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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte COLIN LEONARD

Appeal 2019-002401
Application 15/257,642
Technology Center 2600

Before ROBERT E. NAPPI, ELENI MANTIS MERCADER, and
SCOTT E. BAIN, *Administrative Patent Judges*.

BAIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's
decision to reject claims 1–20. 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 Colin Leonard. Appeal Br. 1.

BACKGROUND

The Claimed Invention

The invention relates to “analog audio processing systems.” Spec. ¶ 2. Specifically, the invention is directed to an “improved mastering system” that “allows for analog mastering from remote locations.” *Id.* ¶ 4.

Claims 1 and 15 are independent. Claim 3 is illustrative of the invention and the subject matter in dispute, and is reproduced below along with the claims from which it depends:

1. An audio processing system, comprising:
 - a server complex in communication with a network, the server complex receiving a digital audio file and one or more analog domain control settings from a remote device across the network;
 - a digital-to-analog converter receiving the digital audio file from the server complex and converting the digital audio file to an analog signal;
 - one or more analog signal processors receiving the analog signal from the digital-to-analog converter and applying at least one analog modification to the analog signal in accordance with the one or more analog domain control settings received from the remote device to the analog audio to obtain a modified analog signal; and
 - an analog-to-digital converter converting the modified analog signal to a modified digital audio file.
2. The audio processing system of claim 1, further comprising a control device operable with the one or more analog signal processors, the control device applying setting adjustments to the one or more analog signal processors in accordance with the one or more analog domain control settings received from the remote device.
3. The audio processing system of claim 2, the control device comprising a robotic arm.

Appeal Br. 29 (Claims Appendix).

References

The references relied upon by the Examiner are:

Name	Reference	Date
Jubien et al. ("Jubien")	US 2006/0152398 A1	July 13, 2006
Barrett	US 2017/0269898 A1	Sept. 21, 2017 ²

The Rejections on Appeal

Claims 1–18 and 20 stand rejected under 35 U.S.C. § 102 as anticipated by Barrett. Final Act. 3–13.

Claim 19 stands rejected under 35 U.S.C. § 103 as unpatentable over Barrett and Jubien. Final Act. 13.

DISCUSSION

We have reviewed the Examiner's rejections in light of Appellant's arguments presented in this appeal. Arguments that Appellant could have made but did not make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). At the outset, we note that the anticipation rejection of claims 1, 2, 4, 5, 8, 10, 12–17 and 20 is before us, but not argued by Appellant in the briefs. *See* 37 C.F.R. § 41.31(c); MPEP §1205.02; Appeal Br. 9. Accordingly, we sustain the Examiner's rejection of these claims *pro forma*. With respect to the anticipation rejection of claims 6, 7, 9, and 11, we

² For purposes of the Examiner's rejections, Barrett's effective date is March 21, 2016 (the date of its provisional application 16/311,285). Final Act. 2; Reply Br. 5.

agree with the Examiner's findings and conclusions and adopt them as our own. With respect to the anticipation rejection of claims 3 and 18, and the obviousness rejection of claim 19, however, we are persuaded by Appellant's arguments that the Examiner erred. We provide the following to highlight and address specific arguments.

Claim 3

Appellant argues the Examiner erred in finding Barrett discloses a control device comprising "a robotic arm," as recited in claim 3. Appeal Br. 11–13; Reply Br. 7; *see also* Spec. Fig. 4. Appellant contends the Examiner has relied on "hypothetical possibilities" in Barrett, rather than any disclosure of the claimed robotic arm. We are persuaded by Appellant's argument.

The Examiner relies on Barrett's disclosure of "robotic control hardware" and ("though not depicted") "mechanical devices, such as levers" which may manipulate "buttons and switches." Final Act. 6; *see also* Barrett ¶¶ 36, 45, Figs. 3, 7. As Appellant argues, however, merely disclosing "control hardware" and devices such as levers is not the same as a "robotic arm." *See* Spec. ¶ 37, Fig. 4. The Examiner asserts that the "teaching" of a motor controlled lever satisfies the disputed claim limitation, but the rejection of claim 3 was anticipation, not obviousness. Ans. 4.

Accordingly, we are persuaded the Examiner erred in rejecting claim 3. We, therefore, do not sustain the rejection of claim 3.

Claims 6, 7, and 9

Claim 6 recites a "digital audio workstation comprising the digital-to-analog converter," and "receiving the digital audio file" from the server

complex. Appeal Br. 30. Dependent claim 7 adds a “second digital audio workstation,” and dependent claim 9 recites “concurrent” initiation of the digital audio file and “conversion” of the analog signal. *Id.* Appellant argues that the Examiner fails to find any disclosure of the claimed workstations in Barrett, and that Barrett’s “real time” processing is not the same as the “gating” of Appellant’s claims. Appeal Br. 16–21; Reply Br. 12.

As the Examiner finds, however, Barrett discloses a “D/A converter” implemented by a “machine,” which receives a digital audio file, and an “A/D converter” which may be implemented by a second machine (or the same machine). Ans. 5. The Examiner finds, and we agree, that the foregoing converters satisfy the disputed limitations. Moreover, although Appellant argues Barrett does not disclose “gating,” that limitation is not in the appealed claims. *See E-Pass Techs., Inc. v. 3Corn Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003) (although we gave claims their broadest reasonable interpretation in light of the specification, “limitations from the specification are not to be read into the claims”).

Accordingly, we are not persuaded the Examiner erred in rejecting claims 6, 7, and 9. We, therefore, sustain the anticipation rejection of claims 6, 7, and 9.

Claim 11

Dependent claim 11 recites a “loudness level selection tool defining a loudness level *associated with* the digital audio file.” Appeal Br. 31 (emphasis added). Appellant argues the Examiner erred in relying on Barrett’s disclosure of a “vol” control to adjust loudness because, according to Appellant, that control is associated with analog output of sound rather

than a “digital audio file.” Appeal Br. 22–23; Reply Br. 12. We are not persuaded by Appellant’s argument.

As the Examiner finds, and Appellant does not dispute, Barrett discloses performing real time digital-to-analog and analog-to-digital conversion of files, and thus adjustment of the “vol” control results in a loudness level “associated” with the recited digital audio file. Ans. 6. We agree with the Examiner’s observation that claim 11 does not require the recited tool to operate “directly on” the file, but merely to select a level “associated with” the file. *Id.*

Accordingly, we are not persuaded the Examiner erred in rejecting claim 11. We, therefore, sustain the anticipation rejection of claim 11.

Claims 18 and 19

Claim 18 recites “transmitting” a message identifying a “mastering status” of one or more of the digital audio files, and its dependent claim 19 recites assigning further data to a digital audio file. Appeal Br. 32. Appellant argues the Examiner erred in finding Barrett’s disclosure of a “plugin” satisfies the “mastering status” message recited in claim 18. Appeal Br. 24–25; Reply Br. 13. We are persuaded by Appellant’s argument.

The Examiner cites Barrett’s disclosure that a “plugin simply has to send [user settings] to the audio server for the initial position.” Ans. 6. The Examiner’s finding, however, does not indicate transmitting any message identifying “mastering status” of a digital audio file, as recited in claim 18. The Examiner does not explain, and we do not discern on this record, how a plugin sending user settings corresponds to the claimed “mastering status” of a digital audio file.

Accordingly, we are persuaded the Examiner erred in rejecting claim 18. For the same reasons, we are persuaded the Examiner erred in rejecting dependent claim 19, which includes the same limitation. We, therefore, do not sustain the anticipation rejection of claim 18 and the obviousness rejection of claim 19.

CONCLUSION

We affirm the Examiner's decision rejecting claims 1, 2, 4–17 and 20.

We reverse the Examiner's decision rejecting claims 3, 18, and 19.

SUMMARY DECISION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–18, 20	102	Barrett	1, 2, 4–17, 20	3, 18
19	103	Barrett, Jubien		19
Total Outcome			1, 2, 4–17, 20	3, 18, 19

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED-IN-PART