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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TODD REIN, EYLON STROH, SHASHI RAI, MARCO QUALIZZA, ROMAN DOLGOV, and CHRIS ETHIER

Appeal 2019-002923
Application 12/129,972
Technology Center 2100

Before MICHAEL J. STRAUSS, JAMES W. DEJMEK, and AMBER L. HAGY, *Administrative Patent Judges.*

STRAUSS, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[2] appeals from the Examiner's decision to reject claims 1–4, 6–9, 14–17, 19–22, and 27–36, which constitute all of the claims pending in this appeal. *See* Final Act. 1.

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[1] We refer to the Specification, filed May 30, 2008 ("Spec."); Final Office Action, mailed December 28, 2017 ("Final Act."); Appeal Brief, filed August 29, 2018 as supplemented on September 17, 2018 ("Appeal Br."); and the Examiner's Answer, mailed January 4, 2019 ("Ans.").

[2] We use the word Appellant to refer to "applicant" as defined in 37 C.F.R. § 1.42 (2017). Appellant identifies the real party in interest as Adobe Systems Incorporated. Appeal Br. 3.

Claims 5, 10–13, 18, and 23–26 have been cancelled. Supplemental Appeal Br. 2–9, Claims App. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

PRIOR APPEAL

This Application was subject to a prior appeal 2013-007592, decided on September 22, 2015 (our "prior Decision"), in which the Board affirmed the Examiner's rejections of all of the claims then pending.

CLAIMED SUBJECT MATTER

According to Appellant, the claims are directed to setting privileges for collaborative lists. Spec., Title. Claim 1, reproduced below with claim element labels added in brackets, is representative of the claimed subject matter:

> 1. A computer implemented method for selecting portions of data within collaborative lists to be viewed by members that can access the collaborative lists, the method comprising:
>
> [(i)] obtaining a collaborative list that includes collaborative data and a tree structure, the tree structure representing a plurality of hierarchical positions, wherein a hierarchical position in the plurality of hierarchical positions is associated with an access privilege to access at least a portion of the collaborative data;
>
> [(ii)] receiving a request to access the collaborative data, wherein the request is associated with a first hierarchical position in the plurality of hierarchical positions; and
>
> [(iii)] responsive to the request, providing a first portion of the collaborative data based on a determination that the first hierarchical position is associated with a first access privilege to access the first portion of the collaborative data.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Belknap et al. ("Belknap")	US 6,489,979 B1	Dec. 3, 2002
Baschy	US 2004/0239700 A1	Dec. 2, 2004
Faitelson et al. ("Faitelson")	US 2009/0119298 A1	May 7, 2009

REJECTIONS[3]

Claims 14, 15–17, 19–22, and 31–33 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Final Act. 4–5.

Claims 1, 3–4, 6–9, 14, 16–17, 19–22, and 27–36 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Belknap and Faitelson. Final Act. 5–17.

Claims 2 and 15 stand rejected under pre-AIA U.S.C. § 103(a) as being unpatentable over Belknap, Faitelson, and Baschy. Final Act. 17–18.

STANDARD OF REVIEW

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *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).

[3] A separate rejection of all claims under 35 U.S.C. § 101, based on a determination that the claimed invention is directed to a judicial exception without significantly more (Final Act. 2–4), has been withdrawn. Ans. 3.

OPINION

Rejection under 35 U.S.C. § 101

The Examiner rejected claims in the Application on two bases under 35 U.S.C. § 101, rejecting claims 1–4, 6–9, 14–17, 19–22, and 27–36 as being directed to a judicial exception without significantly more (Final Act. 2–4), and separately rejecting claims 14, 15–17, 19–22, and 31–33 as directed to non-statutory subject matter (not clearly reciting a process, machine, manufacture, or composition of matter) (*id.* at 4). Although the Examiner has withdrawn the rejection of claims under 35 U.S.C. § 101 based on reciting a judicial exception without significantly more (Ans. 3), there is no indication the Examiner has withdrawn the rejection of claims 14, 15–17, 19–22, and 31–33 under 35 U.S.C. § 101 as directed to non-statutory subject matter. Accordingly, the rejection is still outstanding. Appellant's Brief does not address this rejection. In the absence of any argument by Appellant contesting the rejection, we summarily affirm the rejection of the indicated claims. *See* 37 C.F.R. § 41.37(c)(1)(iv); MPEP § 1205.02.[4]

Rejections under 35 U.S.C. § 103(a)

We are not persuaded the Examiner erred in rejecting all pending claims under 35 U.S.C. § 103(a). We agree with and adopt, as our own, the Examiner's findings and reasoning in the Final Office Action and in the

[4] "If a ground of rejection stated by the examiner is not addressed in the appellant's brief, appellant has waived any challenge to that ground of rejection and the Board may summarily sustain it, unless the examiner subsequently withdrew the rejection in the examiner's answer." MPEP § 1205.02

Answer and add any additional findings of fact appearing below for emphasis.

The Examiner finds Belknap's database interface that assigns users differing levels of access privileges teaches the limitations of claim 1 but for the requirement that a collaborative list include a tree structure representing a plurality of hierarchical positions. Final Act. 5–6. The Examiner relies on Faitelson's user interface for teaching the claimed tree structure. *Id.* at 7. According to the Examiner, it would have been obvious to incorporate Faitelson's user interface into Belknap's interface to allow "an administrator to review privileges of users and see the view that a selected user would see" and "more quickly and clearly see the access permissions and user views." *Id.*

Appellant contends the rejection is improper, alleging the combination of Belknap and Faitelson fails to teach

a. The collaborative list include the recited tree structure of hierarchical positions associated with access privileges to collaborative data (Appeal Br. 25–31), i.e., the "tree structure collaborative list" limitation as recited by claim element (i); and
b. Providing a portion of the collaborative data based on a determination that a first hierarchical position is associated with a first access privilege (*id.* at 31–34), i.e., the "providing" limitation as recited by claim element (iii).

We address Appellant's contentions *seriatim* in the order presented in the Appeal Brief. *Id.* at 25–34.

a. Tree Structure Collaborative List

Appellant contends:

> Belknap and Faitelson fail to teach or suggest: "obtaining **a collaborative list that includes collaborative data and a tree structure**, the tree structure representing a plurality of hierarchical positions, **wherein a hierarchical position in the plurality of hierarchical positions is associated with an access privilege to access at least a portion of the collaborative data**" as recited by claim 1.

Id. at 26. Appellant argues, rather than a tree structure, "Belknap teaches a relational database and an interface that relies on a separate user table for rights-limited navigation of that database." *Id.* Appellant argues "Faitelson fails to cure the deficiencies of Belknap" because "*Faitelson* merely describes a way to view user and group access rights to files and directories utilizing a tree-like organizational structure—the treelike structure does not serve any underlying functional purpose but is provided for an organized way to present queried data (i.e. users' access rights) to a system administrator." *Id.* at 29.

The Examiner responds, explaining Belknap's data tables may be accessed by multiple users, thereby teaching collaborative data and that Belknap's user tables define group level access privileges as recited by claim 1. Ans. 5. The Examiner finds, although Belknap uses a table rather than a hierarchical structure such as a tree,

> [Belknap's] user table does contain access rights to different levels of data, wherein the access rights are defined according to an organizational hierarchy (see 9:1-17 and Table 6). Notably, various users exist, in which one user is a president, another user is a sales manager, and another user is a field salesperson. One of ordinary skill in the art would consider the claimed "hierarchical position . . . associated with an access privilege" to

> be obvious in view of an organizational hierarchy containing a "president," "sales manager," and "fields sales person," each of which have access to different levels of data.

Id. at 6. To address Belknap's use of a table rather than the recited tree structure representing the claimed hierarchical positions, the Examiner relies on Faitelson's disclosure of displaying users "in a tree structure containing a navigable list including expandable elements, wherein the users are positions in the tree structure may inherit access rights and may be members of expandable user groups." *Id.* at 7. The Examiner finds Faitelson's display of users teaches the recited "tree structure . . . containing a plurality of hierarchal positions." *Id.* The Examiner concludes "[t]hus, a combination of Belknap in view of Faitelson does teach the claimed subject matter to the extent with which it is claimed." *Id.*

Appellant's contention is unpersuasive because it fails to address the Examiner's findings with respect to the individual references. Appellant argues that each reference individually fails to teach the entirety of the disputed limitation rather than explaining why the references fail to teach the respective elements relied upon by the Examiner. Thus, Appellant's argument is, in effect, an improper attack on the references individually when the rejection is based on the combination of Belknap and Faitelson. "Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references." *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)).

Appellant next contends the combination of Belknap and Faitelson is improper, arguing the Examiner is improperly "picking and choosing elements from among these two references in order to disclose the features

presently claimed" and "has failed to provide any rationale why one skilled in the art would have modified or combined the references to arrive at the present claims." Appeal Br. 30.

The Examiner responds as follows:

> [A]ny judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Appellant's disclosure, such a reconstruction is proper.

Ans. 13. The Examiner further explains the reason for modifying Belknap to include Faitelson's tree-structured user interface is to allow Belknap's administrator "to more quickly and clearly see the access permissions and user views associated with users of Belknap." *Id.* at 14 (citing Faitelson ¶¶ 4–9 describing the desirability of increasing efficiency in determining user views of database systems).

Appellant's contention is unpersuasive of reversible Examiner error. The Examiner reasons:

> It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Belknap et al. by the teachings of Faitelson et al., because Faitelson et al. provides a user interface for an administrator to review privileges of users and see the view that a selected user would see. This would allow an administrator of Belknap et al. to more quickly and clearly see the access permissions and user views of Belknap et al.

Final Act. 7; *see also* Ans. 14–15 (providing additional reasoning in support of the combination). Accordingly, the Examiner has articulated reasoning

with rational underpinnings sufficient to justify the legal conclusion of obviousness. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007).

Appellant further argues:

> There is no indication of how Belknap might be modified by Faitelson to at least arrive at "a collaborative list that includes collaborative data and a tree structure, the tree structure representing a plurality of hierarchical positions, wherein a hierarchical position . . . is associated with an access privilege to access at least a portion of the [included] collaborative data." The claimed hierarchical positions are themselves each associated with an access privilege which drives access to the collaborative data. Neither reference discusses utilizing any sort of hierarchical position that is associated with an access privilege to access portions of data. Instead, Belknap uses a user table with independent user entries that are referenced when a user logs in to determine an access level, and Faitelson merely provides a way to organize and view user access privileges in a tree-like structure. Consequently, there is no "hierarchical position in the plurality of hierarchical positions [. . .] associated with an access privilege to access at least a portion of the collaborative data" as neither reference mentions anywhere that access to data is based on a hierarchical position associated with an access privilege. The organizational way of viewing access privileges described by Faitelson, describing only a way to view access privileges, would not be implemented in the user table of Belknap, as Belknap does not describe any relationships between the users in the user table, they are indeed independent entries.

Appeal Br. 30–31.

The Examiner responds:

> Belknap shows that roles in an organizational hierarchy may be associated with different levels of data access rights to collaborative data and stored in a user table (see 9:59-10:17 and an organizational hierarchy containing a "president," "sales manager," and "fields sales person," each of which have access to different levels of data). Faitelson shows that user positions

> within a tree, such as being a member of a user group or inheriting permissions, is associated with data access rights to collaborative data (see paragraphs [0055] - [0059] and Figure 4). The combination of references teaches the claimed subject matter, wherein user data may exist in a tree structure, and each element of user data in the tree is associated with an access permission.

Ans. 15–16.

Addressing Appellant's contention that Faitelson only describes a way to view access privileges, the Examiner explains that the claims do not recite the argued "functional relationship between a hierarchal position in the 'tree structure' relative to other hierarchal positions and the access rights the position receives." *Id.* at 16. According to the Examiner "[t]here is no claim limitation that states, for example, that a position 'higher' in the tree, such as a parent element, would receive different access rights than a child element based on the relationship. All the claimed limitations appear to require is that a user access permission associated with a position in some sort of tree structure." *Id.* (formatting altered).

We agree with the Examiner. During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Construing claims broadly during prosecution is not unfair to the applicant, because the applicant has the opportunity to amend the claims to obtain more precise claim coverage. *Acad. of Sci. Tech Ctr.*, 367 F.3d at 1364; *see also In re Skvorecz*, 580 F.3d 1262, 1267–68 (Fed. Cir. 2009) ("Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the

possibility that the claim, once issued, will be interpreted more broadly than is justified." (quoting Manual of Patent Examining Procedure § 2111)).

Under a broad but reasonable interpretation, claim 1 does not require the argued access to data be based on a hierarchical tree position associated with an access privilege. Therefore, Appellant's argument is unpersuasive as it is not commensurate in scope with claim 1. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (limitations not appearing in the claims cannot be relied upon for patentability). Accordingly, the combination of Belknap and Faitelson teaches or suggests the argued limitation.

b. Providing a First Portion of the Collaborative Data

Appellant argues:

> [Belknap's] relational database and the use of reference user tables to browse through navigational tables cannot be said to be similar to "responsive to the request, providing a first portion of the collaborative data based on a determination that the first hierarchical position is associated with a first access privilege to access the first portion of the collaborative data" as there is no hierarchical position associated with any of the users in the user table of Belknap. Instead, according to Belknap access to a database is based solely on unrelated entries in a user table-each user is assigned to an access level, but nowhere is there any discussion of a "hierarchical position . . . associated with an access privilege."

Appeal Br. 32. Addressing Faitelson, Appellant argues Faitelson fails to disclose the claimed tree structure for reasons argued in connection with the tree structure collaborative list limitation addressed above. Appellant continues, arguing, "No determination is made in *Faitelson* to provide data based on a hierarchical position where the hierarchical position is associated with an access privilege. At best, *Faitelson* describes a user at a position in

a structure (organizational directory) and when the user is selected one can view what access privileges that user has." *Id.* at 34.

The Examiner responds, again explaining the argued relationship between access privileges and relative tree position is not recited by the claim, as follows:

> Appellant's argument appears to be rooted in the idea that the position itself possesses a degree of access privilege based on the location of the position in the tree relative to other positions. This is incorrect, and not what the claim language requires. Rather, the claim requires that a hierarchal position in a tree structure has an associated access privilege. It is noted that this access permission appears to be independent and unrelated to other access permissions in the hierarchal data structure, as no claim limitation describing any such relation exists in the independent claims.

Ans. 18. That is, according to the Examiner, "the claims are directed toward[] accessing data based on an access privilege that is associated with a hierarchal position, NOT based on, as Appellant argues, the position of the hierarchical position relative to other positions within the hierarchy itself." The Examiner further notes:

> Appellant concedes that Belknap shows that a user may have a position within a company, or hierarchal organization, which dictates what access levels that user has been assigned. Belknap shows that an access level a user has been assigned in a company controls what data a user has access to because roles are associated with data access (see 9:11-17 and 10:30-57). Thus, it would be obvious in view of these facts, shown in Belknap, that a user's position within a hierarchy is associated with access privileges, and that a given position in a hierarchy will receive access to a first portion of collaborative data based on an access privilege associated with that hierarchy.

Id. at 20.

Appellant's contention that the prior art fails to teach or suggest the subject providing limitation (iii) is unpersuasive for the reasons discussed above in connection with the tree structure collaborative list limitation. In particular, we agree with the Examiner that the claims only require an access privilege be associated with a hierarchical position, not that the hierarchical position relative to other hierarchical positions be determinative of an access privilege. Thus, Appellant's argument is not commensurate in scope with claim 1. Instead, we agree with the Examiner in finding Belknap's table that associates a user with that user's access privilege in combination with Faitelson's use of a tree structure teaches or suggests the argued access privilege determination.

Furthermore, we agree with the Examiner that one skilled in the art would have appreciated that a hierarchical position within an organization is indicative of an access level provided to that position. Therefore, even if claim 1 was narrowly interpreted as argued by Appellant, the combination of Belknap and Faitelson would nonetheless teach or suggest the argued relationship that a given position in a hierarchy, as indicated by a tree structure, would receive access to a first portion of collaborative data based on an access privilege associated with that hierarchy.

For the reasons discussed above, Appellant's contentions are unpersuasive of reversible Examiner error. Accordingly, we sustain the rejection of independent claim 1 under pre-AIA 35 U.S.C. § 103(a) over Belknap and Faitelson together with the rejection of independent claims 14, 27, and 28 which are argued on the basis of claim 1. *See* Appeal Br. 34. We further sustain the rejection of dependent claims 3, 4, 6–9, 16, 17, 19–22, and 29–36 which are not argued separately with particularity. *Id.*

Rejection of Claims 2 and 15

Appellant does not present any additional arguments traversing the rejection of claims 2 and 15 other than to allege the addition of the Baschy reference fails to cure the argued deficiencies in the rejection of claim 1. Appeal Br. 34–35. Thus, claims 2 and 15 are not separately argued. Having found no reversible error in the rejection of claim 1, we likewise sustain the rejection of claims 2 and 15 under pre-AIA 35 U.S.C. § 103(a) over Belknap, Faitelson, and Baschy.

DECISION SUMMARY

Claims Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**
14–17, 19–22, 31–33	101	Non-statutory subject matter	14–17, 19–22, 31–33	
1, 3–4, 6–9, 14, 16–17, 19–22, 27–36	103(a)	Belknap, Faitelson	1, 3–4, 6–9, 14, 16, 17, 19–22, 27–36	
2, 15	103(a)	Belknap, Faitelson, Baschy	2, 15	
Overall Outcome			1–4, 6–9, 14–17, 19–22, 27–36	

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