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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ERICH STUNTEBECK and MICHELLE BURNETT

Appeal 2019-003503
Application 14/961,022
Technology Center 2400

Before JUSTIN BUSCH, JOHN D. HAMANN, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

HAMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–4, 8–11, 13, 15–18, and 21–27. 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(a). Appellant identifies the real party in interest as Airwatch LLC, which Appellant identifies as a wholly owned subsidiary of VMware, Inc. Appeal Br. 2.

² Our Decision relies upon Appellant's Appeal Brief (“Appeal Br.,” filed Dec. 10, 2018), Reply Brief (“Reply Br.,” filed Apr. 1, 2019), and Specification (“Spec.,” filed Dec. 7, 2015), as well as the Examiner's Answer (“Ans.,” mailed Jan. 31, 2019) and the Final Office Action (“Final Act.,” mailed July 6, 2018).

CLAIMED SUBJECT MATTER

Appellant's claimed invention "relate[s] generally to data security, and more particularly, to systems and methods for controlling network access." Spec. ¶2. Claim 1 is representative of the subject matter on appeal and is reproduced below.

1. A system, comprising:
 - a computing device; and
 - a storage device storing a plurality of computer instructions executable by the computing device, wherein the plurality of computer instructions cause the computing device to at least:
 - obtain a request from a user device to access a wireless network beacon;
 - obtain a device profile for the user device based at least in part on the request, wherein the device profile indicates a state of the user device;
 - determine that the user device satisfies an authorization rule based on the state of the user device as indicated by the device profile;
 - cause the user device to access at least one resource, the at least one resource corresponding to at least one resource rule specifying that the at least one resource is encrypted and that the user device contains at least one mechanism to decrypt the at least one resource;
 - authorize the user device to access the wireless network beacon responsive to determining that the user device satisfies the authorization rule and the at least one resource rule;
 - configure at least one setting on the user device based at least in part on a management policy and the wireless network beacon responsive to authorizing the user device to access the wireless network beacon, wherein the at least one setting alters at least one functionality provided by the user device;
 - determine a stringency of the authorization rule based on the state of the user device as indicated by the

device profile subsequent to authorizing the user device to access the wireless network beacon; and

determine that the user device fails to satisfy the authorization rule based at least in part on the stringency subsequent to authorizing the user device to access the wireless network beacon.

REJECTIONS³

(1) The Examiner rejected claims 1–3, 8–10, 13, and 15–17 under 35 U.S.C. § 103(a) as being unpatentable over McGeehan (US 2010/0211997 A1; published Aug. 19, 2010) and Fitzgerald (US 2009/0253410 A1; published Oct. 8, 2009).

(2) The Examiner rejected claims 21–23 under 35 U.S.C. § 103(a) as being unpatentable over the combination of McGeehan, Fitzgerald, and Malik (US 2013/0007245 A1; published Jan. 3, 2013).

(3) The Examiner rejected claims 4, 11, and 18 under 35 U.S.C. § 103(a) as being unpatentable over the combination of McGeehan, Fitzgerald, and Goyal (US 2008/0134347 A1; published June 5, 2008).

(4) The Examiner rejected claims 24–26 under 35 U.S.C. § 103(a) as being unpatentable over the combination of McGeehan, Fitzgerald, and Gum (US 2010/0175116 A1; published July 8, 2010).

(5) The Examiner rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable over the combination of McGeehan, Fitzgerald, and Balwani (US 2007/0117558 A1; published May 24, 2007).

³ The Examiner withdrew the 35 U.S.C. § 101 rejection of claims 1–4, 8–11, 13, 15–18, and 21–27, as well as the non-statutory double patenting rejection. *See* Ans. 4; Final Act. 12–20.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments that the Examiner errs. The dispositive issues for this appeal are (i) whether McGeehan teaches or suggests configuring a setting on a user device, which alters a functionality provided by the user device, and (ii) whether the Examiner provided sufficient rationale for combining Fitzgerald’s teachings for this limitation — the Examiner found that Fitzgerald also teaches this limitation — with McGeehan. We find Appellant’s arguments as to these issues persuasive.⁴

(1) McGeehan’s Teachings

Appellant argues that the combination of McGeehan and Fitzgerald fails to teach or suggest “configur[ing] at least one setting on the user device . . . , wherein the at least one setting alters at least one functionality provided by the user device,” as recited in independent claims 1, 8, and 15. Appeal Br. 18–19; Reply Br. 4–9. Appellant argues that McGeehan merely teaches that a remote system (social networking system 115) stores a machine cookie — what the Examiner finds is the setting — on a user device (client device 105) to help the remote system authenticate the user device. Appeal Br. 18 (citing McGeehan ¶ 41). For example, according to Appellant, McGeehan merely teaches that the cookie may help the remote system recognize the user device as being at a safe location so that the user device can log into the remote system with reduced authentication requirements. Appeal Br. 19 (citing Final Act. 9–10 (citing McGeehan ¶¶ 39–40, 48, 51, 57)). This cookie, however, does not alter a functionality provided by the

⁴ Because we agree with at least one of the dispositive arguments advanced by Appellant, we need not reach the merits of Appellant’s other arguments.

user device, according to Appellant. Appeal Br. 19. More specifically, Appellant argues that McGeehan’s teachings regarding aiding the user device’s authentication by the remote system “is not functionality **provided by the**” user device (client device 105) of McGeehan. Appeal Br. 19 (citing McGeehan ¶ 41). Put differently, Appellant argues that “[i]nstead of altering a functionality provided by the user device, the machine cookie is merely ‘retrieved by the social networking system 115 to verify the identity of the client device 105.’” Appeal Br. 19 (quoting McGeehan ¶ 41); Reply Br. 8 (citing McGeehan ¶ 45, Fig. 1) (arguing that “[t]he functions of authenticating and establishing an authorized connection . . . [are] functions of the social networking system 115 and are not provided by the client device 105”).

The Examiner finds that McGeehan teaches this limitation. Ans. 6–7; Final Act. 23. More specifically, the Examiner finds that McGeehan teaches that:

Prior to having a machine cookie configured on [a] client device, the functions of authenticating and establishing an authorized connection performed/provided by the client device . . . are simple as user device with no prior history is not considered highly suspicious However, after having been configured with a machine cookie and having performed prior sessions, the functions of authenticating and establishing an authorized connection provided by the client device are changed and require additional authentication by the client device to perform the function of establishing the authorized connection Therefore, configuring the machine cookie on the client device in McGeehan changes the methods/functions of authentication and establishing the session/connection performed by the client device.

Ans. 6–7 (citing McGeehan ¶¶ 45, 51, 57–58).

We find that the Examiner errs. We agree with Appellant that McGeehan teaches that the machine cookie is “retrieved by the social networking system 115 to verify the identity of the client device 105.” McGeehan ¶ 41. Moreover, the cited portions of McGeehan relate to the networking system authenticating the client device based on the cookie, rather than the client device performing a function. McGeehan ¶¶ 45, 51, 57–58. Nor do we find that these paragraphs support that the client device (as opposed to the networking system) is required to perform additional authentication for the function of establishing the authorized connection. *Id.*

Accordingly, we find that the cited portions of McGeehan do not teach or suggest the disputed limitation.

(2) *Combining McGeehan’s and Fitzgerald’s Relevant Teachings*

Appellant argues that the Examiner does not provide sufficient rationale to combine Fitzgerald’s teachings of configuring a setting on a user device, which alters a functionality provided by the user device, with McGeehan’s teachings. Reply Br. 11–12 (citing Final Act. 25). We agree with Appellant.

The Examiner combines the above teaching from Fitzgerald with McGeehan’s teachings for the first time in the Answer. *Compare* Ans. 7–8, *with* Final Act. 23. And, when doing so, the Examiner does not provide any rationale for why one of ordinary skill in the art would have combined Fitzgerald and McGeehan in this way. Ans. 7–8. Nor is the rationale the Examiner provided in the Final Action for why one of ordinary skill in the art would have combined other teachings in Fitzgerald with McGeehan relevant here. Namely, the Examiner finds that one of ordinary skill in the art would have found it obvious “to integrate Fitzgerald’s method of

specifying that the resource is encrypted with the system of McGeehan so that if the security of the mobile device is compromised, unauthorized persons with access to the mobile device cannot access protected data on the mobile device.” Final Act. 25 (citing Fitzgerald, ¶ 91).

Accordingly, we find that the Examiner does not provide sufficient rationale to combine Fitzgerald’s teachings of configuring a setting on a user device, which alters a functionality provided by the user device, with McGeehan’s teachings. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections 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”), cited with approval in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

CONCLUSION

Accordingly, we do not sustain the Examiner’s rejection of independent claims 1, 8, and 15. With respect to the Examiner’s rejections of the dependent claims, the Examiner relies on the above findings and the additionally cited references do not cure the above deficiencies. Accordingly, we also do not sustain the Examiner’s rejections of claims 2–4, 9–11, 13, 16–18, 21–27.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference/Basis	Affirmed	Reversed
1-3, 8-10, 13, 15-17	103(a)	McGeehan, Fitzgerald		1-3, 8-10, 13, 15-17
21-23	103(a)	McGeehan, Fitzgerald, Malik		21-23
4, 11, 18	103(a)	McGeehan, Fitzgerald, Goyal		4, 11, 18
24-26	103(a)	McGeehan, Fitzgerald, Gum		24-26
27	103(a)	McGeehan, Fitzgerald, Balwani		27
Overall Outcome				1-4, 8-11, 13, 15-18, 21-27

REVERSED