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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ALAN WADE COHN, GARY ROBERT FAULKNER, JAMES EDWARD KITCHEN, DAVID LEON PROFT, and COREY WAYNE QUAIN

Appeal 2019-001369
Application 12/771,071
Technology Center 2400

Before ELENI MANTIS MERCADER, NORMAN H. BEAMER, and GARTH D. BAER, *Administrative Patent Judges*.

MANTIS MERCADER, *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, 3–11, 13–20, 25, 26, and 31–34, which are all the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

THE INVENTION

Appellant's claimed invention is directed to a "server-based environment for management of widget programs distributable to remote execution and display devices" (Abstract).

Independent claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method comprising:

receiving, by an application management system, an application package, wherein the application package comprises an application;

receiving an indication of an access restriction associated with the application, wherein the access restriction is configured to limit, based on functionality of the application, access to the application to a subset of users of a plurality of users;

receiving, by the application management system and from a remote device associated with a user of the plurality of users, a request for the application;

[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies iControl Networks, Inc., which is a subsidiary of Comcast Cable Communications, LLC, as the real party in interest (Appeal Br. 1).

> determining, in response to receiving the request, that the user is a member of the subset of users; and
>
> transmitting, to an interface device associated with the user and in response to the request, the application, wherein the interface device is configured to install and execute the application on the interface device, wherein the interface device is located at a premises and configured to manage one or more of a security device or an automation device located at the premises.

Appeal Br. 11 (Claims Appendix).

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is the following:

Mehta	US 2002/0131404 A1	Sept. 19, 2002
Bi[2]	US 2007/0064714 A1	Mar. 22, 2007

REJECTION

The Examiner made the following rejection:

Claims 1, 3–11, 13–20, 25, 26, and 31–34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mehta, in view of Official Notice. Final Act. 3.

ISSUE

The pivotal issue is whether the Examiner erred in finding Mehta, in view of Official Notice, teaches or suggests the limitation of

[2] The Examiner additionally cited this reference to support the taking of Official Notice. Final Act. 5.

> transmitting, to an interface device associated with the user and in response to the request, the application, wherein the interface device is configured to install and execute the application on the interface device, wherein the interface device is located at a premises and configured to manage one or more of a security device or an automation device located at the premises,

as recited in independent claim 1, and similarly recited in independent claims 11 and 31.

ANALYSIS

Appellant argues that "[t]he Examiner relies on a *single* subscriber device (shown as a simple cell phone in the figures) of Mehta to allegedly teach each of the remote device, the interface device, and the automation device, as claimed" (Appeal Br. 5, emphasis in original). Appellant contends that "[t]he courts and the USPTO Patent Trial and Appeal Board have held that in anticipation and obviousness rejections it is improper to rely on the same structure as being responsive to multiple different elements" (Appeal Br. 4, citing *Ex Parte Sampath*, Appeal 2016-007001 (PTAB June 9, 2017) (non-precedential), *Ex parte Weideman*, Appeal 2008-003454 (BPAI Jan. 27, 2009) (non-precedential), *Lantech, Inc.* v. *Keip Machine Co.*, 32 F.3d 542 (Fed. Cir. 1994), *In re Robertson*, 169 F.3d 743 (Fed. Cir. 1999)).

Appellant further contends "the Examiner fails to identify distinct 'logical devices' from the cited references that perform the functions associated with the corresponding interface device, remote device, and automation device" (Appeal Br. 7).

The Examiner finds that Mehta's subscriber device (or wireless device) functions as the claimed "remote device" (Final Act. 4, citing Mehta Fig. 17, ¶ 138), the claimed "interface device" (Final Act. 5, citing Mehta ¶ 63), and the claimed "automation device" (Final Act. 5, citing Mehta Fig. 1, ¶ 11). Particularly, the Examiner finds that "the subscriber's device . . . can be considered an automation device" because the subscriber's device can "provide automatic notification to users when updates are available for downloaded content" (Final Act. 5, quoting Mehta ¶ 11).

We agree with Appellant that the Examiner has not identified portions of Mehta that teach or suggest at least one of the claimed "remote device," "interface device," and "automation device." Particularly, the Examiner finds "the subscriber's device . . . can be considered an automation device" because it can "provide automatic notification to users when updates are available for downloaded content." However, the portion of Mehta cited by the Examiner is describing a function of the Mobile Application System ("MAS"),

> which is a collection of interoperating server components that work individually and together in a secure fashion to provide applications, resources, and other content to mobile subscriber devices, such as wireless devices

(Mehta ¶ 5), in which

> [a]pplication, resources, and other content *is provisioned* and verified by the MAS for authorized access by the subscriber, compatibility with a requesting subscriber device, and/or compliance with security and billing policies of the carrier and system administrators of the MAS. In this manner, applications, resources, and *other content can be downloaded to devices, such as wireless devices*, with greater assurance of their ability to successfully execute

(Mehta ¶ 5, emphasis added). While the user of Mehta's mobile subscriber device may provide "automatic notification to users," the mobile subscriber device is merely the *recipient of the notification*, in which the automation is *performed* by the provisioning of MAS. *See* Mehta ¶ 11; *see also* Mehta ¶¶ 5–17. Thus, Mehta's mobile subscriber device fails to teach or suggest the claimed "automation device located at the premises." The Examiner's taking of Official Notice fails to remedy this deficiency.

Accordingly, we are constrained by the record to reverse the Examiner's obviousness rejection of independent claim 1 and independent claims 11 and 31 commensurate in scope, as well as dependent claims 3–10, 13–20, 25, 26, and 32–34.

CONCLUSION

The Examiner erred in finding Mehta, in view of Official Notice, teaches or suggests the limitation of

> transmitting, to an interface device associated with the user and in response to the request, the application, wherein the interface device is configured to install and execute the application on the interface device, wherein the interface device is located at a premises and configured to manage one or more of a security device or an automation device located at the premises,

as recited in independent claim 1, and similarly recited in independent claims 11 and 31.

DECISION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 3–11, 13–20, 25, 26, 31–34	103(a)	Mehta, Official Notice		1, 3–11, 13–20, 25, 26, 31–34

REVERSED