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14/940,098	11/12/2015	Douglas H. MARMAN	092283.000778	3294

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EXAMINER	
TANG, KAREN C	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DOUGLAS H. MARMAN

Appeal 2019-001032
Application 14/940,098
Technology Center 2400

Before NORMAN H. BEAMER, ADAM J. PYONIN, and GARTH D. BAER, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–15, which are all pending claims. Appeal Br. 4. 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 Avigilon Corporation as the real party in interest. Appeal Br. 2.

BACKGROUND

A. The Invention

Appellant's invention is directed to an "intelligent lighting system [that] employs energy efficient outdoor lighting and intelligent sensor technology in cooperation with video analytics processing." Abstract. Independent claim 1 is representative and reproduced below, with emphasis added to disputed elements:

> 1. An illumination system, comprising:
>
> a first light source configured to illuminate a first area of a location;
>
> ***a first image sensor configured to acquire mega-pixel resolution image data*** corresponding to the location;
>
> video analytics configured to detect an event in the location using the ***acquired megapixel resolution image data*** and to provide information about the detected event; and
>
> a controller configured to direct the first light source to assume one extended illumination state among a plurality of extended states of illumination in response to the provided information about the detected event, the plurality of extended states of illumination including a non-illuminated state and a fully illuminated state.

Appeal Br. 13 (Claims Appendix).

B. The Rejection on Appeal[2]

The Examiner rejects claims 1–15 under 35 U.S.C. § 103(a) as being unpatentable over Gagvani (US 2009/0022362 A1; Jan. 22, 2009) and Peddie (US 2005/0270175 A1; Dec. 8, 2005). Final Act. 4.

[2] Claims 16–20 were canceled in an Amendment After Final Rejection entered on July 16, 2018, and the rejection of claims 16–20 under 35 U.S.C.

ANALYSIS

A. Obviousness Rejection of Claim 1

Appellant argues that "Gagvani is not entitled to the priority date of the Gagvani Provisional" (of July 16, 2007) because "the Office has never attempted to show how any claim in Gagvani is fully supported by the Gagvani Provisional." Reply Br. 7, citing *Dynamic Drinkware, LLC v. National Graphics, Inc.*, 800 F.3d 1375 (Fed. Cir. 2015). Appellant also contends that "U.S. Provisional Appl. No. 60/950,019 [f]ails to [d]isclose [m]ega-[p]ixel [r]esolution [i]mage [d]ata." Reply Br. 1 (emphasis omitted).

As described below, we disagree with Appellant's argument that Gagvani's non-provisional application does not get the benefit of its provisional filing date, but we agree with Appellant that Gagvani's provisional application fails to disclose mega-pixel resolution data.

1. Benefit of Gagvani's Provisional Filing Date

Gagvani's non-provisional application is entitled to the benefit of Gagvani's provisional application, if two criteria are met. First, the provisional application must satisfy 35 U.S.C. § 119(e)(1), which states that

> [a]n application for patent filed under section 111(a) or section 363 for an invention *disclosed in the manner provided by section 112* of this title in a provisional application filed under section 111(b) of this title, by an inventor or inventors named in the provisional application, *shall have the same effect, as to such invention, as though filed on the date of the provisional application* filed under section 111(b) of this

§ 101 has been withdrawn in the Answer. *See* Final Act. 3–4, Adv. Act. 1, Ans. 10.

> title . . . .

35 U.S.C. § 119(e)(1) (2007) (emphases added). Second,

> the specification of the *provisional* must 'contain a written description of the invention and the manner and process of making and using it, in such full, clear, concise, and exact terms,' 35 U.S.C. § 112 ¶ 1, to enable an ordinarily skilled artisan to practice the invention *claimed* in the *non-provisional* application.

Dynamic Drinkware, LLC v. Nat'l Graphics, Inc., 800 F.3d 1375, 1378 (Fed. Cir. 2015) (quoting *New Railhead Mfg., L.L.C. v. Vermeer Mfg. Co.*, 298 F.3d 1290, 1294 (Fed. Cir. 2002)) (emphasis added).

Here, the Examiner finds, and we agree, that claim 1 of Gagvani's published application "is supported by [Gagvani's] provisional's disclosure in [paragraphs] 1018, 1019, 1021, [and] 1024." Ans. 11. This finding contradicts Appellant's assertion that "the Office has never attempted to show how any claim in Gagvani is fully supported by the Gagvani Provisional," and Appellant does not otherwise address the Examiner's finding. Accordingly, we find the Gagvani non-provisional application is entitled to the benefit of Gagvani's provisional application.

2. Gagvani's Provisional Application's Disclosure of Image Resolution

The Examiner relies on Gagvani's disclosure of "a camera group may have all cameras that are from a single manufacturer and are set up for video at CIF resolution at 15 frame[s] per second[,] using MPEG-4 Simple Profile compression over the RTP protocol" as disclosing the claimed "mega-pixel resolution image data." Ans. 12–13 (citing Gagvani Provisional ¶ 1024, Gagvani Non-Provisional ¶ 44). In support, the Answer additionally includes two web pages both accessed using web.archive.org: (1)

bhphotovideo.com, dated Oct. 11, 2007 and (2) neowin.net, containing a user posting dated Mar. 17, 2008.

Appellant contends that of the two web pages, the first from bhphotovideo.com discloses a 640 x 480 image sensor, or a resolution of "0.3 Megapixel" (Reply Br. 3). While Appellant asserts it was unable to "access the relied upon" second web page from neowin.net, Appellant contends that the Gagvani's use of the "term 'CIF resolution' refers to the Common Intermediate Format or Common Interchange Format[] which 'defines a video sequence with a resolution of 352 x 288.'" Reply Br. 5–6 (citing Wikipedia at https://en.wikipedia.org/wiki/Common_Intermediate_Format).

We agree with Appellant. Appellant's assertion that a video CIF resolution corresponds to 352 x 288 pixels is confirmed by "H.261: Video codec for audiovisual services at p x 64 kbit/s," International Telecommunication Union (Approved Mar. 12, 1993), available at https:/itu.int/rec/T-REC-H.261-199303-l/en at 3. Such a resolution corresponds to approximately .10 megapixels, because 352 times 288 pixels equals 101,376 pixels. Because the Examiner has not shown that Gagvani teaches or suggests "mega-pixel resolution image data," we are constrained by the record to reverse the Examiner's rejection of independent claim 1 and independent claim 11 commensurate in scope, as well as all dependent claims.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–15	103(a)	Gagvani, Peddie		1–15

REVERSED