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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JONATHAN ALLAN ARSENAULT, ERIC JOHN WOLF, and
DENIS MERCIER

Appeal 2019-001249
Application 12/745,352
Technology Center 2400

Before ALLEN R. MacDONALD, JEFFREY S. SMITH, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–40 and 47–49, which constitute all of the pending claims. *See* Final Act. 1 *and* Br. 12–20 (Claims App'x).² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ We use “Appellant” to refer to the “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest BCE INC. Br. 2.

² We refer herein to the Appeal Brief filed July 10, 2018 (“Br.”), the Answer mailed Sept. 25, 2018 (“Ans.”), the Final Office Action mailed Jan. 10, 2018 (“Final Act.”), and the Specification filed May 28, 2010 (“Spec.”).

Introduction

Appellant describes the invention as “relat[ing] generally to a method of routing communications destined for a given party, and more particularly, to a method and system for modifying the way communications are routed to the given party.” Spec. 1:6–8. Claim 1 is illustrative:

1. A method implemented by a network entity, said method comprising:
 - accessing communication routing information regarding incoming calls associated to a called party and stored in a memory, the communication routing information being indicative of at least one termination device to which the incoming calls destined for a communication device associated with the called party and arriving at a gateway device are to be routed via the gateway device, the communication routing information being configurable by the called party;
 - monitoring behavior information associated to the called party;
 - processing the communication routing information and the behavior information at least in part on the basis of modification information in an attempt to determine if said communication routing information stored in the memory is suitable for modification;
 - causing the called party receiving the incoming calls to be advised when said processing has determined that the communication routing information stored in the memory is suitable for modification.

Br. 12 (Claims App’x).

References and the Examiner's Rejections

The Examiner's rejections rely on the following references:

Name³	Number	Published	Filed
Knauerhase	US 2007/0299927 A1	Dec. 27, 2007	Sept. 10, 2007
Agarwal	US 2009/0055502 A1	Feb. 26, 2009	Aug. 21, 2007
Horvitz	US 2003/0046421 A1	Mar. 6, 2003	Dec. 12, 2001
Nadler	US 2009/0131080 A1	May 21, 2009	Nov. 21, 2007
Hill	US 2009/0111474 A1	Apr. 30, 2009	Oct. 24, 2007
Ridley	US 2009/0247188 A1	Oct. 1, 2009	Aug. 3, 2007

The Examiner rejected claims 1–8, 10, 11, 13–25, 27, 28, 30–37, 39, 40, and 47–49 under 35 U.S.C. § 103 as obvious over the combined teachings of Knauerhase, Agarwal, Horvitz, and Nadler. Final Act. 3–20.

The Examiner rejected claims 9, 26, and 38 as obvious over Knauerhase, Agarwal, Horvitz, Nadler, and Hill. *Id.* at 20–21.

The Examiner rejected claims 12 and 29 as obvious over Knauerhase, Agarwal, Horvitz, Nadler, and Ridley. *Id.* at 22–23.

ANALYSIS

We review the appealed rejections for error based on the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential); *see also* 37 C.F.R. 41.37(c)(1)(iv). Here, Appellant argues error in the rejection of independent claims 1, 18, 34, 35, and 40 based on claim 1 and presents no substantive arguments for dependent claims 2–6, 8–17, 19–23,

³ All reference citations are to the first listed inventor's surname.

25–33, 36–39, 48, and 49 separate from the independent claims. Br. 6–10. Appellant substantively separately argues error in the rejection of claim 7 and, for the same reason, claims 24 and 47. *Id.* at 9. Accordingly, claims 2–6, 8–23, 25–40, 48, and 49 stand or fall with claim 1, and claims 24 and 47 stand or fall with claim 7. 37 C.F.R. § 41.37(c)(1)(iv).

We have reviewed the Examiner’s rejections in light of Appellant’s contentions of reversible error. We disagree with Appellant’s conclusions. Instead, as consistent with our discussion below, we adopt the Examiner’s findings and reasons as set forth in the Final Office Action from which this appeal is taken and as set forth in the Answer. We highlight the following for emphasis.

Claim 1

With respect to claim 1, Appellant initially contends the Examiner errs in finding Agarwal teaches

accessing communication routing information regarding incoming calls associated to a called party and stored in a memory, the communication routing information being indicative of at least one termination device to which the incoming calls destined for a communication device associated with the called party and arriving at a gateway device are to be routed via the gateway device,

as recited (the “first disputed limitation”). Br. 6–8. In particular, Appellant argues that, because Agarwal discloses notifications only “about senders of emails,” “Agarwal is irrelevant to ‘communication routing information’ that is used to route incoming calls (originally destined for a communication device via a gateway device) to a termination device via the gateway device.” Br. 7 (also noting Agarwal’s notifications are “sent to the recipient receiving incoming emails and not to be configured by the recipient”).

This argument is unpersuasive. The Examiner relies on the combination of Knauerhase and Agarwal for teaching the first disputed limitation. In particular, the rejection does not rely on Agarwal for teaching the “incoming calls” and “called” party aspects of the first disputed limitation. *See* Final Act. 5 (finding Agarwal teaches, *inter alia*, “accessing communication routing information associated to a party”). One cannot show nonobviousness by attacking references individually when the rejection is based on a combination of references. *In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *see also In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (explaining the relevant inquiry is whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the *combined teachings* of those references). As for Agarwal’s focus on emails rather than “calls,” we note “[a] reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect.” *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907 (Fed. Cir. 1985) (emphasis omitted).

For the first disputed limitation, the Examiner first finds Knauerhase teaches “monitoring behavior information associated to the called party” (and that “the called party is the party receiving the incoming calls”). Final Act. 4 (citing Knauerhase ¶¶ 5, 15, 17, Fig. 1). The Examiner then finds that it is the combination of Knauerhase and Agarwal that teaches the entirety of the first disputed limitation. *Id.* at 5–6. As the Examiner explains in response to Appellant’s argument, the rejection relies on Agarwal only for “teach[ing] the concept wherein communication routing information (methods/means on which communications may take place such as IM or different email or

voicemail) associated with a user and wherein that communication routing information for a communication can be modified.” Ans. 23. Appellant does not persuasively explain how or why the Examiner errs in the findings and reasoning for combining the teachings of Knauerhase and Agarwal.

Appellant further contends the Examiner errs in relying on Agarwal to teach “causing the called party receiving the incoming calls to be advised when said processing has determined that the communication routing information stored in the memory is suitable for modification,” as recited (the “second disputed limitation”). Br. 8. In particular, Appellant argues the Examiner errs because Agarwal discloses sending notifications “to the email’s sender, NOT to a recipient receiving emails.” *Id.* (citing Agarwal ¶¶ 45–46).

This argument is unpersuasive. Immediately after Agarwal’s disclosure that is the basis for Appellant’s argument—the sending of notifications to an email sender regarding an alternative communication channel—Agarwal then discloses an embodiment that sends such notifications to email recipients. *See* Agarwal ¶¶ 47–49. Consideration of cited references includes the entirety of what they teach and suggest to one skilled in the art, not merely portions specifically cited by the Examiner. *See, e.g., In re Hedges* 783 F.2d 1038, 1039 (Fed. Cir. 1986) (citing *In re Wesslau*, 353 F.2d 238, 241 (CCPA 1965)); *see also In re Passal*, 426 F.2d 828, 831 (CCPA 1970) (“Just as piecemeal reconstruction of the prior art by selecting teachings in light of appellant’s disclosure is contrary to the requirements of 35 U.S.C. § 103[,], so is the failure to consider as a whole the references collectively as well as individually.”).

Appellant furthermore contends the Examiner errs in relying on Horvitz to teach or suggest the requirement for “the communication routing information being configurable by the called party,” as recited (the “third disputed limitation”). In particular, Appellant argues that “Horvitz *at most* teaches using the routing option to place received messages into special folders. Horvitz’s routing option [] does not correspond to the ‘communication routing information’, as defined in claim 1. Br. 8 (citing Horvitz ¶¶ 5, 64–65, 68, Fig. 1) (emphasis added).

Appellant’s argument is unpersuasive. Appellant reads Horvitz too narrowly. As the Examiner finds, and we agree, Horvitz more broadly teaches that a communication recipient (i.e., a “called party”) can modify their message delivery options. Ans. 23–24. The “piping or routing messages to a desired delivery folder” is only one such option that Horvitz discloses. Horvitz ¶ 11. Horvitz discloses various other communication delivery/routing options, such as “[d]evice options [that] can include selecting the desired output device for delivery of a message (e.g., send message to ABC manufacturer[’]s cell phone.” Horvitz ¶ 14. “Furthermore, the text may be delivered or diverted to a subsequent or alternative device, for example, if a primary device of the user, such as a desktop computer, is determined to be idle for a specified period of time.” *Id.* ¶ 16; *see also id.* ¶ 265 (“[U]sers can specify routing and paging options as a function of quantities including expected criticality, maximum expected loss, and value of alerting the user.”).

Accordingly, we sustain the rejection of claim 1 and, along with it, claims 2–6, 8–23, 25–40, 48, and 49, not separately argued.

Claim 7

Claim 7 depends from claim 1 through claim 2 and adds the limitations of “determining a suggestion as to how to modify said communication routing information” and “providing said suggestion to the called party.” Br. 13 (Claims App’x). Appellant contends the Examiner errs in finding Agarwal teaches these additional limitations. Br. 9 (citing Agarwal ¶¶ 28, 34). In particular, Appellant argues that Agarwal’s

alerting the recipient or providing the recipient with information to allow for a certain type of communication with a sender is not suggestive of providing a suggestion as to how to modify (pre-existing) communication routing information that is indicative of a termination device to which incoming calls (destined for an original recipient via a gateway device) are to be routed via the gateway device.

Id.

This argument is unpersuasive. Each reference cited by the Examiner must be read, not in isolation, but for what it fairly teaches in combination with the prior art as a whole. *See Merck*, 800 F.2d at 1097; *Keller*, 642 F.2d at 425. As the Examiner responds, and we agree, the combined teachings of Knauerhase and Agarwal teach the limitations added by claim 7:

“Knauerhase teaches the general system of modifying a communication routing information and more specifically where the party is a called party (Figure 1, Paragraph 5). Agarwal improves upon this system.” Ans. 24; *see also id.* at 25. Appellant does not explain how or why the Examiner errs in relying on the combined disclosures of Knauerhase and Agarwal for teaching the limitations of claim 7.

Accordingly, we sustain the rejection of claim 7 and, along with it, of claims 24 and 47.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed
1–8, 10, 11, 13–25, 27, 28, 30–37, 39, 40, 47–49	103	Knauerhase, Agarwal, Horvitz, Nadler	1–8, 10, 11, 13–25, 27, 28, 30–37, 39, 40, 47–49
9, 26, 38	103	Knauerhase, Agarwal, Horvitz, Nadler, Hill	9, 26, 38
12, 29	103	Knauerhase, Agarwal, Horvitz, Nadler, Ridley	12, 29
Overall Outcome			1–40, 47–49

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).

AFFIRMED