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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RAJEEV TIWARI and RAFAEL VILLANUEVA

Appeal 2019-001434
Application 15/099,384
Technology Center 2400

Before MICHAEL J. STRAUSS, HUNG H. BUI, and ADAM J. PYONIN,
Administrative Patent Judges.

PYONIN, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the
Examiner's rejection. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ We use the word "Appellant" to refer to "applicant" as defined in 37
C.F.R. § 1.42(a). Appellant identifies the real party in interest as Contec,
LLC. Appeal Br. 2.

STATEMENT OF THE CASE

Introduction

The Application is directed to “a network-based testing system [that] is used for testing multimedia devices such as set top boxes.” Spec. ¶ 9. Claims 1–14 are pending; claims 1, 8, and 12 are independent. *See* Response to Notification of Non-Compliant Appeal Brief, filed December 13, 2018. Claims 1 and 12 are reproduced below for reference (emphases added):

1. A system comprising:
 - a plurality of video and audio analyzers, wherein *each video and audio analyzer of at least a subset of the plurality of video and audio analyzers is configured to send input signals to a corresponding set top box (STB) of a plurality of STBs under test for testing the corresponding STB;*
 - a main test controller that is remote from the plurality of video and audio analyzers, the main test controller communicating with the plurality of video and audio analyzers via Ethernet;
 - a headend controller connected to at least one of the plurality of video and audio analyzers, the headend controller configured to communicate with at least one STB under test; and
 - a jump server connected across a network to the headend controller, the jump server also connected across a remote link and across a gateway to the main test controller.

12. A method of automatically testing plurality of devices, comprising the steps of:
 - outputting video and audio signals from at least a subset of a plurality of set-top boxes (STBs) under test;
 - receiving, at at² least a subset of a plurality of video and audio analyzers, the video and audio signals output from the at least a subset of the plurality of STBs under test;

² We note independent claim 12 recites “at” twice in a row. For purposes of our analysis herein, we treat the claim as reciting one “at.”

converting to digitized reading values, at the at least a subset of the plurality of video and audio analyzers, the video and audio signals received from the at least a subset of the plurality of STBs;

transmitting, to a main controller, the digitized reading values from the at least a subset of the plurality of video and audio analyzers; and

analyzing, at the main controller, the digitized reading values received from the at least a subset of the video and audio analyzers, analysis of the digitized reading values comprising calculations of aspects of the video and audio signals.

References and Rejections

The Examiner relies on the following prior art:

Name	Reference	Date
Day	US 6,728,767 B1	Apr. 27, 2004
Vanderhoff	US 8,595,784 B2	Nov. 26, 2013
Oliver	US 2014/0123203 A1	May 1, 2014
Totten	US 2014/0282783 A1	Sept. 18, 2014
McClay	US 8,978,081 B2	Mar. 10, 2015

Claims 12 and 14 are rejected under 35 U.S.C. § 102(a)(1) as anticipated by Vanderhoff. Final Act. 2.

Claims 1, 3, 5, 6, 8–10, and 13 are rejected under 35 U.S.C. § 103 as unpatentable over Vanderhoff and Totten. Final Act. 4, 5.

Claim 2 is rejected under 35 U.S.C. § 103 as unpatentable over Vanderhoff, Totten, and McClay. Final Act. 7.

Claim 4 is rejected under 35 U.S.C. § 103 as unpatentable over Vanderhoff, Totten, and Day. Final Act. 8.

Claims 7 and 11 are rejected under 35 U.S.C. § 103 as unpatentable over Vanderhoff, Totten, and Oliver. Final Act. 8

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments. Arguments Appellant could have made but chose not to make are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

With respect to claims 1–11, we are persuaded the Examiner's rejection is in error. With respect to claims 12–14, we disagree with Appellant that the Examiner erred and adopt as our own the findings and reasons set forth by the Examiner, to the extent consistent with our analysis below. We add the following primarily for emphasis.

Anticipation Rejection

Appellant argues the Examiner's anticipation rejection of independent claim 12 is in error, because “[a]s clearly recited in claim 12, the ‘converting’ step takes place at the video and audio analyzers,” whereas “Vanderhoff clearly says ‘the SDI encoder 32 may be configured to convert the output from a selected set-top box 12, transmitted through the video switch 30, into a format that is compatible with the analyzer.’” Reply Br. 3 (quoting Vanderhoff 5:32–35). Appellant contends “it is clear that conversion takes place at the SDI encoder and does not take place at the analyzer as recited in claim 12,” and “the [a]nswer cites no support for the claim that a converter and an analyzer are synonymous.” *Id.*

We are not persuaded the Examiner errs in finding Vandherhoff's “SDI encoder is interpreted as an ‘analyzer’ for the interpretation of claim 12.” Ans. 4. Claim 12 requires the analyzer receives, converts, and transmits the signals output from the set-top boxes (STBs). Similarly, Vandherhoff's SDI encoder also receives, converts, and transmits the signals

output from the STBs. *See* Final Act. 3; Vanderhoff 5:30–40. The Examiner’s construction is consistent with the Specification—as cited by Appellant for support of the disputed limitation—which describes the analyzers as capturing audio and video signals, and then sending signal data to a quick test main controller for analysis. *See* Appeal Br. 5; Spec. ¶¶ 24, 32. Thus, we see no error in the Examiner’s mapping of the claimed analyzer to Vandherhoff’s SDI encoder. *See* Ans. 4. In a finding of anticipation, “the reference need not satisfy an ipsissimis verbis test[.]” *In re Gleave*, 560 F.3d 1331, 1334 (Fed. Cir. 2009) (citing *In re Bond*, 910 F.2d 831, 832–33 (Fed. Cir. 1990)).

Appellant further argues “Vander[h]off does not identically disclose the claim 12 feature of ‘transmitting, to a main controller, the digitized reading values from the at least a subset of the plurality of video and audio analyzers.’” Appeal Br. 8. We are not persuaded the Examiner’s rejection is in error. The Examiner finds that Vanderhoff’s depicted arrow pointing to the controller discloses “the analyzed data is sent to the controller.” Ans. 5; *see also* Advisory Act. 2; Final Act. 2, 3; Vanderhoff Figs. 1, 4, and 8:12–27, 9:16–40. We find the Examiner’s analysis reasonable, and Appellant does not respond to the Examiner’s findings in the Answer. Separately, we note the recited “main controller” is anticipated by Vanderhoff’s analyzer 16, which receives transmissions from Vanderhoff’s SDI converter (itself mapped to the claimed “analyzer”) and analyzes the received signals. *See* Vanderhoff 5:30–40, 6:1–19.

We sustain the Examiner’s anticipation rejection of independent claim 12, and the anticipation and obviousness rejections of claims 13 and 14 not separately argued. *See* Appeal Br. 17; Reply Br. 2, 3.

Obviousness Rejection

Appellant argues the Examiner’s obviousness rejection of independent claim 1 is in error, because “[c]laim 1 features, *inter alia*, ‘. . . wherein each video and audio analyzer . . . is configured to send input signals to a corresponding set top box,’” whereas Vanderhoff’s “controller (not the analyzer) [is configured] to communicate signals to the set-top boxes.” Reply Br. 4.

We are persuaded the Examiner errs. Independent claim 1 is narrower in scope relative to independent claim 12. The Examiner finds “Vanderhoff teaches transmitting signals to the STBs [set-top boxes] in order to monitor them for quality,” because “Vanderhoff says explicitly ‘to allow the analyzer 16 to communicate with the set-top boxes 12 to monitor the operations of the set-top boxes 12 and the associated transmissions.[.]’” Ans. 7 (quoting Vanderhoff 3:4–13). As noted by Appellant, however, Vanderhoff teaches this communication is transmitted only in one direction: Vanderhoff “show[s] data moving from the STBs to the video switch, to the SDI encoder, to the analyzer, but not in the reverse direction.” Reply Br. 4; Vanderhoff Fig. 1. We agree with Appellant because Vanderhoff depicts one way arrows from the STBs to the analyzer. *See* Vanderhoff Figs. 1, 4; Reply Br. 4. That is, Vanderhoff, as cited by the Examiner, does not teach the analyzer (or SDI encoder) is configured to send input signals *to* an STB. *See* Appeal Br. 10.

Rather than being sent by the analyzer, the cited portions of Vanderhoff disclose that the controller 14 sends testing signals to the STBs. *See* Vanderhoff 3:7–10 (“[t]he controller 14 to communicate signals 18 to

the various set-top boxes 12 instructing the set-top boxes 12 to perform certain operations.”); Final Act. 4. The Examiner, however, relies on Vanderhoff’s controller to teach the recited “main test controller.” *See* Final Act. 4. Based on the Examiner’s mapping, we agree with Appellant that Vanderhoff fails to teach or suggest the disputed input signals sent to an STB. Nor does the Examiner rely on Totten for teaching the disputed limitation. *See* Final Act. 5.

We are persuaded the Examiner’s obviousness rejection of independent claim 1 is in error, as well as the Examiner’s rejection of independent claim 8, which recites limitations commensurate in scope. We do not sustain the Examiner’s obviousness rejection of these claims, or the claims dependent thereon, the Examiner not relying on the other cited references of for the disputed limitation.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)	Affirmed	Reversed
12, 14	102(a)(1)	Vanderhoff	12, 14	
1, 3, 5, 8–10, 13	103	Vanderhoff, Totten	13	1, 3, 5, 6, 8–10
2	103	Vanderhoff, Totten, McClay		2
4	103	Vanderhoff, Totten, Day		4
7, 11	103	Vanderhoff, Totten, Oliver		7, 11
Overall Outcome			12–14	1–11

Appeal 2019-001434
Application 15/099,384

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-IN-PART