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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ARSHAM HATAMBEIKI and JON GALLEGOS

Appeal 2019-003043
Application 15/377,274
Technology Center 2400

Before JOHN A. EVANS, JUSTIN BUSCH, and
JOHN P. PINKERTON, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s Final Rejection of claims 17–22, which are all of the claims pending in the application. Appeal Br. 1; *see also* Claims App. 12–15. Claims 1–16 are canceled. Appellant’s Response to Non-Final Office Action 2, 6 (filed February 6, 2018). We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.²

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Universal Electronics Inc. Appeal Br. 2.

² Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (“Appeal Br.”) and Claims Appendix (Claims App.), filed September 18, 2018; the Reply Brief (“Reply Br.”), filed March 4, 2019; the Examiner’s Answer (“Ans.”), mailed January 8, 2019; the Final

STATEMENT OF THE CASE

Appellant's Invention

The claims relate to “promoting apps or other media to a smart device.” Spec. ¶ 5.

Illustrative Claim

Claims 17, 19, and 21 are independent. An understanding of the invention can be derived from a reading of illustrative claim 17, which is reproduced below with some formatting added:

17. A smart device adapted to promote new apps to an end user of the smart device, comprising:

an electronic storage medium having processor-readable code embodied therein and storing an identification of promoted apps as received from a remote server;

a communication interface; and

a processor, coupled to the electronic storage medium and the communication interface for executing the processor-readable code that causes the smart device to:

send, via the communication interface, a command to one or more other smart devices on a common local-area network as the smart device, the command instructing each of the one or more smart devices to provide installed app information to the smart device over the local area network;

receive, via the communication interface, the installed app information of one or more of the other smart devices;

compare the received installed app information of each of the one or more other smart devices that provided

Office Action (“Final”), mailed June 18, 2018; and the Specification (“Spec.”), filed December 13, 2016; for their respective details.

installed app information to the smart device with the identification of promoted apps;

determine one or more missing apps from the comparison of the identification of apps presently installed on the one or more other smart devices with the identification of promoted apps, the missing apps comprising one or more apps listed in the identification of promoted apps that are not present in one or more of the other smart devices; and

provide a notification to one or more of the other smart devices indicating that one or more of the missing apps are available for installation on one or more of the other smart devices.

Claims App. 12–13.

References and Rejection

Claims 17–22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gava et al. (US 2014/0215457 A1; published July 31, 2014) (“Gava”), Lee et al. (US 2014/0157387 A1; published June 5, 2014) (“Lee”), and Volach (US 2016/0057179 A1; published Feb. 25, 2016). Final 4–9.

ANALYSIS

“A patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 401 (2007). Although it may “be necessary for a court to look to interrelated teachings of multiple patents,” in order to “facilitate review, this analysis should be made explicit.” *Id.* at 418. Accordingly, “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the

legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

The Examiner finds Gava’s smart device teaches much of claim 17. *See* Final 4–6 (citing Gava ¶¶ 17, 18, 21, 25, 28–30, 39, Figs. 2A, 4B). Gava teaches a local/home network including a first device (e.g., a smartphone) that has an app with logic for querying a second device (e.g., a TV) on the network. Gava ¶ 25. Querying may be done to determine whether a companion app exists on the second device, and if so, whether it is executing. *Id.* If the first device determines that the second device does not have the companion app, and the app is available for download (e.g., from a server on the network), the first device’s app may notify the user and ask if the user wants to download the companion app to the second device. *Id.* ¶ 28; *see also id.* ¶ 23. If the user approves the download request, the first device may issue a command to the second device to download the companion app, and the download may be initiated on the second device without further action from the user. *Id.* ¶ 29. Gava explains that this process may be embedded in any app “in order to promote [the] use of a companion app for the second device.” *Id.*; *see also id.* ¶ 30.

The Examiner acknowledges, however, that Gava does not explicitly disclose the following claim limitations as recited:

compare the received installed app information of each of the one or more other smart devices that provided installed app information to the smart device with the identification of promoted apps;

determine one or more missing apps from the comparison of the identification of apps presently installed on the one or more other smart devices with the identification of promoted apps, the missing apps comprising one or more apps listed in

the identification of promoted apps that are not present in one or more of the other smart devices; and

provide a notification to one or more of the other smart devices indicating that one or more of the missing apps are available for installation on one or more of the other smart devices.

Ans. 6–8. The Examiner cites disclosures from Lee and Volach to fill the gaps in Gava. *See id.* (citing Lee ¶¶ 30, 172, 177, 182, 191; Volach ¶¶ 22, 132, 194).

Lee teaches an application synchronization system in which a smart device may perform synchronization with a pre-installed application list. *See, e.g.,* Lee ¶¶ 67, 72, 84, 182, 191. Lee describes that the device may compare an actually installed application with the pre-installed application list. *See, e.g., id.* ¶¶ 30, 182, 191. Based on the comparison, the pre-installed application list may be updated, and the device may download and install an application (or update an installed application) via a market server to achieve synchronization. *Id.* In some embodiments, a smart device may receive an application list including a recommended application for the smart device. *See, e.g., id.* ¶ 172.

Volach teaches a system for managing online interactions between users. Volach, Abstract. In one embodiment, responsive to a recommendation to use an application that is absent from a user's communication device, a server's invite module may send an invitation to the device to download and install the missing application. *Id.* ¶¶ 22, 132, 194.

The Examiner reasons that “it would have been obvious . . . to modify the smart device of GAVA with the teaching as taught by LEE *in order to synchronize applications between different kinds of devices so that unusable*

applications may be avoided to be installed on the devices.” Ans. 8
(emphasis added). The Examiner reasons further that:

it would have been obvious . . . to modify the smart device of GAVA in view of LEE with the teaching [of] VOLACH . . . to *provide a recommendation indicative of at least one recommended interaction application to be used for data communication in the interaction with one or more other communication devices.”*

Id. at 8 (emphasis added).

Appellant contends that “the rejection of clam 17 fails to present a *prima facie* case of obviousness” because the proposed reasons for modifying Gava to include the teachings of Lee or Volach are not supported by any rational underpinning. Reply Br. 4–5; *see also* Appeal Br. 8, 9. According to Appellant, “it remains unclear why one [of] skill in the art would have been motivated to modify the smart device of Gava” as proposed by the Examiner “because no explanation has been provided.” Reply Br. 5; *see also* Appeal Br. 8, 9. Appellant also contests the Examiner’s proposed reasoning because “in Gava, the devices are already capable of communicating and, via such communication, a query is made to determine if the second device has installed thereon an app that is a companion to an app already installed and executing on the first device.” Reply Br. 5; *see also* Appeal Br. 8, 9. In response to Appellant’s arguments, the Examiner’s Answer merely repeats the reasoning provided in the Final Office action without providing any further explanation in response to Appellant’s arguments. *See* Ans. 4–5, 9–10.

We agree with Appellant that the Examiner’s proposed reasons to combine are defective. The Examiner’s reason to combine Gava with Lee—to synchronize applications between different kinds of devices so that

unusable applications may avoid being installed—merely describes the intended result of the proposed combination. Final 7. The Examiner does not explain why synchronization or avoiding the installation of unusable applications would be beneficial or advantageous to one of ordinary skill in the art. Nor does the Examiner explain how modifying Gava’s smart device to include Lee’s synchronization procedure (with its application list and recommendation features) would have been routine, predictable, or otherwise obvious to an ordinarily skilled artisan. And the Examiner does not provide any other reason why one of ordinary skill in the art would have combined Gava’s and Lee’s teachings.

The Examiner’s reason to combine Gava with Volach fares no better. *See id.* at 8. That reasoning too merely describes the intended result of the proposed combination—to provide a recommendation of an application for data communication between devices. The Examiner does not explain why providing such a recommendation would be beneficial or advantageous. Nor does the Examiner explain how modifying Gava’s smart device to include Volach’s server-based invite module procedure would have been routine, predictable, or otherwise obvious to an ordinarily skilled artisan. And the Examiner does not provide any other reason why one of ordinary skill in the art would have been led to combine Gava’s and Volach’s teachings.

Therefore, because the Examiner has merely provided “conclusory statements” without “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness,” we decline to sustain the Examiner’s § 103 rejection of independent claim 17. For similar reasons, we decline to sustain the Examiner’s § 103 rejections of claims 18–22, which recite similar limitations for which the Examiner relies on the

same defective reasons to combine the same prior art disclosures. *See id.* at 8–9; *cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“[D]ependent claims are nonobvious if the independent claims from which they depend are nonobvious”).

CONCLUSION

We reverse the Examiner’s rejection of claims 17–22 under 35 U.S.C. § 103.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
17–22	103	Gava, Lee, Volach		17–22

REVERSED