



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/635,457	03/02/2015	Yuki MIZUGUCHI	723-4107	1008
27562	7590	08/31/2020	EXAMINER	
NIXON & VANDERHYE, P.C. 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			MOSSER, ROBERT E	
			ART UNIT	PAPER NUMBER
			3715	
			NOTIFICATION DATE	DELIVERY MODE
			08/31/2020	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOMAIL@nixonvan.com
pair_nixon@firsttofile.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YUKI MIZUGUCHI, TOORU OOE, and SHOYA TANAKA

Appeal 2019-006102
Application 14/635,457
Technology Center 3700

Before JOHN C. KERINS, DANIEL S. SONG, and
BRETT C. MARTIN, *Administrative Patent Judges*.

SONG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), the Appellant¹ appeals from the Examiner's decision to reject claims 1–24. We have jurisdiction under 35 U.S.C. § 6(b). A telephonic hearing was conducted with the Appellant's representative on August 19, 2020, a transcript of which will be entered into the electronic record in due course.

We AFFIRM.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). The Appellant identifies the real party in interest as Nintendo Co., Ltd. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to a game processing system. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A game processing system comprising a first gaming device, a second gaming device, and a third gaming device, wherein the first gaming device comprises:

a first network interface; and

at least one first processor configured to:

transmit a first information via the first network interface;

in response to receiving a second information from the second gaming device after transmitting the first information, execute an authentication process with the second gaming device; and

execute a communicative game based on communication, using the first network interface, with the second gaming device after said executing the authentication process with the second gaming device,

wherein the second gaming device comprises:

a second network interface; and

at least one second processor configured to:

in response to receiving the first information via the second network interface execute the authentication process to perform mutual authentication with the first gaming device; and

execute the communicative game based on communication, using the second network interface, with the first gaming device after said executing the authentication process with the first gaming device, and

wherein the third gaming device comprises:

a third network interface; and

at least one third processor configured to:

in response to receiving the first information via the third network interface, without performing the authentication process to perform mutual

authentication with either the first gaming device or the second gaming device,

receive, using the third network interface, data associated with the communicative game, currently being executed by the first and/or second gaming device, from at least one of the first gaming device and the second gaming device; and

execute a spectating experience process based on the received data.

Appeal Br. 24, Claims App., emphasis added.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Spanton	US 2007/0117635 A1	May 24, 2007
Brunstetter	US 2008/0119286 A1	May 22, 2008
Thompson	US 7,403,542 B1	July 22, 2008
Ho	US 2012/0163235 A1	June 28, 2012

REJECTIONS

1. Claims 1–3, 5, 7–10, 15, and 20–24 are rejected under 35 U.S.C. §103(a) as being unpatentable over Brunstetter in view of Ho. Final Act. 2.

2. Claims 4, 6, and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Brunstetter in view of Ho and Spanton. Final Act. 12.

3. Claims 11–14 and 16–18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brunstetter in view of Ho and Thompson. Final Act. 13.

OPINION

Rejection 1: Brunstetter in view of Ho

The Examiner rejects claims 1–3, 5, 7–10, 15, and 20–24 as being unpatentable over Brunstetter in view of Ho. Final Act. 2. As to independent claim 1, for example, the Examiner finds that Brunstetter discloses the invention substantially as claimed, but fails to disclose that the authentication process involves mutual authentication. Final Act. 2–4. The Examiner finds that Ho discloses that mutual authentication is known, and concludes that it would have been obvious to one of ordinary skill in the art to have incorporated mutual authentication in Brunstetter “in order to utilize a known form of access credentials,” which is “compatible with peer-to-peer networking and offer the added security of encrypted communication.” Final Act. 4.

The Appellant disagrees with the Examiner’s finding with respect to Brunstetter. In particular, the Appellant points out that claim 1 requires the second and third gaming devices to receive the same “first information,” but for the second and third gaming devices to take different actions in response thereto, with the second gaming device executing a mutual authentication processes, and the third gaming device receiving game play data without performing an authentication process. Appeal Br. 13–14; *see also* Appeal Br. 15–16. The Appellant argues that the differing actions taken by the second and third gaming devices in response to the same first information is not disclosed in Brunstetter. Reply Br. 3.

We do not find the Appellant’s argument persuasive. As the Examiner finds, Brunstetter discloses the distribution of game play broadcast to spectators “wherein the authentication of the same is recognized as an alternatively optional step and thus fairly not required to in order to

spectate.” Final Act. 4, citing Brunstetter, Abstract; ¶¶ 9, 32, 36, 40–43, 81; *see also* Ans. 6. Indeed, Brunstetter discloses:

Various users in the network (i.e., spectators and participants) may set security credentials as to the access of certain game data. For example, the credentials may identify who may access what portions of what game data and from where. As such, portal 114 may require certain user credentials (e.g., name and password) in order to gain access to certain game data.

[0042] The interface of portal 114 may further indicate . . . whether permission is required to be an active participant or a spectator relative this particular game or user.

Brunstetter, ¶¶ 41, 42.²

The cited portions of Brunstetter make clear that spectators can view a live game being played by other participants, and that security credentials and permissions may, and thus, optionally, be set for participants and/or spectators. Brunstetter, ¶¶ 9, 32, 36, 41–44, 81. The Examiner is correct that Brunstetter discloses, or at least suggests to one of ordinary skill, that “authentication may or may not be required,” and whether to require authentication may be “dependent on if the user selects the role of spectator or participant.” Ans. 22, citing Brunstetter ¶¶ 41–42. Accordingly, we agree with the Examiner that authentication information “would not be required to be provide by the third spectating gaming device responsive to the first information” so that the limitations pertaining to the third processor

² We note that although portions of Brunstetter describe the interface portal 114, Brunstetter further discloses that its reference to clients/portal/server is “merely for the convenience of understanding the present invention,” and that the invention may be implemented in different configurations, including “peer-to-peer network, a client-server network, an ad hoc network, or within a peer-group (e.g., a specified group of peers).” *See* Brunstetter ¶ 43.

Appeal 2019-006102
Application 14/635,457

of claim 1 is disclosed, or otherwise would have been obvious to one of ordinary skill in the art. Ans. 22–23.

The Appellant argues that

neither a specifying whether permission is required nor describing that the spectator client may ‘sign on’ to the network, teaches or suggests that while the second game device performs mutual authentication with the first gaming device, the third gaming device does not perform the mutual authentication, as required by claim 1.

Appeal Br. 16.

However, we initially observe that, as to the “mutual authentication” limitation of the second gaming device, the rejection finds that Brunstetter discloses authentication, and further relies on Ho for the disclosure of “mutual” authentication. Final Act. 2–4; *see also* Ans. 23 (“Brunstetter is silent regarding the particular type of authentication known as ‘mutual authentication’, however the rejection of record incorporates the secondary reference of Ho for teaching this feature.”). In that regard, the Appellant does not dispute the finding that Ho discloses mutual authentication as a known authentication technique in the art.

In addition, as to the third gaming device, as discussed above, in view of Brunstetter’s teaching that security credentials and permissions may or may not be required can be reasonably be understood to mean that authentication is optional considering that there will be no need for authentication if security credentials and permissions are not required. In addition, it would have been readily apparent and obvious to one of ordinary skill that authentication of the spectator client, which corresponds to the third gaming device claimed, would not have been required, to any extent that Brunstetter fails to explicitly disclose such lack of authentication.

The Appellant also argues that “the cited paragraphs and the entirety of Brunstetter do not disclose that a selective authentication is performed based on the transmission of the same information to both second and third gaming devices.” Reply Br. 6. In that regard, according to the Appellant, “although Brunstetter may also teach that authentication is optional for spectator clients, there is no teaching in the cited paragraphs of Brunstetter that mutual authentication (or even authentication) occurs in a participant client in response to receiving ‘distribution of game play’ by a portal described in Brunstetter.” Appeal Br. 15. The Appellant also asserts that Brunstetter “discloses that the participant client and the spectator client do not access the same ‘portions of game data’” because it discloses live data being accessed by the participant client, but archived portions of game data being accessed by the spectator client. Reply Br. 3–4, citing Brunstetter ¶ 40.

However, as the Examiner points out, “the claim does not impose any limitation describing the nature of the information being utilized,” and “Brunstetter teaches presenting a game and the claimed first information relating thereto . . . enabling additional client devices to . . . either participate in or alternative to watch as a spectator.” Ans. 22, citing Brunstetter ¶¶ 39–40. In other words, the claim does not specify what constitutes the recited “first information,” and as discussed above, it is clear from Brunstetter that the participant client (i.e., second gaming device) and the spectator client (i.e., third gaming device) access the *same game* being played. Based on this functionality of accessing the same game as a participant or as a spectator, it is apparent that both the participant client and the spectator client receive at least some “first information” that is the same, including information that identifies the game being played. In that regard, in

Appeal 2019-006102
Application 14/635,457

considering the scope and content of the prior art, “it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” *In re Preda*, 401 F.2d 825, 826 (CCPA 1968); *cf. Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384 (Fed. Cir. 1986) (“a patent need not teach, and preferably omits, what is well known in the art.”).

Moreover, the fact that paragraph 40 of Brunstetter specifically discloses the added functionality of the spectator clients being able to access archived game play data does not detract from its other disclosure of the spectator accessing the same game being played by participants, or its disclosure of clients accessing game data of a game “being played by other players.” *See, e.g.*, Brunstetter, ¶ 9 (“users who are not playing a particular game may desire to watch a game being played by other players as a spectator. For example, players who belong to a game clan may want to watch fellow members of their clan play against other game clans”); ¶ 81 (“the game data or a portion of the game data may be broadcast over the network 106. The broadcast game data may then available to one or more spectator clients 112 and portal 114. The game data may be broadcast from a server 108 or one or more participant clients 102. The broadcast may be real-time or, if it has been stored in the archival memory 306, time-shifted.”).

The Appellant further argues that “permission, as taught in paragraph [0041] [of Brunstetter], is different from mutual authentication, and moreover that ‘sign on’ to the portal as taught in paragraph [0032], is also different from mutual authentication, as recited in claim 1.” Appeal Br. 16. However, the Appellant does not explain what the alleged differences are, does not appreciate the functional teachings of Brunstetter discussed above,

Appeal 2019-006102
Application 14/635,457

does not address the obviousness basis of the rejection noted above, and appears to contradict its earlier concession that Brunstetter discloses optional authentication for spectator clients. *See* Appeal Br. 15 (“although Brunstetter may also teach that authentication is optional for spectator clients, there is no teaching . . . that mutual authentication (or even authentication) occurs in a participant client in response to receiving ‘distribution of game play’ by a portal described in Brunstetter.”).

Finally, as to Brunstetter not disclosing “mutual” authentication, we again note that the Examiner relied upon Ho for this limitation. Final Act. 4. The Appellant argues that “Ho, even if teaching mutual authentication as alleged by the Office Action, does not rectify the above identified deficiencies of Brunstetter with respect to claim 1.” Appeal Br. 16. However, as discussed above, we are not persuaded by the Appellant’s arguments as to the alleged deficiencies of Brunstetter.

The fundamental basis of the Appellant’s argument is that Brunstetter does not explicitly disclose the lack of authentication by the spectator client (i.e., third gaming device) in response to receipt of “a first information” as compared to authentication by the participating client (i.e. second gaming device). However, as discussed above, Brunstetter discloses or otherwise suggests that authentication is optional. Accordingly, a game processing system as recited in claim 1 would have been obvious to one of ordinary skill in the art. *KSR Int’l v. Teleflex, Inc.*, 550 U.S. 398, 421 (2007) (“[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.”).

Therefore, in view of the above considerations, we affirm the Examiner’s rejection of claim 1. The Appellant relies on the same unpersuasive arguments in support of patentability of independent claims 21

Appeal 2019-006102
Application 14/635,457

and 23. Appeal Br. 17. Accordingly, the rejection of claims 21 and 23 is affirmed as well. Except for arguments directed to dependent claims 9 and 10 addressed below, the Appellant does not submit arguments directed to the remaining rejected dependent claims 2, 3, 5, 7, 8, 15, 20, 22, and 24 that ultimately depend from one of the independent claims. Accordingly, these claims fall with their respective independent claims.

Claims 9 and 10

Claim 9 recites that the first processor does not register the third gaming device, and by virtue of its dependency on claim 7, requires the first processor to be configured to register the second gaming device after the authentication process. Appeal Br. 26, Claims App. Claim 10 also depends from claim 7 and recites, *inter alia*, that the third processor registers the first gaming device. Appeal Br. 26, Claims App.

The Appellant argues that Brunstetter “does not disclose that for the same game, the second gaming device is registered whereas that third gaming device is not registered at the first gaming device which is executing the game with the second gaming device.” Appeal Br. 18; *see also* Reply Br. 7. In response, the Examiner points out that the Appellant’s Specification uses the term “register” to describe how devices identify each other so as to allow communication with one another. Ans. 24, citing Spec. ¶ 86. Indeed, the Appellant’s Specification essentially discloses that the recited registration refers to recordation or storage in a device (e.g., master), identifying information of an authenticated device (e.g., clients). *See, e.g.*, Spec. ¶ 86 (“the master registers, in the own apparatus, identification information (MAC addresses) of the clients C authenticated by the master”); ¶ 87 (“FIG. 6 is a diagram showing a registration table 80 of clients which is generated in the master”); Fig. 6.

Accordingly, as the Examiner explains, the combination of Brunstetter and Ho teaches that participant clients are registered to each other as recited in claim 7 in that they know the identity of each other through mutual authentication so as to allow direct communication with one another. Ans. 24–25, citing Brunstetter, Fig. 1; ¶¶ 43, 45. The Examiner concludes that because spectator clients would not be authenticated, there is no registration thereof in the first participant client. Ans. 25, citing Brunstetter, Fig. 1; ¶¶ 36, 38, 40.

The Appellant responds that the Examiner’s explanation “does not change that Brunstetter does not teach or suggest the features as they are recited in claims 9-10,” and does not address the argued limitations of claim 1 from which these claims ultimately depend. Reply Br. 7. However, the Appellant’s argument circles back to its arguments regarding claim 1, and does not substantively rebut the Examiner’s obviousness rejection of claims 9 and 10, or address the Examiner’s further explanation thereof. *See also* 37 C.F.R. § 41.37(c)(iv) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”).

Accordingly, we are not persuaded by the Appellant’s arguments and affirm the Examiner’s rejection of claims 9 and 10.

Rejection 2: Brunstetter in view of Ho and Spanton

The Appellant does not present specific arguments directed to the Examiner’s rejection of dependent claims 4, 6, and 19 based on combination of Brunstetter, Ho, and Spanton. Final Act. 12. Thus, this rejection of claims 4, 6, and 19 is affirmed.

Rejection 3: Brunstetter in view of Ho and Thomson

The Examiner rejects claims 11–14 and 16–18 as unpatentable over Brunstetter in view of Ho and Thompson, the Examiner relying on Thompson for disclosing the management and registration frames required by these claims. Final Act. 13. Initially, the Appellant argues that Thompson does not “rectify the above identified deficiencies of Brunstetter and Ho.” Appeal Br. 19. However, as discussed above, we are not persuaded of any deficiencies in the combination of Brunstetter and Ho.

Claim 12

As to claim 12, the Appellant argues that:

claim 12, when considered as a whole, requires that the second gaming device and the third gaming device respond differently to the management frame from the first gaming device. More particularly, claim 12 requires that, whereas the second gaming device responds to the management frame by transmitting a registration frame, the third gaming device unilaterally registers the first gaming device by storing the first identification information included in the management frame, without transmitting a registration frame for registering identification information of the third gaming device in the first gaming device.

Reply Br. 8; *see also* Appeal Br. 19.

The Appellant also argues that although Thompson describes “state machines for inbound/outbound MAC, IP and TCP packets, it does not rectify the admitted deficiencies of Brunstetter and Ho with respect to the specific requirements of claim 12.” Appeal Br. 19–20; *see also* Reply Br. 8.

However, the Examiner has *not* admitted to any deficiencies in rejecting claim 12, and instead, found that Thompson discloses the limitations of claim 12. *See* Final Act. 12, citing Thompson, col. 3, l. 15–col. 5, l. 18. The Examiner *did* concede that the combination of Brunstetter

Appeal 2019-006102
Application 14/635,457

and Ho does not disclose the limitations of claim 11 from which claim 12 depends, but relied on Thompson for disclosing the recited network features of using a management frame and a registration frame as recited in claim 11. Final Act. 13–14, citing Thompson col. 3, l. 15–col. 5, l. 18; col. 7, l. 6–col. 8, l. 25; col. 9, ll. 27–37.

In addition, the Specification utilizes the term “frame” to generically refer to the format of the data transmitted and received between the game apparatuses. Spec. Figs. 9, 15, 16, 22, 23. However, as noted above, the Examiner found that such frames are known in the network art as evidenced by Thompson. Final Act. 13–14. Although the Appellant argues that claim 12 requires the second gaming device and the third gaming device to respond differently to the management frame from the first gaming device, this line of argument is substantively the same as that presented relative to claims 1, 9, and 10 discussed above, and is likewise unpersuasive.

Therefore, the Appellant’s arguments are unpersuasive, and we affirm this rejection of claim 12.

Claim 16

The Appellant argues that Thompson, does not teach or suggest the third gaming device selecting the first gaming device to spectate by presenting information regarding the plurality of gaming devices and enable a user to select one of the plurality of gaming devices as the first gaming device based upon the presented information, as required by claim 16.

Appeal Br. 20.

The Examiner explains that “Brunstetter teaches presenting multiple selectable games to the player . . . while the prior art of Thompson teaches the use of frames.” Ans. 27, citing Brunstetter, ¶¶ 28, 38, 40; Thompson,

Appeal 2019-006102
Application 14/635,457

col. 3, l. 15–col. 5, l. 18. The Appellant replies reiterating the same arguments regarding Thompson set forth in its Appeal Brief. *See* Reply Br. 9. Thus, the Appellant’s argument based on Thompson appears to be misdirected and unpersuasive. Accordingly, we affirm this rejection of claim 16.

Claim 17

The Appellant argues that Thompson

does not teach or suggest specifically that the second gaming device does exchange an authentication frame and an association frame with the first gaming device, whereas the third gaming device does not exchange either frame with the first gaming device while both the second gaming device and the third gaming device access the same game being processed.

Appeal Br. 21; *see also* Reply Br. 9.

However, this line of argument is substantively the same as that presented relative to claims 1, 9, and 10 discussed above, and is likewise unpersuasive. Therefore, we agree with the Examiner that claim 17 would have been obvious to one of ordinary skill in the art for the reasons discussed relative to claims 1 and 12, and affirm the rejection of claim 17.

Ans. 27–28

Claim 18

Claim 18 depends from claim 1 and requires, *inter alia*, alternating the gaming devices “between an awake state and a power-saving state at predetermined time cycles,” the first processor periodically transmitting a management frame with information indicating the predetermined time cycles. Appeal Br. 28–29. The Appellant argues that “Thompson merely teaches synchronization across clock domains, and teaches neither the

Appeal 2019-006102
Application 14/635,457

synchronization of awake/power-saving stages nor the specific manners in which claim 18 requires the second and third gaming devices to respond to the first gaming device with respect to authentication and power-saving.”

Appeal Br. 22.

The Examiner responds that “the prior art teaches synchronizing and altering communication operations between an [i]dle and active state and the [i]dle state is understood to implicitly define a period of lower power consumption due to the lack of communication operations.” Ans. 28, citing Thompson, Fig. 3C2; col. 8, l. 65–col. 9, l. 14; col. 25, ll. 19–33. The Appellant replies by reiterating the same arguments regarding Thompson set forth in its Appeal Brief, and does not address the disclosure in Thompson with respect to idle and active states, or the Examiner’s finding that these states correspond to the recited power-saving/awake stages. *See* Reply Br. 10. Therefore, we are not persuaded of error in the Examiner’s finding as to Thompson, or the conclusion of obviousness, and affirm the rejection of claim 18.

The Appellant does not submit separate arguments directed to the remaining dependent claims 11, 13, and 14 that are also rejected. Accordingly, the Examiner’s rejection of these claims is also affirmed.

CONCLUSION

The Examiner’s rejections are affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-3, 5, 7-10, 15, 20-24	103(a)	Brunstetter, Ho	1-3, 5, 7-10, 15, 20-24	
4, 6, 19	103(a)	Brunstetter, Ho, Spanton	4, 6, 19	
11-14, 16-18	103(a)	Brunstetter, Ho, Thompson	11-14, 16-18	
Overall Outcome			1-24	

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