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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TIM McQUILLEN and TULSI R. MAYALA

Appeal 2019-001762
Application 14/921,229
Technology Center 2400

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

BAER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's Final rejection of claims 1–29, which are all pending claims. Appeal Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

BACKGROUND

A. The Invention

Appellant's invention is directed to "processing digital messages to recipients at destination domains." Abstract. Claims 1, 6, 10, 21, and 23 are independent; independent claim 1 is representative and reproduced below, with emphasis added to disputed elements:

1. A method of processing a digital message, comprising:
 - on a digital message system having one or more processors and memory storing one or more programs for execution by the one or more processors:
 - receiving a request from a remote computer system to deliver an outbound digital message to at least one recipient at a destination domain;
 - determining the destination domain for the outbound digital message;
 - reading a profile associated with the destination domain of the outbound digital message, the *profile* comprising *one or more parameters that correspond to an incoming digital message policy of the destination domain*, wherein at least one parameter in the profile is a *quota on a number of digital messages or a maximum amount of data* that may be sent from the

¹ We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies Selligent, Inc. as the real party in interest. Appeal Br. 1.

digital message system to the destination domain in a given period of time;

determining whether the quota is exceeded for the destination domain prior to sending the outbound digital message to the destination domain; and,

(i) in accordance with determining that the quota is not exceeded for the destination domain, sending the outbound digital message to the destination domain in accordance with the profile when permitted by the one or more parameters in the profile, and

(ii) in accordance with determining that the quota is exceeded for the destination domain, holding the outbound digital message for a period of time without sending the outbound digital message to the destination domain, wherein *the digital message is not sent to the destination domain by the digital message system during a time when the quota is exceeded, and, subsequent to the period of time and during a time when the quota is not exceeded, resuming sending the held outbound digital message to the destination domain.*

Appeal Br. 14 (Claims Appendix).

B. The Rejections on Appeal

The Examiner rejects claims 1, 6, 10, 14–16, 20, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Banister (US 2004/0199595 A1; Oct. 7, 2004), Stolfo (US 2003/0167402 A1; Sept. 4, 2003), and Dreamhost, “New Outbound Mail Quotas,” Dreamhost Blog (2006), available at: web.archive.org/web/20060808075501/blog.dreamhosters.com/2006/04/28/new-outbound-mail-quotas/. Final Act. 3.

The Examiner rejects claims 21 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Banister, Stolfo, and Dreamhost. Final Act. 12.

The Examiner rejects claims 2–5, 7–9, and 11–13 under 35 U.S.C. § 103(a) as being unpatentable over Banister, Stolfo, Dreamhost, and Jaladanki (US 7,536,439 B1; May 19, 2009). Final Act. 15–16.

The Examiner rejects claims 17–19 under 35 U.S.C. § 103(a) as being unpatentable over Banister, Stolfo, Dreamhost, and Brown (US 2007/0033283 A1; Feb. 8, 2007). Final Act. 19.

The Examiner rejects claims 25–28 under 35 U.S.C. § 103(a) as being unpatentable over Banister, Stolfo, Dreamhost, and Iverson, “How to deliver mail to AOL,” SpamResource (Jan. 25, 2007), available at: www.spamresource.com/2007/01/how-to-delivermail-to-aol.html. Final Act. 20.

The Examiner rejects claim 29 under 35 U.S.C. § 103(a) as being unpatentable over Banister, Stolfo, Dreamhost, and Iverson. Final Act 21–22.

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 waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2017). We adopt the Examiner’s findings and conclusions as our own, and add the following primarily for emphasis.

A. Obviousness Rejection of Claims 1, 6, 10, 14–16, 20, 23, and 24

Appellant first argues that “the Examiner inconsistently identifies Banister’s filter as corresponding to both the claimed *incoming digital message policy of the destination domain* as well as the claimed *profile*.”

Reply Br. 2, citing Ans. 4–5 (emphasis in original). Appellant contends “the Examiner still neglects to reasonably identify with any particularity what exactly within Banister corresponds to the other elements of the limitation.”

Reply Br. 2.

We do not find this argument persuasive. The Examiner finds, and we agree, that “the disclosure of the instant application does not give any formal definition in which ‘profile’ is to be narrowly judged, and instead the claimed limitation merely calls for associated with a destination domain and comprising one or more parameters.” Ans. 6. The Examiner further finds, and we agree, that

[Banister’s] system performs evaluating the filter associated with [the] domain name of [the] destination of [the] out-going message. Note that [Banister] identifies some issues with email policy of Internet Service Providers in receiving end (for example (but not limited to), “spam” filter or generating an automatic “bounce” message).

Ans. 4, citing Banister ¶¶ 49, 48, 128–129, 6–13. The Examiner further finds, and we agree, that Banister’s filtering “**permit[s] senders to dispatch messages in a manner that prevents unwarranted blocking by receivers.**” Ans. 4–5, quoting Banister ¶ 15 (emphasis Examiner’s). One skilled in the art would recognize the need to combine Banister’s filter, with Stolfo’s statistics regarding message number and size quotas applied to destination domains (or “receivers”) for monitoring, to prevent incoming messages being blocked by destination domains as spam.

Thus, combining Banister’s and Stolfo’s teachings, in conjunction with the Examiner’s broad and reasonable claim interpretation, yields filter elements that form a profile used to implement the destination domain’s incoming digital message policy.

Appellant also argues the Examiner erred because Stolfo's threshold is not a quota on the number of emails / amount of data sent from a digital message system to a destination domain. Rather, the threshold is, at best, a quota on the number of emails / amount of data sent – independent of the destination domain – because the threshold is a threshold of the ISP, not of any destination domain.

Reply Br. 4 (emphasis omitted). We do not find this argument persuasive, because Appellant attacks Stolfo individually and does not address Banister's and Stolfo's combined teachings. “[O]ne cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

As shown above, in the combination, Stolfo is modified so that it tracks the number of e-mails sent to the destination domain. Banister reiterates the motivation for this modification in teaching that “[b]y establishing filter rules that modify the source IP or hostname of a message based on the destination or other characteristics of the message, message routing past security protocols can be achieved.” Ans. 8, quoting Banister ¶ 49 (emphasis removed).

Appellant finally argues the Examiner erred, because though Dreamhost discusses disabling message sending capabilities, there is no indication that violation of the message quota only disables those capabilities *until a subsequent time period during which the quota is not exceeded, at which point unsent (or held) messages are sent.*

Appeal Br. 11 (emphasis in original). Appellant also contends that Dreamhost does not meet the claimed “quota on a number of digital messages or a maximum amount of data,” because “Dreamhost’s ability to

delay message sending in response to exceeding a recipient-based quota does not teach the specific details of the claimed feature.” Appeal Br. 11.

We do not find this argument persuasive. The Examiner finds, and we agree, that Dreamhost teaches “a new email policy, which restrict[s] you to send out a maximum of 100 emails per hour (counting each recipient as a separate email) via their SMTP-server.” Ans. 14, quoting Dreamhost at “New Outbound Mail Quotas.” The Examiner further finds, and we agree, Dreamhost teaches that “[e]xceeding it once will get your outbound mail delayed” (Ans. 14, quoting Dreamhost at Response by “Pete”) and that “Dreamhost’s email system will send out the ‘exceeding’ emails (not more than 100) in next hour or later.” Ans. 14–15, *see* Response by “Pete.”

Again, Appellant attacks Dreamhost individually, and does not consider the combined references in which Dreamhost’s “counting each recipient as separate email” is replaced by Stolfo’s quota. With that replacement, we discern no difference between Dreamhost’s delay until the next hour and Appellant’s claimed

digital message is not sent to the destination domain by the digital message system during a time when the quota is exceeded, and, subsequent to the period of time and during a time when the quota is not exceeded, resuming sending the held outbound digital message to the destination domain.

In Stolfo’s and Dreamhost’s combination, should a user attempt to send out 150 messages in 30 minutes, the first 100 messages will be sent, and an hour after sending the first message, the remaining 50 messages will be sent. The quota is then not exceeded for one hour in which the first 100 messages are sent.

Accordingly, we sustain the Examiner’s rejections of independent claim 1 and independent claims 6, 10, 21, and 23 commensurate in scope, as

well as dependent claims 2–5, 7–9, 11–20, 22, and 24–29 not separately argued.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 6, 10, 14–16, 20, 23, 24	103(a)	Banister, Stolfo, Dreamhost	1, 6, 10, 14–16, 20, 23, 24	
21, 22	103(a)	Banister, Stolfo, Dreamhost	21, 22	
2–5, 7–9, 11–13	103(a)	Banister, Stolfo, Dreamhost, Jaladanki	2–5, 7–9, 11–13	
17–19	103(a)	Banister, Stolfo, Dreamhost, Brown	17–19	
25–28	103(a)	Banister, Stolfo, Dreamhost, Iverson	25–28	
29	103(a)	Banister, Stolfo, Dreamhost, Iverson	29	
Overall Outcome			1–29	

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