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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROGER N. PANTOS, DAVID L. BIDERMAN, WILLIAM B. MAY JR., JOHN Y. SU, and MOHAMMED Z. VISHARAM

Appeal 2019-001086
Application 14/869,238
Technology Center 2400

Before JEAN R. HOMERE, MICHAEL J. STRAUSS, and DAVID J. CUTITTA II, *Administrative Patent Judges.*

CUTITTA, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 1–16, 18–24, 26–28, and 30–38, all of the pending claims.[2] We have jurisdiction under 35 U.S.C. § 6(b). A hearing was scheduled, but Appellant waived oral arguments on April 2, 2020.

We AFFIRM.

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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 Apple Inc. as the real party in interest. Appeal Br. 2.

[2] Claims 17, 25, and 29 are cancelled. Appeal Br. 11–15, Claims App.

CLAIMED SUBJECT MATTER

Appellant's claimed subject matter relates to

> techniques for managing playback of media items in a computer system. A media item may include metadata that identifies portions of the media item as "gates," that govern access to other portions of the media item, called "scopes." When playback reaches a scope portion, a player may determine a state of its associated gate(s). If the gate is locked, the scope portion cannot be played until the gate is unlocked. When playback reaches a gate portion, the player may determine its state and either play the gate or skip playback of the gate depending on its state and definitions supplied for the gate. Gates may be collected into larger constructs, called "pools," which may be locked and unlocked based on definitions supplied for the pools.

Spec. ¶ 10.[3]

Independent claim 4 is reproduced below with limitations at issue emphasized and is exemplary of the claimed subject matter:

> 4. A media management method, comprising:
>
> *playing a media item that includes a plurality of gates and associated scopes, wherein a plurality of gates are assigned to a common pool*,
>
> when a gate unlock condition is met while playing content of one of the gates:
>
> determining whether the one gate is a member of the pool of gates,

[3] Throughout this Decision we refer to: (1) Appellant's Specification filed September 29, 2015 ("Spec."); (2) the Final Office Action ("Final Act.") mailed November 1, 2017; (3) the Appeal Brief filed April 25, 2018 ("Appeal Br."); (4) the Examiner's Answer ("Ans.") mailed September 26, 2018; and (5) the Reply Brief filed November 20, 2018 ("Reply Br.").

if so, determining whether a pool unlock condition is met, and

if so, changing a state of all other gates in the pool based on the pool unlock condition.

Appeal Br. 11 (Claims Appendix).

REFERENCES AND REJECTION

The Examiner rejects claims 1–16, 18–24, 26–28, and 30–38 under U.S.C. § 103 as unpatentable over the combined teachings of Barsook et al. (US 8,776,108 B2; pub. July 15, 2010) ("Barsook") and Mlodzinski (US 2014/0317653 A1; pub. Oct. 24, 2014). Final Act. 4–13.

OPINION

We review the appealed rejection for error based upon the issues identified by Appellant and in light of Appellant's arguments and evidence. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2017). We disagree with Appellant that the Examiner erred and adopt as our own the findings and reasons set forth by the Examiner. We add the following primarily for emphasis.

Independent claim 4 recites, in part, "playing a media item that includes a plurality of gates and associated scopes, wherein a plurality of gates are assigned to a common pool." The Examiner notes that "Barsook fails to explicitly disclose: wherein a plurality of gates are assigned to a common pool," but finds Mlodzinski's advertisements 414, 422, 430 teach this limitation. Final Act. 4 (citing Mlodzinski ¶¶ 50, 53, 54, Fig. 4).

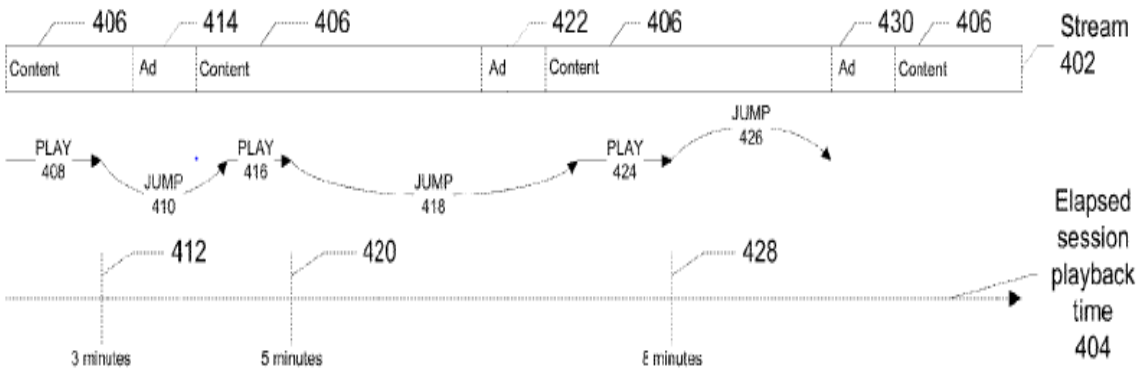
Appellant argues that Mlodzinski does not teach or suggest that gates are assigned to a common pool, as recited in claim 4. Specifically, Appellant argues,

> Mlodzinski's system operates on the premise that access to the various content elements is governed by an elapsed playback time. Mlodzinski has no disclosure teaching that a plurality of advertisements ever would be "assigned to a common pool" or that "a state of all other gates in the pool" would be changed "based on [a] pool unlock condition." Instead, Mlodzinski's system decides whether to permit a user to skip over an ad based solely on the various measures of elapsed time. Again, Mlodzinski's advertisements 414, 422, 430 are treated individually; there is no disclosure that describes the advertisements 414, 422, 430 (or the different content elements 406) would be related to each other.

Appeal Br. 4.

We find unpersuasive Appellant's argument that "Mlodzinski has no disclosure teaching that a plurality of advertisements ever would be 'assigned to a common pool.'" *Id.*

Mlodzinski's Figure 4 is reproduced below:



Mlodzinski's Figure 4 "illustrates an example flow diagram for implementing arbitrated ad consumption" for advertisements 414, 422, and 430.

Referring to Figure 4 of Mlodzinski, we agree with the Examiner's finding that "the various elapsed session playback time (i.e.[,] 3 min, 5 min, and 8 min) are clustered among 'required content (e.g., advertisements 414, 422, 430)' [and] could be interpreted as wherein a plurality of gates are assigned to a common pool." Ans. 5 (emphasis omitted). Ads 414, 422, 430 act as gates because in certain circumstances, such as when a viewing time threshold is exceeded, a user may not jump past or fast-forward through the ads to content but instead must watch the ads before watching additional content. Mlodzinski ¶¶ 55, 56. Moreover, we agree with the Examiner's finding that Mlodzinski describes that ads 414, 422, 430 are assigned to a common pool because each of the ads cited by the Examiner is associated with content 406 and is governed by the same threshold time of 7 minutes. *Id.* at ¶¶ 50, 52–56, Fig. 4.

Appellant further argues Mlodzinski fails to teach determining whether a pool unlock condition is met, and if so, changing a state of all other gates in the pool based on the pool unlock condition because "Mlodzinski has no disclosure that any advertisement has 'a gate unlock condition,' or that any collection of advertisements have 'a pool unlock condition'" and "[t]here is no disclosure that, when a pool unlock condition is met, 'a state of all other gates in the pool [is changed] based on the pool unlock condition.'" Reply Br. 2–3.

These arguments are unpersuasive. As Appellant describes, "Mlodzinski's system operates on the premise that access to the various content elements is governed by an elapsed playback time." Appeal Br. 4. We also agree with Appellant that in Mlodzinski's Figure 4 and corresponding text, "if a user attempts to jump over an ad (e.g., jump 410),

the jump is allowed if the elapsed playback time (3 minutes) is less than a threshold time (7 minutes)." *Id.* (citing Mlodzinski ¶¶ 52, 53). "However, if the user attempts to jump over an ad (e.g., jump 426 to subsequent content 406), and the elapsed playback time (8 minutes) is greater than the threshold time, the jump is disallowed and playback starts at the beginning of the ad (e.g., ad 430)." *Id.* (citing Mlodzinski ¶55).

In view of Appellant's summary, we agree with the Examiner that Mlodzinski teaches "determining whether a pool unlock condition is met," as recited in claim 4, by determining whether the elapsed session playback time 404 has accumulated (or not) to a threshold value. Mlodzinski ¶52. Mlodzinski further describes that once the elapsed session playback time 404 has accumulated to a threshold value, no additional advertisements (including ads such as ad 430 that are otherwise skippable, but for the threshold having been met) may be skipped until another advertisement in the pool has been viewed and the elapsed session playback time 404 has been reset. Mlodzinski ¶¶ 50, 52–56, Fig. 4. Mlodzinski further explains that "[a]fter viewing advertisement 430, the elapsed session playback time 404 may reset to zero" after which "the user may continue viewing unrequired content" such as content 406. Mlodzinski ¶¶ 56, 51. Accordingly, because Mlodzinski describes changing a state of ads 414, 422, 430 to a lock or unlock state based on whether elapsed session playback time 404 meets a predetermined threshold, we agree with the Examiner that Mlodzinski teaches or suggests "changing a state of all other gates in the pool based on the pool unlock condition," as recited in claim 4.

Claims 30, 35, and 36

Appellant nominally argues claims 30, 35, and 36 separately. Appellant argues "[b]ecause the prior art fails to teach or suggest the concept of pools, it cannot teach or suggest the different playback control techniques that rely on gate state management techniques (Claim 30) or playback techniques (Claims 35, 36) that depend on the pools" and, therefore, the rejection of claims 30, 35, and 36 should be reversed. Appeal Br. 7–8.

This argument is unpersuasive for reasons similar to those discussed above for claim 4. That is, because we find unpersuasive Appellant's argument presented for claim 4 that the prior art fails to teach or suggest the concept of pools, we also find this argument persuasive.

Claims 1–3, 13–16, 24, 26, and 31

Appellant nominally argues claims 1–3, 13–16, 24, 26, and 31 separately. First, Appellant highlights portions of text from each of these claims and argues "[t]hese claims describe various relationships gate states that are neither taught nor suggested by the prior art." Appeal Br. 8.

Such a conclusory statement, however, amounting to little more than a paraphrasing of the claim language and a general denial, is unpersuasive to rebut the Examiner's findings. *Cf.* 37 C.F.R. § 41.37(c)(iv) (2017) ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim."); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) ("[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.").

Appellant next argues "[t]hese claims describe that the gates have states associated with them, described variously as locked, unlocked, and collapsed, and these states control playback in different ways" and because "Mlodzinski determines access controls solely by checking elapsed time" . . . [t]here is no disclosure that gating segments 102 or advertisements 414, 422, 430 have a 'state.'" Appeal Br. 79.

This argument is unpersuasive for the same reasons discussed above for claim 4. That is, because we find unpersuasive Appellant's argument presented for claim 4 that Mlodzinski fails to teach or suggest that advertisements 414, 422, 430 have a state that may be changed, we also find this argument persuasive.

For all of the reasons discussed, Appellant has not persuaded us of error in the Examiner's obviousness rejection of representative claim 4. Accordingly, we sustain the Examiner's rejection of that claim, as well as independent claims 37 and 38, and dependent claims 1–3, 5–16, 18–24, 26–28, and 30–36.

CONCLUSION

We affirm the Examiner's rejection of claims 1–16, 18–24, 26–28, and 30–38 under 35 U.S.C. § 103.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	References	Affirmed	Reversed
1–16, 18–24, 26–28, 30–38	103	Barsook, Mlodzinski	1–16, 18–24, 26–28, 30–38	

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED