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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOSEPH M. VANEK

Appeal 2019-004148
Application 13/617,829
Technology Center 2100

Before JASON V. MORGAN, IRVIN E. BRANCH, 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), Appellant¹ appeals from the Examiner’s decision to reject claims 1–6 and 10–19.² We have jurisdiction under 35 U.S.C. § 6(b). Oral arguments were heard on June 18, 2020. A transcript of that hearing will be added to the record in due time.

We AFFIRM.

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 the applicant/inventor Joseph M. Vanek. Appeal Br. 1.

² Claims 7–9 are cancelled. Appeal Br. 11.

CLAIMED SUBJECT MATTER

Invention

Appellant's claimed subject matter relates to "automatically sharing information between individuals who wish to become socially or professionally 'connected.'" Spec. ¶ 4.³

Exemplary Claim

Claim 1, the sole independent claim, is exemplary of the claimed subject matter and is reproduced below with limitations at issue highlighted:

1. A method enabling people to discover shared connections, comprising the steps of:

exchanging electronic communications between two persons using separate electronic devices accessed by each person, the communications including a request to share connections from one of the persons, and an acceptance of the request from the other person;

if the request is accepted, automatically and independently accessing a computer network by the electronic device of each person to establish a connection with a remote computer;

automatically searching, by the remote computer, multiple Internet websites and electronic databases with contact lists to locate information common to, shared by, or

³ We refer to: (1) the originally filed Specification filed September 14, 2012 ("Spec."); (2) the Non-Final Office Action mailed June 12, 2018 ("Non-Final Act."); (3) the Appeal Brief filed January 15, 2019 ("Appeal Br."); (4) the Examiner's Answer mailed March 5, 2019 ("Ans."); and (5) the Reply Brief filed May 6 2019 ("Reply Br.").

linking the two persons; and, if such information is found during the independent searches,

providing the information to both persons through their electronic devices.

Appeal Br. 10 (APPENDIX).

REFERENCE AND REJECTION

The Examiner rejects claims 1–6 and 10–19 under pre-AIA 35 U.S.C. § 102(b) as anticipated by Ahuja (US 2010/0280904 A1, published Nov. 4, 2010). Non-Final Act. 4–7.

OPINION

We review the appealed rejection 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) (2018). We adopt as our own the findings and reasons set forth by the Examiner (1) in the Non-Final Rejection (Non-Final Act. 4–7) and (2) in the Examiner’s Answer (Ans. 3–12) and concur with the conclusions reached by the Examiner. We highlight the following for emphasis.

The Examiner finds Ahuja discloses “if the request is accepted, automatically and independently accessing a computer network by the electronic device of each person to establish a connection with a remote computer,” as recited in claim 1. Non-Final Act. 5–6 (citing Ahuja ¶¶ 9, 43, 56, 62); Ans. 4–9 (citing Ahuja ¶¶ 45, 55, 56, 60–62, 99, 100).

Appellant argues that “in Ahuja, a computer network is not automatically and independently accessed by the electronic device of each person to establish a connection with a remote computer.” Appeal Br. 6.

Appellant’s argument is unpersuasive. We agree with the Examiner’s findings, noting that in Ahuja, “[i]f User 2 accepts the friend request, both users are added in each other's friend’s list” and “if the two users Active profile displays links of their accounts with similar networking sites, MySpace, Facebook, and others, the device automatically sends ‘Friend Request’ related to those Social Networking sites as well.” Ahuja ¶ 60. Because Ahuja discloses each user device automatically connecting with various social networking sites to send friend requests, we agree with the Examiner that Ahuja discloses “automatically and independently accessing a computer network by the electronic device of each person to establish a connection with a remote computer” where the remote computer is for one of the social networking sites, as recited in claim 1.

Appellant next argues that Ahuja fails to disclose “automatically searching, by the remote computer, multiple Internet websites and electronic databases with contact lists to locate information common to, shared by, or linking the two persons,” as recited in claim 1. Of particular relevance, Appellant argues

[i]n Ahuja information common to, shared by, or linking the two persons is not found during independent searches, and the information is not provided to both persons through their electronic devices. Instead, to the extent Ahuja performs a search, it is very limited, and the information is provided to a social networking server.

Appeal Br. 8 (citing Ahuja ¶ 60).

The Examiner finds Appellant’s argument that shared information is not provided to both users on the device unpersuasive “because the invention is based on using a device to perform actions that can be executed by the device itself or by a remote computer.” Ans. 11 (citing Ahuja ¶¶ 8, 44, 51).

The Examiner further finds “[t]here are many teachings of providing information to users through their respective electronic devices as above noted because ‘Ahuja devices’ is based on using devices to perform certain automated and manual functions.” Ans. 11.

Appellant’s arguments are unpersuasive of reversible Examiner error. We agree with the Examiner that Ahuja discloses the claimed automatic searching. As an example, Appellant fails to persuasively demonstrate error in the finding that Ahuja’s X-Path server automatically searches multiple websites and electronic databases to locate and update user profile or contact information and provides the updated information to all of the user’s devices. Non-Final Act. 6 (citing Ahuja ¶¶ 23, 45, 51, 97, 100); *see also* Ans. 4 (citing Ahuja ¶ 99).

Furthermore, although we do not rely upon the following analysis to affirm the Examiner’s rejection, we find Appellant’s arguments are not commensurate with the scope of the claim. Under the broadest reasonable interpretation of the claimed method steps, the following steps are only performed if certain conditions precedent are met; and as such, the Examiner does not have to find that the prior art discloses these method steps. *Ex parte Schulhauser*, Appeal 2013-007847, 2016 WL 6277792, at *7–8 (Apr. 28, 2016) (precedential). Specifically, the steps of “automatically and independently accessing a computer network by the electronic device of each person to establish a connection with a remote computer,” “automatically searching, by the remote computer, multiple Internet websites and electronic databases with contact lists to locate information common to, shared by, or linking the two persons,” and, “if such information is found during the independent searches, providing the information to both

persons through their electronic devices,” are conditional steps and thus, are only performed “*if* the request is accepted.” Claim 1 (emphasis added). More specifically, if the request is not accepted, none of the conditional steps identified above will be performed. This claim interpretation is supported by Appellant’s Figure 2, which shows that the claimed process ends without establishing a connection with a remote computer if recipient does not accept/verify the sender’s request. Even further, some of the claimed conditional steps would only be performed if additional conditions precedent were met (e.g., “providing the information to both persons through their electronic devices” “*if* such information is found during the independent searches” (claim 1 (emphasis added))). Accordingly, under a broad but reasonable interpretation in light of binding precedent set forth in *Schulhauser*, the claimed method would only encompass the step of “exchanging electronic communications between two persons using separate electronic devices accessed by each person, the communications including a request to share connections from one of the persons, and an acceptance of the request from the other person,” as recited in claim 1.

We, therefore, sustain the 35 U.S.C. § 102(b) rejection of independent claim 1. We also sustain the Examiner’s § 102(b) rejection of dependent claims 2–6 and 10–19, which are not argued separately. *See* Appeal Br. 5–9.

CONCLUSION

We affirm the Examiner’s decision to reject claims 1–6 and 10–19 under 35 U.S.C. § 102(b).

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference	Affirmed	Reversed
1-6, 10-19	102(b)	Ahuja	1-6, 10-19	

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