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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte JAMES O. NORMILE, HSI-JUNG WU, XIAOSONG ZHOU,
CHRIS Y. CHUNG, KE ZHANG, and YEPING SU

_____

Appeal 2019-002448
Application 14/290,227
Technology Center 2400

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Before JEAN R. HOMERE, MICHAEL J. STRAUSS, and
DAVID J. CUTITTA II, *Administrative Patent Judges.*

CUTITTA, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the
Examiner's decision to reject claims 1–13, 15–19, 34, and 38–44, all of the
pending claims.[2] We have jurisdiction under 35 U.S.C. § 6(b). A hearing
was scheduled but Appellant waived oral arguments on April 2, 2020.

We AFFIRM.

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[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 Apple Inc.
Appeal Br. 2.
[2] Claims 14, 20–33, and 35–37 are canceled. Appeal Br. 26, 27.

CLAIMED SUBJECT MATTER

Appellant's claimed subject matter relates to "distribut[ing] video content among a plurality of associated devices by identifying segments associated with the video content." Spec. ¶ 9.[3] Appellant explains that "[f]or each identified segment, if it is determined that the segment is stored by one of the associated devices, other associated devices requesting the segment may retrieve the segment from the device storing the segment. Otherwise, the segment may be delivered directly to the device requesting the video content." *Id.*

Claims 1, 6, and 34 are independent. Claim 1, reproduced below with limitations at issue italicized, exemplifies the claimed subject matter:

> 1. A video player, comprising:
>
> a communication transceiver;
>
> a subscription log that includes identifiers of video content associated with a user of the video player and a media server from which the video content is available;
>
> *a neighbor log that stores an index of segments of video content stored by other player devices that are assigned to a same user account as the video player*, wherein the neighbor log is updated over time to reflect storage of segments by the other player devices; and
>
> *a processor that, responsive to a request to play selected video content, searches the neighbor log at the time of the request* for identification of another player device that, prior to

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[3] Throughout this Decision we refer to: (1) Appellant's Specification filed May 29, 2014 ("Spec."); (2) the Final Office Action mailed April 20, 2018 ("Final Act."); (3) the Appeal Brief filed September 20, 2018 ("Appeal Br."); (4) the Examiner's Answer mailed December 14, 2018 ("Ans."); and (5) the Reply Brief filed February 1, 2019 ("Reply Br.").

the request, stores a segment associated with the selected video content,

when a matching player device is found, causes the transceiver to transmit a request to the matching player device for video segments identified on the neighbor log, and

for segments for which no matching player device is found, causes the transceiver to transmit a request to the media server for such segments.

Appeal Br. 24 (Claims Appendix).

REFERENCES AND REJECTIONS

The Examiner rejects claims 1, 3, 4, 6–8, 13, 15, 16, 18, 19, 34, and 38–44 under 35 U.S.C. § 103 as unpatentable over the combined teachings of Gaude (US 2013/0111513 A1, published May 2, 2013) and Alsina et al. (US 2014/0074783 A1, published Mar. 13, 2014) ("Alsina"). Final Act. 3–11.

The Examiner rejects claims 2, 9, 10, and 38 under 35 U.S.C. § 103 as unpatentable over the combined teachings of Gaude, Alsina, and Altberg et al. (US 2009/0010408 A1, published Jan. 8, 2009) ("Altberg"). Final Act. 11–13.

The Examiner rejects claim 5 under 35 U.S.C. § 103 as unpatentable over the combined teachings of Gaude, Alsina, and Roberts et al. (US 2012/0304233 A1, published Nov. 29, 2012) ("Roberts"). Final Act. 13–14.

The Examiner rejects claims 11 and 12 under 35 U.S.C. § 103 as unpatentable over the combined teachings of Gaude, Alsina, and Akkurt et al. (US 2014/0172971 A1, published June 19, 2014) ("Akkurt"). Final Act. 14–15.

The Examiner rejects claim 17 under 35 U.S.C. § 103 as unpatentable over the combined teachings of Gaude, Alsina, Altberg, and Akkurt. Final Act. 15–17.

OPINION

We review the appealed rejections for error based upon the issues identified by Appellant and in light of Appellant's arguments and evidence. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2017). We disagree with Appellant that the Examiner erred and adopt as our own the findings and reasons set forth by the Examiner. We add the following primarily for emphasis.

Obviousness Rejection of Claim 1

The Examiner relies on the combination of Gaude and Alsina to teach or suggest "a neighbor log that stores an index of segments of video content stored by other player devices that are assigned to a same user account as the video player," as recited in claim 1. Final Act. 3–4. Of particular relevance, the Examiner finds that Gaude teaches or suggests "a neighbor log that stores an index of segments of video content stored by other player devices" and that Alsina teaches or suggests "player devices that are assigned to a same user account as the video player." *Id.* The Examiner determines that sufficient motivation existed to combine the teachings of the references. *Id.*

Appellant argues that Gaude's "peer devices 130 are not 'assigned to a same user account as the video player' that receives 'a request to play selected video content.'" Appeal Br. 14.

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The Examiner responds that it is "Alsina [that] discloses a local list that is stored on user devices belonging to a same user account." Ans. 4 (emphasis omitted) (citing Alsina ¶¶ 35, 36, 38–41, Fig. 2). Accordingly, Appellant's argument based on Gaude is unpersuasive because the Examiner relies on Alsina to teach devices that are assigned to a same user account and therefore the argument is not responsive to the rejection. *See Nat'l Steel Car, Ltd. v. Canadian Pac. Ry., Ltd.*, 357 F.3d 1319, 1336–37 (Fed. Cir. 2004) (rejecting argument directed at the wrong reference).

Next, Appellant argues that in Alsina, "[n]one of the devices store a 'neighbor log' indicating which other devices associated with the user account have which purchased items stored." Appeal Br. 14.

This argument is not responsive to the rejection because the Examiner relies on the combined teachings of Gaude and Alsina, rather than Alsina alone, to teach or suggests a neighbor log as recited in claim 1. Final Act. 3–4.

Third, Appellant argues that the Examiner has not articulated a sufficient motivation to combine the teachings of Gaude and Alsina. Specifically, Appellant argues that

> Alsina's teaching of metatdata exchanges to identify media items that a user has purchased from individual devices would not cause a skilled worker to create neighbor logs in Gaude's system that "store an index of segments of video content stored by other player devices that are assigned to a same user account." Gaude's system simply is architected differently.

Appeal Br. 15.

This argument is unpersuasive because the Examiner articulated a reason to combine the teachings of Gaude and Alsina that is rational on its face and supported by evidence drawn from the record (Final Act. 4 (citing

Alsina ¶ 6); Ans. 10–11) and Appellant's argument does not address the reason identified by the Examiner.

In summary, Appellant's first three arguments are not responsive to the rejection because Appellant fails to persuasively address the Examiner's findings that (1) Gaude teaches "a neighbor log that stores an index of segments of video content stored by other player devices," (2) Alsina teaches "player devices that are assigned to a same user account as the video player," and the Examiner's conclusion (3) that it would have been obvious to one of skill in the art to modify the neighbor log of Gaude to include "player devices that are assigned to a same user account as the video player as taught by Alsina in order to in order to efficiently keep track of all user purchased items." Final Act. 3, 4.

Claim 1 further recites "a processor that, responsive to a request to play selected video content, searches the neighbor log at the time of the request for identification of another player device." Appeal Br. 24.

Appellant argues Gaude "does not describe a device that 'searches [a] neighbor log *at the time of request*' to play selected video content" because "Gaude's player device (the content requesting node 102 of FIG. 1), must first receive a content request, then send its own content request to the media tracker to obtain requested media data."

In response, the Examiner finds that

> the list which locates and identifies chunks is (looked through) or searched by the requesting node that receives it from the media tracker so as to be able to retrieve what is needed. *The list is received upon request for a content from the media tracker, so it is received, at the time of request for the content* (Para. 80 (In stage 10, the content requesting node receives the list of a plurality of peers having recorded chunks of the media content

> item from the media tracker, including their locations and
> identifiers of the chunks)).

Ans. 7 (emphasis added).

Appellant's argument is not commensurate with the scope of claim 1. Although the claim recites that the processor searches the neighbor log responsive to a request to play selected video content, the claim does not require that the *processor* must *receive* the request to play the video content, e.g., from a user. That is, Appellant fails to show error in the Examiner's interpretation of the claim as encompassing submitting of the content request *by the processor*, such as by Gaude's content requesting node 102 submitting a content request to media tracker 118. In addition, we agree with the Examiner's finding that Gaude's content requesting node 102 submits a request for a media content item to the media tracker and the content requesting node receives and searches the [neighbor] list at the time of the request, and that these steps teach or suggest the disputed limitation in view of the Examiner's broad but reasonable interpretation of the claim. Ans. 7; *see* Gaude ¶¶ 78, 80.

Appellant further argues "the cited art does not describe finding devices storing media segments from two different data sources, the 'neighbor log' and a 'subscription log.'" Appeal Br. 15. Appellant continues that "the Examiner agrees that Gaude does not describe a subscription log" and "Alsina does not describe a neighbor log." *Id.*

Appellant's arguments do not address the actual reasoning of the Examiner's rejection. Instead Appellant attacks the references singly for lacking teachings that the Examiner relied on a combination of references to show. It is well established that one cannot show non-obviousness by attacking references individually where the rejections are based on

combinations of references. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Appellant's arguments that "'Alsina does not describe a neighbor log'" and that "'Gaude does not describe a subscription log'" fail to address the Examiner's finding that the combined teachings of Gaude and Alsina teach the logs as claimed. Final Act. 3–4.

For the reasons discussed, Appellant has not persuaded us of error in the Examiner's obviousness rejection of independent claim 1. Accordingly, we sustain the Examiner's rejection of that claim, as well as the rejection of independent claims 6 and 34, and dependent claims 2–5, 7, 9–13, 15–19, and 38–44, which Appellant does not argue separately with particularity. Appeal Br. 18–22.

Obviousness Rejection of Claim 8

Dependent claim 8 recites, in part, "wherein the identifying comprises searching a manifest file downloaded from the media server to the first device that identifies neighboring client device(s) that store segments of the selected content." Appeal Br. 25.

The Examiner finds Gaude in view of Alsina teaches or suggests this limitation because in Gaude, a "requesting interface has a search engine for browsing for contents stored on the peer to peer network-list 142 is the neighbor log." Final Act. 7 (citing Gaude ¶¶ 62–63).

Appellant argues that Gaude's

> requesting interface is a component of the content requesting node, and the search engine merely displays available content to a user using the content requesting node. Gaude, ¶ 62. The search engine does not "identify neighboring client device(s) that store segments of the selected content," as recited in claim 8. Instead, a user makes a request for content using the search engine, and then "[o]nce a request for a particular content unit

has been made, media tracker 118 then . . . determine[s] the location of the content at a media peer 130." Gaude, ¶ 63. Unlike the claimed manifest file, the search engine does not both identify available content and devices where that content is stored.

Appeal Br. 21.

The Examiner responds that "the Gaude list that identifies chunks and where they are located on the peers distribution network (Para. 63, 77, 81–83, 112, 130) satisfies a manifest file" as claimed. Ans. 20 (emphasis omitted).

Appellant's argument that Gaude's content requesting interface 110 "does not 'identify neighboring client device(s) that store segments of the selected content,' as recited in claim 8" (Appeal Br. 21), is not responsive to the Examiner's finding that Gaude's peer-to-peer network list 142 "identifies [content] chunks and where they are located on the peers distribution network." Ans. 20. In addition, Appellant fails to address all of the Examiner's findings from Gaude. *See, e.g.,* Gaude ¶ 77 ("the location of each chunk of the media content item is determined at each peer by the media tracker, optionally to prepare the above described list" 142); *see also* Gaude ¶¶ 81–83, 112, 130. Accordingly, we sustain the Examiner's rejection of claim 8.

CONCLUSION

We affirm the Examiner's decision to reject claims 1–13, 15–19, 34, and 38–44 under 35 U.S.C. § 103.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 3, 4, 6–8, 13, 15, 16, 18, 19, 34, 38–44	103	Guade, Alsina	1, 3, 4, 6–8, 13, 15, 16, 18, 19, 34, 38–44	
2, 9, 10, 38	103	Gaude, Alsina, Altberg	2, 9, 10, 38	
5	103	Gaude, Alsina, Roberts	5	
11, 12	103	Gaude, Alsina, Akkurt	11, 12	
17	103	Gaude, Alsina, Altberg, Akkurt	17	
Overall Outcome			1–13, 15–19, 34, 38–44	

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