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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARTIN C. POTORNY, DAVID A. JONES, and
STEVEN M. WELSH

Appeal 2019-000935
Application 12/821,685
Technology Center 2600

Before MIRIAM L. QUINN, DANIEL N. FISHMAN, and
ADAM J. PYONIN, *Administrative Patent Judges*.

QUINN, *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, 2, 4–9, 12–18, and 20–27. *See* Final Act. 1.² 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 Alcatel-Lucent USA Inc. Appeal Br. 1.

² Citations to the “Final Office Action” refer to the Final Office Action mailed September 18, 2017.

CLAIMED SUBJECT MATTER

The claims are directed to a method and system for providing podcast information based on location information and temporal information. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A system for providing podcast information to a subscriber device at specific geographical locations at the request of a subscriber or network, the system comprising:

a podcast server operative to receive a request from the subscriber or network to provide podcast information to the subscriber device, validate the subscriber device by accessing a configurable subscriber profile comprising subscription information and subscriber profile information including subscriber specified preferences of the subscriber, the subscriber specified preferences comprising temporal information on a time when the podcast information will be of interest to the subscriber at a specified geographical location, obtain location information for the subscriber device, and provide the podcast information to the subscriber device responsive to the request, based on the location information and the temporal information, in accord with the subscriber profile.

Appeal Br. 12 (Claims Appendix).

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Krumm	US 2007/0006098 A1	Jan. 4, 2007
Neumann	US 2007/0299874 A1	Dec. 27, 2007
Wilson	US 2008/0305781 A1	Dec. 11, 2008
Dorogusker	US 2010/0131567 A1	May 27, 2010
Valin	US 2011/0153362 A1	June 23, 2011

REJECTIONS

Claims 1–2, 4–8, 12–18, 20 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dorogusker, Krumm, and Valin. Final Act. 3–12.

Claims 21, 22, and 24–26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dorogusker, Krumm, Valin, and Wilson. *Id.* at 12–14.

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Dorogusker, Krumm, Valin, and Neumann. *Id.* at 14–15.

OPINION

This appeal presents two issues:³

- 1) Did the Examiner err in determining that Valin teaches “the subscriber specified preferences comprising temporal information on a time when the podcast information will be of interest to the subscriber at a specified geographical location,” as recited in claims 1 and 12?⁴

³ Although Appellant raises the argument that claims 1–9, 12–18, and 20–23 are definite, under 35 U.S.C. § 112, second paragraph (Appeal Br. 9–10), that argument is not discussed because the Examiner withdrew the rejection. Ans. 5.

⁴ Appellant does not argue separately dependent claims 2, 4–8, 13–18, 20 and 23. Appeal Br. 8. Therefore, all claims rise and fall in accordance with our determination concerning claims 1 and 12. 37 C.F.R. § 41.37(c)(1)(iv). Further, Appellant does not argue claim 27, which depends from claim 1, separately from claim 1. Appeal Br. 9. Accordingly, our determination concerning claim 1 also disposes of the rejection of claim 27. 37 C.F.R. § 41.37(c)(1)(iv).

- 2) Did the Examiner err in determining that a person of ordinary skill in the art would have combined Wilson’s teachings with those of Dorogusker, Krumm, and Valin, in rejecting claims 21, 22, and 24–26?

Having reviewed the Examiner’s rejections in light of Appellant’s arguments, as presented in the Appeal Brief and Reply Brief, we are not persuaded that the Examiner has erred as Appellant alleges. We discuss each issue in turn.

Temporal Information

Claims 1 and 12 recite “temporal information” with respect to two limitations. First, the claims recite the “subscriber specified preferences comprising *temporal information* on a time when the podcast information will be of interest to the subscriber at a specified geographical location,” and providing “podcast information to the subscriber device . . . based on the location information and the *temporal information*, in accord with the subscriber profile.” The Examiner’s findings concerning the temporal information are as follows:

- 1) “Valin discloses: the subscriber specified preferences comprising temporal information on a time when the podcast information will be of interest to the subscriber at a specified geographical location (Valin at ¶ 1918 where the user can mark the location and time for content delivery)” (Final Act. 5);
- 2) “Dorogusker already discusses using temporal information as part of its podcast tagging” (*id.* at 6);
- 3) Referring to the combination of Dorogusker and Krumm with Valin’s teaching of marking location and time for content delivery,

the Examiner states that “[t]his would seem to be a reasonable modification as Dorogusker already discusses using temporal information as part of its podcast tagging. *Id.* at 6.

The Examiner also relies on Wilson as evidence of the knowledge in the art at the time of invention, which provides reasons for using Valin’s teachings to deliver targeted podcasts to users when they will likely be interested in them. *Id.*

Appellant argues, however, that Valin’s teachings are vague and “only shows a user designation of location, not location and time.” Appeal Br. 7–8. According to Appellant, the reference to “time” in Valin “is unclear as to its technical meaning and context.” *Id.* Appellant further argues that although “some type of ‘time’ data (origin and type unknown) is used by the GPS system,” Valin “does not expressly show time data supplied by the user as a preference for content delivery.” *Id.* We do not agree.

Valin expressly states that a “*user* marks the spatial point target, or targets where they want their content delivered to.” Valin ¶ 1918 (emphasis added). Part of the information that Valin’s system captures via this user marking feature is “Time,” together with the coordinates of location. *Id.* Figure 182 of Valin, which the cited paragraph of Valin describes, shows, at step “A,” that the user’s computer allows for the user to “Mark location,” causing the system at steps “B” and “F” to capture the location and “Time.” *Id.* at Fig. 182. The captured information is sent to the server at step “G” for “identification, positioning[,] and broadcast point analysis.” *Id.* These disclosures are not vague, and they expressly describe capturing *time and the location* at which the user desires broadcast information to be delivered.

The Examiner's rejection also refers to Dorogusker, which describes at ¶ 108 (cited by the Examiner, Final Act. 4), that the user instructs the portable mobile device to tag the "current location provided by a GPS device, a beacon, cell towers, WiFi hotspots, and the like." This disclosure also teaches that the "current" time is part of the tag that the user implements. Dorogusker ¶ 108. Dorogusker further describes at paragraph 37, also cited by the Examiner, that the asset management system uses tags provided by a user to select and distribute media assets and to allow a user to download a track (e.g., podcast) based on the tags. Thus both Dorogusker and Valin teach "temporal information" that the user designates, in addition to location, for the purpose of downloading media, or podcasts, that are of interest to the user. Therefore, the podcasts would be delivered using the designated time, and would be related to the current location (in light of Krumm's teachings).

Finally, we note that, as stated by the Examiner, Wilson is evidence of the knowledge of skill in the art and, although we do not rely expressly on Wilson as teaching the "temporal information" limitations, Wilson does indicate that it would have been obvious to read Valin's spatial markings in light of Dorogusker and Krumm as part of user preferences. For instance, Wilson teaches at paragraph 97, which the Examiner refers to elsewhere in the rejection (Final Act. 12–13), that it is known that "[t]he user profile may include, but is not limited to, information related to a user's interests, age, gender, location *at a given time, including the time of day, the day of the week*, credit information, usage patterns, web browsing patterns, purchases, downloads, behavioral patterns, lifestyle information, the type of the communications device, and the wireless network provider." Wilson ¶ 97

(emphasis added). Thus, we agree with the Examiner’s findings that Wilson provides reasons why, (1) in view of Valin’s user being able to mark a location and a current time to deliver content to a user, (2) in view of Krumm’s contextual delivery, and (3) in view of Dorogusker also teaching that the user receives content based on the *current* location provided by the tags in the user subscriber profile, it would have been obvious for subscriber specified preferences to comprise *temporal information* on a time when the podcast information will be of interest to the subscriber at a specified geographical location” and to provide “the podcast information to the subscriber device . . . based on the location information and the *temporal information*, in accord with the subscriber profile,” as recited in claims 1 and 12. Final Act. 5–6; Ans. 4–6.

Combination Including Wilson

The Examiner rejected claims 21–22 and 24–26 over a combination of Dorogusker, Krumm, Valin, and Wilson. Final Act. 11–14. The Examiner states that it would have been obvious to combine Wilson’s teachings with those of Dorogusker, Krumm, and Valin because Wilson states the market need for increasing revenue per user by matching the interests of the customers with the content from third-party providers. *Id.* at 13. The Examiner states that it would have been obvious to modify the combination of teachings of the other references with those of Wilson to “deliver the best targeted podcasts to users when they will likely be interested in them.” *Id.* Appellant argues that Wilson’s focus is on “targeting device users as opposed to providing podcast information in accord with a subscriber profile.” Appeal Br. 8–9. Appellant points out that the “temporal information” in Wilson “relates to providing targeted

breakfast ads to users in the morning – not providing podcast information as disclosed and/or claimed.” *Id.* at 9. We are not persuaded by Appellant’s argument.

The Examiner’s rejection relies on Wilson teaching a market need for identifying and delivering content that matches the user’s interests. This is consistent with *KSR Int’l Co. v. Teleflex Inc.*, 550 US 398, 418 (2007) which states that it may be necessary to determine whether there is an apparent reason to combine the known elements because of a demand in the design community or in the marketplace. Such a demand has been shown here, with Wilson’s teachings. Furthermore, the Examiner relies on Wilson’s express teachings of a user profile including various information such as preferences, content history, user history, purchases, etc. as taught in paragraphs ¶¶ 44, 47, and 97. Final Act. 12. The Examiner does not rely on Wilson for content delivery. For that aspect of the claim, the Examiner relies on Dorogusker, which expressly discloses delivering podcasts to users based on user profile tags, as discussed above. Wilson contributes the teaching of user profiles including all sorts of information, including temporal information (*see* claim 22, and Final Act. 13, citing Wilson ¶ 97). The disclosure of breakfast ads contributes the teaching of time periods set as preferences, such as morning and evening. Final Act. 13 (citing Wilson ¶¶ 153–54). Notwithstanding that the breakfast ads involve pushing an advertisement rather than a user requesting a podcast, what is important is that Wilson teaches matching the desires of a user with content that matches those desires, based on the user profile. Accordingly, we determine that the Examiner has not erred in relying on Wilson for the teaching of a desire to match content to the users by utilizing a user profile.

CONCLUSION

We are not persuaded that the Examiner erred in rejecting claims 1 and 12 over Dorogusker, Krumm, and Valin. We are also not persuaded that the Examiner erred in rejecting claims 21, 22, and 24–26 over Dorogusker, Krumm, Valin, and Wilson. The Examiner’s rejections are sustained.

DECISION SUMMARY

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-2, 4-8, 12-18, 20, 23	103(a)	Dorogusker, Krumm, Valin	1-2, 4-8, 12-18, 20, 23	
21, 22, 24-26	103(a)	Dorogusker, Krumm, Valin, and Wilson	21, 22, 24-26	
27	103(a)	Dorogusker, Krumm, Valin, and Neumann	27	
Overall Outcome:			1, 2, 4-9, 12-18, 20-27	

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