c] causing the data that at least identifies by name a one of a plurality of media content sources to be used to locate a sequence of commands to be used to cause a display device to present a media content stream that originates from the named one of the plurality of media content sources; and
>
> [d] causing the located sequence of commands to be executed whereupon the media content stream that originates from the named one of the plurality of media content sources will be presented on the display device.

REFERENCE(S)

The prior art relied upon by the Examiner is:

Name	Reference	Date
Dresti et al. "Dresti"	US 2003/0103088 A1	June 5, 2003

REJECTION

Claims 1–11 stand rejected under 35 U.S.C. § 102(b) as anticipated by Dresti. Final Act. 2–6.

OPINION

We have reviewed the Examiner's rejection in light of Appellant's arguments that the Examiner has erred. We agree with at least one of Appellant's arguments, which is dispositive with respect to all of the rejected claims, and reverse the Examiner's rejection of all claims.

Neither the Appellant nor the Examiner asks us to construe any claim term. *See* Appeal Br. 1–13; *see also* Ans. 3–6. In particular, neither party asks us to construe the preamble of claim 1. A preamble must be construed when it is needed to breathe "life and meaning" into a claim. *See Pitney Bowes, Inc. v. Hewlett Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999) ("If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim."); *see also Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997) ("Where a patentee uses the claim preamble to recite *structural limitations* of his claimed invention, the PTO and courts give effect to that usage.") (emphasis added).

Here, the preamble of claim 1 includes structural limitations not elsewhere recited in claim 1 that are needed to give life and meaning to the claimed *media access controlling device*. In particular, claim 1 recites a media access controlling device, rather than a method, that must include "a processing device," "a non-transitory computer readable media," and "instructions" that cause the device to: (1) receive, from a personal communication device, data identifying by name a media content source; (2) use that data to locate a sequence of commands; and (3) execute the

sequence of commands to present on a display device a content stream from the named media content source. Appeal Br. 14, Claims App. (claim 1).

The Examiner rejects claims 1–11 as anticipated by Dresti. Final Act. 2–6. To anticipate a claim, a reference must disclose "every element of the claimed invention," and "must also disclose those elements 'arranged as in the claim.'" *NetMoneyIn, Inc. v. VeriSign Inc.*, 545 F.3d 1359, 1360 (Fed. Cir. 2008) (internal citations omitted). To establish a prima facie case of anticipation, the Examiner must "set forth the statutory basis of the rejection and the reference . . . relied upon i*n a sufficiently articulate and informative manner* as to meet the notice requirement of [35 U.S.C.] § 132." *In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011) (emphasis added).

Appellant first argues that the Examiner fails to establish a prima facie case of anticipation because the Examiner fails to identify where Dresti discloses a media access controlling device having a processing device and a computer readable medium storing instructions executed by the processing device as required by claim 1. Appeal Br. 5. Although we agree with Appellant that the Examiner initially failed to identify where Dresti discloses these limitations, the Examiner subsequently corrected this deficiency in the Examiner's Answer. *Compare* Final Act. 2–3 (failing to identify where Dresti discloses a media access controlling device), with Ans. 4 (citing Dresti ¶ 30, Fig. 1) (identifying Dresti's home entertainment equipment 1120 as a media access controlling device). Accordingly, we are not persuaded by Appellant's first argument.

Appellant next argues that the Examiner fails to show anticipation by Dresti because the Examiner fails to meaningfully identify where Dresti discloses the media access controlling device "*receiving from a personal*

communication device data that at least identifies by name a one of a plurality of media content sources," as recited in claim element 1[b], "*causing the data that at least identifies by name a one of a plurality of media content sources to be used to locate a sequence of commands,*" as recited in claim element 1[c], and "*causing the located sequence of commands to be executed whereupon the media content stream that originates from the named one of the plurality of media content sources will be presented on [a] display device,*" as recited in claim element 1[d]. App. Br. 6–9. We agree that the Examiner has not shown that Dresti teaches all of the limitations of claim 1.

Initially, in the Final Action, the Examiner fails to identify where Dresti discloses a media access controlling device that "*receiv[es] from a personal communication device data that at least identifies by name a one of a plurality of media content sources*" as recited in claim element 1[b]. *See* Final Act. 3. This is facially deficient. *See Jung*, 637 F.3d at 1363 (To establish prima facie anticipation, the Examiner must identify "*where each limitation of the rejected claims is shown in the prior art reference* by specific column and line number.").

The Examiner also fails to correctly identify where Dresti discloses the media access controlling device "*caus[es] the data that at least identifies by name a one of a plurality of media content sources to be used to locate a sequence of commands*" as recited in claim element 1[c]. *See* Final Act. 3 (citing Dresti ¶¶ 47, 178–180). Specifically, the Examiner fails to show that the cited passages of Dresti disclose a media access controlling device that (i) "*receiv[es] . . . data that at least identifies by name a one of a plurality of media content sources*" and (ii) "*caus[es] the data . . . to be used to locate a*

sequence of commands" as recited in claim elements 1[b] and [c]. Instead, the cited passages of Dresti disclose a remote control application 1102, executing on *personal communication device 1150*, that is capable of "learning IR codes, assigning and playing back macros, [and] specifying favorites ([e.g.] assigning channel numbers and/or the IR sequences necessary to cause entertainment appliances to switch channels to network logos)." Dresti ¶¶ 30–32, 47.

Dresti's IR codes, which the Examiner appears to map to the "sequences of commands" recited in limitation 1[b], are stored in a device configuration file on *personal communication device 1150*, and are subsequently located by *personal communication device 1150* when a user selects an icon displayed on personal communication device 1150 and transmitted to media access control device 1120. *See, e.g., id*. ¶ 30 ("PDA device 1150 is adapted to provide wireless control of consumer appliances such as home entertainment equipment 1120"), ¶ 34 (PDA 1150 includes IR Signaling Software 1118 that "performs the IR signal generating functions to universally control appliances; supporting a database of IR codes and transmission protocols"), ¶¶ 222–224 (disclosing the PDA's user and standard IR code databases, as well as a configuration file that stores "any resources required by the device," including IR codes). The IR codes identified by the Examiner, therefore, are stored on personal communication device 1150, and located by personal communication device 1150 rather than by media access control device 1120.

The Examiner attempts, in the Examiner's Answer, to correct these deficiencies in the Final Action by citing to different disclosures in Dresti to explain how Dresti discloses a media access controlling device that

(i) "*receiv[es] from a personal communication device data that at least identifies by name a one of a plurality of media content sources*" and (ii) "*caus[es] the data that at least identifies by name a one of a plurality of media content sources to be used to locate a sequence of commands.*" *See* Ans. 4 (citing Dresi ¶¶ 47, 86). However, as explained below, this effort also fails to show that Dresti discloses these limitations and anticipates claim 1.

First, the Examiner finds Dresti "details how sequences are transmitted to a media access device for the control of access media content sources." *Id*. (citing Dresti ¶¶ 47, 86). It is unclear, from this terse passage, whether the Examiner means to identify the IR code disclosed in paragraph 47 of Dresti (i.e., the "IR sequences necessary to cause entertainment appliances to switch channels") as the data "*receiv[ed] from a personal communication device . . . that at least identifies by name a one of a plurality of media content sources*" recited in claim element 1[b], or as the sequence of commands that "*the data that at least identifies by name a one of a plurality of media content sources* [is] *used to locate*" as recited in claim element 1[c]. If the Examiner intends the IR code to be data that identifies the name of a media content source received by media access control device 1120, then the Examiner fails to show where Dresti discloses using the IR code to locate a sequence of commands as required by claim element 1[c]. If the Examiner intends the IR code to be the sequence of commands located by media content access device 1120, the Examiner fails to show where Dresti discloses media content access device 1120 (i) receives data that identifies by name a media content source from personal communication device 1150 as required by claim element 1[b] or (ii) uses the name of the

media content source to locate a sequence of commands as required by claim element 1[c].

Next, the Examiner finds:

> Dresti provides that favorites within the interface can be pre-populated which will include logo and name information along with data such as URL data that can be loaded (See Figures 17a-h and Paragraph 180). These capabilities all provide a functionality where a specific name is used to locate sequences that will then be used for media content access. The names and logos include items such as CNN, ESPN and FOX. Therefore not only would the name be included with the logo and favorites set-up page used for access but also in the URL that would load on the browser (i.e. cnn.com, espn.com or fox.com).

Ans. 4. The Examiner's finding that the interface on the *personal communication device* 1150 can be prepopulated with data such as a logo, name information, or URL data does not sufficiently explain that the data is transmitted to the *media access controlling device* 1120 and then used by that device to locate any command sequences, let alone command sequences that cause the *display device* to present media content. Accordingly, the Examiner has not shown that the media access controlling device of Dresti (i) receives data that identifies by name a media content source as required by claim element 1[b] or (ii) uses that data to locate a sequence of commands as required by claim element 1[c].

For example, the Examiner identifies a name in a URL (e.g., CNN in www.cnn.com) as "*data that at least identifies by name a one of a plurality of media content sources.*" *See* Ans. 4 (citing Dresti ¶ 180, Figs. 17a–h). However, the Examiner fails to explain how Dresti discloses personal communication device 1150 transmits this URL "name" data to home entertainment/media access controlling device 1120, thereby establishing

that home entertainment/media access controlling device 1120 "*receiv[es] from a personal communication device data that at least identifies by name a one of a plurality of media content sources*," as required by claim element 1[b].

Additionally, the Examiner fails to explain how Dresti discloses home entertainment/media access controlling device 1120 "*caus[es] the data . . . to be used to locate a sequence of commands*" as required by claim element 1[c]. Although the Examiner asserts that the URL's linkage to an icon displayed on Dresti's personal communications device 1150 "provide[s] a functionality where a specific name is used to locate sequences that will then be used for media content access," the Examiner fails to explain what these sequences are and how the *media access controlling device* 1120 uses the URL on personal communication device 1150 to locate these sequences. Ans. 4–5. Thus, the Examiner fails to show that Dresti's home entertainment/media access controlling device 1120 "*caus[es] the data that at least identifies by name a one of a plurality of media content sources to be used to locate a sequence of instructions*," as also required by claim 1.

Similarly, the Examiner fails to identify where Dresti teaches a media access controlling device that performs the step of "causing the located sequence of commands to be executed whereupon the media content stream that originates from the named one of the plurality of media content sources will be presented on the display device" as recited in claim element 1[d]. The Examiner cites to Figure 17 of Dresti and paragraphs 150, 167, 224, and 283 as disclosing the limitations of claim element 1[d]. *See* Final Act. 3. All of these paragraphs, however, disclose steps taken on personal communications device or PDA 1150 rather than *media access controlling*

device 1120. *See, e.g.*, Dresti ¶ 150 (disclosing using PDA remote control application 1102 to specify the device IR format and command set to be used to control selected devices), ¶ 167 (disclosing using PDA remote control application 1102 to configure macros (i.e., preprogrammed sequence of command actions that may be played back by pressing a single key)), ¶ 224 (disclosing using the PDA's device configuration file to store user defined macros and IR code sequences on the PDA), ¶ 283 (disclosing using PDA remote control application 1102 to update channel numbers associated with favorite stations (e.g., CNN) when a cable provider changes channel line-ups).

Accordingly, for the reasons discussed above, we reverse the Examiner's rejection of claim 1. Claims 2–11 depend, directly or indirectly, from claim 1. *See* Appeal Br. 14–16. We, therefore, reverse the Examiner's rejection of claims 2–11 for the same reasons.

CONCLUSION

The Examiner's rejection of claims 1–11 as anticipated by Dresti is reversed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–11	102(b)	Dresti		1–11

REVERSED

McGRAW, *Administrative Patent Judge*, concurring.

I concur with the majority's decision to reverse the Examiner's rejection of claims 1–11 under 35 U.S.C. § 102 as anticipated by Dresti. The Examiner has not persuasively shown that Dresti explicitly discloses, either expressly or inherently, where the media access control device uses data received from the personal communication device to then locate a sequence of commands or cause the located sequence of commands to be executed, as required by claim elements 1[c] and [d], necessary to support a rejection under § 102.

I disagree, however, with the majority's conclusion that Dresti does not disclose a media access controlling device that receives from a personal communication device "data that at least identifies by name a one of a plurality of media content sources" as recited in claim element 1[b].

As admitted by Appellant, Dresti's personal communication device 1150 transmits to media access control device 1120 "a sequence of channel tuning command signals that the user previously recorded." Reply 3 (citing Dresti ¶ 180) (emphases omitted); *see also* Final Act. 3 (citing Dresti ¶¶ 178–180). Dresti explains the user can use the setup wizard "to record a sequence of keystrokes" that are to be associated with a favorites entry. Dresti ¶ 180. For example, the user can "enter a series of keystrokes" such as "'0,' '0,' '4,' and 'Enter' to assign to a favorites button commands for switching the satellite receiver device . . . to channel four." Dresti ¶ 180; *see also id.* ¶ 47 (stating the set up wizard can be used for "assigning channel numbers and/or the IR sequences necessary to cause the entertainment appliances to switch channels"). Appellant has not persuasively explained why these commands for switching the satellite receiver to channel four are

not data that identifies by name a media content source (i.e., channel four) as required by claim element 1[b]. As noted by the Examiner, Appellant has not provided an explicit definition nor steps pertaining to a level at which the name information must be utilized. Ans. 4.