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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RYAN HEDLEY TURNER, DANIEL STEVEN HALIGAS, VELAYUDHAN VENUGOPAL, and ALEX HOLM DEVINE

Appeal 2019-003366
Application 14/512,279
Technology Center 3600

Before BRADLEY W. BAUMEISTER, ADAM J. PYONIN, and IFTIKHAR AHMED, *Administrative Patent Judges.*

PYONIN, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's rejection. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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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 HomeAway.com, Inc., a subsidiary of Expedia, Inc. as the real party in interest. Appeal Br. 3.

STATEMENT OF THE CASE

Introduction

The Application is directed to using "[r]eview data associated with a guest experience at an event, such as a vacation rental," in which the "review data may include access credentials and location data that may be processed to validate that the review data is legitimate." Abstract. Claims 1–8 and 11–22 are pending; claims 1 and 11 are independent. App. Br. 31–35. Claim 1 is reproduced below for reference (emphases added):

> 1. A computer-implemented method comprising:
>
> as performed by a computing system comprising one or more computing devices configured to execute specific instructions, receiving, at a networked computing device, review data transmitted by a client device, wherein the review data is generated by an application executed on the client device, and wherein the review data is associated with a rental location;
>
> *extracting credential data and network data* from the review data, wherein the credential data comprises data regarding the client device, and wherein *the network data comprises:*
>
> *data identifying a network to which the client device is connected; and*
>
> *data representing a signal strength of a network connection of the client device to the network*;
>
> determining that the credential data corresponds to access credentials stored in a data storage resource;
>
> determining, based at least partly on the network data, that the network to which the client device is connected is a wireless network at the rental location;
>
> *determining, based at least partly on the network data, that the signal strength of the network connection satisfies a threshold*;
>
> determining, based at least partly on the signal strength satisfying the threshold, that the client device is within a predetermined proximity of the rental location;

determining, based at least partly on (l) the credential data corresponding to the access credentials and (2) the client device being within the predetermined proximity of the rental location, to initiate publication of at least a portion of the review data;

formatting, at the networked computing device, text content and media content included in the review data into a review data file;

queuing the review data file for publication;

communicating a notice of a pending publication of the review data file to an owner device associated with an owner of the rental location;

receiving, from the owner device, review action data regarding an action to be taken with respect to the review data file;

determining, based at least partly on the review action data, to publish the review data file; and

publishing the review data file.

References and Rejections[2]

The Examiner relies on the following prior art:

Name	Reference	Date
Feser	US 2003/0120525 A1	June 26, 2003
Gronberg	US 2007/0255792 A1	Nov. 1, 2007
Nicholas	US 2010/0211688 A1	Aug. 19, 2010
Xiong	US 2011/0178885 A1	July 21, 2011
Book	US 2012/0246004 A1	Sept. 27, 2012
Salomon	US 2013/0047034 A1	Feb. 21, 2013

Claims 1–4, 6–8, and 21 are rejected under 35 U.S.C. § 103 as being unpatentable over Book, Xiong, and Feser. Final Act. 5.

Claims 11, 12, 15, 16, 18, 20, and 22 are rejected under 35 U.S.C. § 103 as being unpatentable over Book and Xiong. Final Act. 16.

[2] The Examiner has withdrawn the patent eligibility rejection. *See* Ans. 4.

Claims 5, 13, 14, 17, and 19 are rejected under 35 U.S.C. § 103 as being unpatentable over various combinations of Book, Xiong, Feser, Gronberg, Salomon, and Nicholas. Final Act. 15, 24–38.

ANALYSIS

Claim 1 recites determining that a client device (such as a smartphone) is within a predetermined proximity of a specified location, based on "determining, based at least partly on the network data, that the signal strength of the [client device's] network connection satisfies a threshold." The Examiner finds Book teaches or suggests this limitation, because Book "discloses determin[ing] the network[, that] the client device is connected to[,] is a wireless network which is at a rental location." Final Act. 7; Book ¶ 27 ("the location of a user device 150 in proximity to a merchant location may be determined based on whether the user device 150 is connected to a wireless network at the merchant location."). The Examiner explains that, "[a]s known in the art[,] connecting to a network through WIFI requires a set signal strength, thus [Book's] connection itself acts as data representing the signal strength," because Book's "signal strength has to be above a threshold and the user has to be within proximity in order to use the WIFI spot." Ans. 9.

Appellant argues the Examiner's rejection is in error, because the rejection "conflate[s] the meaning of 'connection' and 'signal strength.'" Reply Br. 4; *see* Appeal Br. 24. Appellant contends that, under Book, "there would be no need or reason to determine if a signal strength of a connection satisfies a threshold [as claimed,] because the signal strength would always

meet the threshold when the device is connected." Reply Br. 5; *see* Appeal Br. 25.

We are persuaded the Examiner errs. "The correct inquiry in giving a claim term its broadest reasonable interpretation in light of the specification is . . . an interpretation that corresponds with what and how the inventor describes his invention in the specification, i.e., an interpretation that is 'consistent with the specification.'" *In re Smith Int'l, Inc*., 871 F.3d 1375, 1382–83 (Fed. Cir. 2017) (citations omitted). Here, Appellant's Specification describes using signal strength to determine a user location:

> a locus may also be determined by information and/or signals including but not limited to . . . radio frequency (RF) signal strength as *measured* by a communications interface (e.g., 180, 130, 140) in communications with the client device 110, [received signal strength indicator (RSSI)] as *measured* by a communications interface (e.g., 180, 130, 140), signal ping times as measured by a communications interface (e.g., 180, 130, 140), just to name a few, for example. As one example, location data may be determined to be unreliable and/or unverifiable if RSSI in RF signals transmitted by the client device 110 are below a threshold value, and/or if RF signal strength from RF signals transmitted by the client device are below a threshold value. RSSI and/or RF signal strength that are below their respective threshold values may be indicative of a distance between the client device 110 and a communications interface (e.g., 180, 130,140) being too great for the client device 110 (e.g., and its associated guest 101) to be within a locus of the event.

Spec. ¶ 26 (emphases added).

The Specification presents alternative methods of location determination, including determining a user device is accessing "[c]ellular communications networks . . . located near event" or "[w]ide area and/or public WiFi networks, such as WiMAX, located in vicinity of event," which "may be used to verify location for [the] guest." *Id.* Thus, consistent with

the Specification, the claimed "signal strength of a network connection" is a value of a network connection that is *measured*, and is distinguished from merely accessing a given network. This construction is further exemplified by the claim limitation relating to the network connection determination being distinct from the claim requirement for comparing the signal strength to a threshold. *See* Reply Br. 5; *cf. Innova/Pure Water, Inc. v. Safari Water Filtration Sys*., Inc., 381 F.3d 1111, 1119 (Fed. Cir. 2004) ("[W]hen an applicant uses different terms in a claim it is permissible to infer that [the] different terms [] reflect a differentiation in the meaning of those terms."); *Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2010) ("Where a claim lists elements separately, 'the clear implication of the claim language' is that those elements are 'distinct component[s]' of the patented invention." (alteration in original) (quoting *Gaus v. Conair Corp*., 363 F.3d 1284, 1288 (Fed. Cir. 2004))).

As cited by the Examiner, Book determines a location based on whether a user device is connected to a specific network. *See* Book ¶¶ 26, 27. The mere fact of a network connection, however, does not teach or suggest the claimed "signal strength" limitations, as broadly, but reasonably construed in light of the Specification. *See* Appeal Br. 23, 24; Spec. ¶¶ 25, 26, 71.

Book does not use a measured network connection value; nor does the Examiner provide reasoning to show that one of skill in the art would modify the cited references to use a signal strength of a network connection, within the meaning of the claim. *See* Ans. 9, 10; Final Act. 7. Accordingly, we agree with Appellant that "the cited portions of the references do not teach any determinations related to 'signal strength' of a network

connection," as claimed. Appeal Br. 23. We find, therefore, that the Examiner has not sufficiently presented a case of obviousness with respect to claim 1, as the Examiner has not shown the disputed claim "elements are found in the prior art." *KSR Int'l Co. v. Teleflex Inc*., 550 U.S. 398, 415 (2007)

We are persuaded the Examiner's rejection of claim 1 is in error. Independent claim 11 similarly recites a "signal strength of the network connection." *See* Appeal Br. 26–29. We do not sustain the Examiner's obviousness rejections of the independent claims, or of claims 2–4, 6–8, 12, 15, 16, 18, and 20–22, which depend from these claims.

With respect to the remaining obviousness rejections of dependent claims 5, 13, 14, 17, and 19, the Examiner does not rely on any of the additionally cited references, Nicholas, Gronberg, and Salomon, to cure the deficiency noted in relation to independent claims 1 and 11. Appeal Br. 15, 25, 28–31. Accordingly, we do not sustain the Examiner's obviousness rejections of the claims for the reasons set forth in relation to claims 1 and 11.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)	Affirmed	Reversed
1–4, 6–8, 21	103	Book, Xiong, Feser		1–4, 6–8, 21
5	103	Book, Xiong, Feser, Nicholas		5
11, 12, 15, 16, 18, 20, 22	103	Book, Xiong		11, 12, 15, 16, 18, 20, 22

Claims Rejected	35 U.S.C. §	Reference(s)	Affirmed	Reversed
13, 14	103	Book, Xiong, Gronberg		13, 14
17, 19	103	Book, Xiong, Salomon		17, 19
Overall Outcome				1–8, 11–20

REVERSED