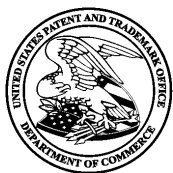

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HANK J. HUNDEMER

Appeal 2020-001691
Application 15/434,478
Technology Center 2400

Before ST. JOHN COURTENAY III, ELENI MANTIS MERCADER, and JUSTIN BUSCH, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1–7, 9–15, and 17–22. Claims 8, 16, and 23 are canceled. We have jurisdiction over the pending claims 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) (2019). According to Appellant, the "real party in interest is Tribune Broadcasting Company, LLC (a subsidiary of Tribune Media Company)." *See* Appeal Br. 4.

STATEMENT OF THE CASE [2]

Introduction

Appellant's claimed invention relates generally to a "method for outputting an alert indicating a functional state of a back-up media-broadcast system." Abstract.

Independent Claim 1

1. A method for outputting an alert indicating a functional state of **a back-up media-broadcast system**, the method comprising:

a computing device determining first bitrate-data associated with [**L1**] *a first compressed media-stream generated by a primary media-broadcast system*;

the computing device determining second bitrate-data associated with [**L2**] *a second compressed media-stream generated by **the back-up media-broadcast system***;

the computing device making a determination that the determined first bitrate-data and the determined second bitrate-data lack a threshold extent of similarity; and

responsive to the determination that the determined first bitrate-data and the determined second bitrate-data lack the threshold extent of similarity, the computing device outputting an alert that the back-up media-broadcast system is not functioning properly.

[2] We herein refer to the Final Office Action, mailed December 4, 2018 ("Final Act."); Appeal Brief, filed July 15, 2019 ("Appeal Br."); the Examiner's Answer, mailed October 30, 2019 ("Ans."); and the Reply Brief, filed December 30, 2019 ("Reply Br.").

Appeal Br. 15, Claims App. (disputed **L1** and **L2** limitations emphasized).

Evidence

The prior art relied upon by the Examiner as evidence is:

Name	Reference	Date
Gotoh	US 6,335,676 B1	Jan. 1, 2002
Arye	US 2002/0009143 A1	Jan. 24, 2002
Nesvadba et al. (“Nesvadba”)	US 2008/0189753 Al	Aug. 7, 2008
Kwan et al. (“Kwan”)	US 2009/0064248 Al	Mar. 5, 2009
Haritaoglu	US 2011/0122255 Al	May 26, 2011
Fan et al. (“Fan”)	US 2011/0307932 Al	Dec. 15, 2011

Rejections

As noted by Appellant, the non-statutory obviousness-type double patenting (OTDP) rejection of claims 1–3, 6, 7, 9–11, 14, 15, 17–19, 21, and 22, as being unpatentable over claims 1–9 of U.S. Patent No. 9,621,935, is moot in view of a previously submitted terminal disclaimer. *See* Appeal Br. 8.

We note the terminal disclaimer was filed on May 3, 2019, and was approved on the same day. In response, the Examiner withdrew the OTDP rejection in the Answer (3). Therefore, this rejection is not before us on appeal.

The rejections that remain before us on appeal are:

Rej.	Claims Rejected	35 U.S.C. §	Reference(s)/Basis
A	1, 7, 9, 15, 17, 22	103	Arye, Haritaoglu, Kwan
B	2, 3, 10, 11, 18, 19	103	Arye, Haritaoglu, Kwan, Nesvadba
C	4, 12	103	Arye, Haritaoglu, Kwan, Gotoh
D	5, 13	103	Arye, Haritaoglu, Kwan, Gotoh, Nesvadba
E	6, 14, 21	103	Arye, Haritaoglu, Kwan, Fan
F	20	103	Arye, Haritaoglu, Kwan, Nesvadba, Gotoh [3]

ANALYSIS

Rejection A under 35 U.S.C. § 103

Under 35 U.S.C. § 103, we focus our analysis on the following argued limitations regarding Rejection A of independent claim 1.

Issues: Did the Examiner err by finding that Arye, Haritaoglu, and Kwan collectively teach or suggest disputed limitations **L1** and **L2**:

> a computing device determining first bitrate-data associated with [**L1**] *a first compressed media-stream generated by a primary media-broadcast system*;
>
> the computing device determining second bitrate-data associated with [**L2**] *a second compressed media-stream generated by the* ***back-up media-broadcast system***[,]

---

[3] For clarity, we have listed Rejections A–F seriatim, as set forth by the Examiner in the Final Action (2–21). However, we note that Rejections D and F are over the same combination of references.

within the meaning of independent claim 1? (emphasis added).[4]

The Examiner finds the claim 1 language "a computing device determining first bitrate-data associated with *a first compressed media-stream*" is taught or suggested by Arye at paragraph 85, which describes an encoder controlling bitrates. *See* Final Act. 2. The Examiner finds Figure 9 of Arye also "suggests the encoder measures the signal with the picture store [and] prediction calculation unit." Final Act. 3. The Examiner similarly finds "a computing device determining second bitrate-data associated with *a second compressed media-stream*" is taught or suggested by the same paragraph 85 and Figure 9 of Arye. Final Act. 3.

However, the Examiner finds "Arye is unclear regarding a first compressed media-stream generated by a primary media-broadcast system . . . [and] a second compressed media-stream generated by the **back-up media-broadcast system**." Final Act. 3 (emphasis omitted, added in bold).

The Examiner finds: "Haritaoglu teaches a first compressed media-stream generated by a primary media-broadcast system [Fig. 1: discloses a production studio (item 10) broadcasting through satellite (item 20)]." (emphasis omitted, brackets in original). Final Act. 3.

Dispositive to this appeal, the Examiner finds Haritaoglu also teaches: "a second compressed media-stream generated by the **back-up media-broadcast system** [Fig. 1: discloses a duplication facility (item 30) broadcasting through satellite (item 20)]." Final Act. 4 (emphasis added, brackets in original).

[4] We give the contested claim limitations the broadest reasonable interpretation (BRI) consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

Appellant disagrees that Haritaoglu discloses a "back-up media-broadcast system." Appellant points to paragraphs 17, 47, 59, and 54 of Haritaoglu and urges that "at best, Haritaoglu discloses techniques for identifying when a second party illegally copies and distributes a copyrighted video that was originally broadcast by a first party." Appeal Br. 9.

Appellant refers to the Specification at paragraph 4, and contends:

> But an original video and an illegally copied version of that video do not amount to "a first compressed media-stream generated by a primary media-broadcast system" and "a second compressed media-stream generated by **the back-up media-broadcast system**," as recited by claim 1. Appellant submits that a "primary media-broadcast system" and a "**back-up media-broadcast system**" are known terms to a person of ordinary skill in the art. In particular, a person of ordinary skill in the art would understand that **a back-up media broadcast system**, as its name implies, serves to *back up the primary media-broadcast system, and take over for the primary media-broadcast system should the primary system become inoperative*.

Appeal Br. 9–10 (emphasis added).

Appellant urges that, in Haritaoglu:

> the duplicate video is generated by a second party *after* receiving the original copyrighted video from the production studio. The duplicate video *cannot*, therefore, be generated by **a back-up media-broadcast system** for the original video broadcast, *because the duplicate video cannot exist until after the original video has already been broadcast*, such that *the duplicate video would not be available* to be broadcast in place of the original video broadcast *if the original video broadcast became inoperative*.

Appeal Br. 10 (emphasis added).

The Examiner disagrees with Appellant, and further explains the basis for the rejection. The Examiner refers to the Specification at paragraph 4, which describes: "In some instances, two different media-broadcast systems (a primary and a back-up) may be configured to generate the same (or substantially the same) media streams at the same (or substantially the same) time" (emphasis added). Ans. 6. Applying the broadest reasonable interpretation in light of the Specification, the Examiner interprets the claimed "media streams that are received" as being from *two different* media-broadcast systems." *Id.* (emphasis added).

But merely because a second media-broadcast system is *different* from a first media-broadcast system does not establish, without more, that the second media-broadcast system is **a back-up media broadcast system** to the first media-broadcast system.

We note the Examiner relies upon Haritaoglu as teaching two media streams that are generated and broadcast by production studio 10 and duplication facility 30, as shown in Figure 1 of Haritaoglu (depicting two different media-broadcast systems). *Id.*

We understand the basis for the Examiner's rejection as being premised upon the Examiner's theory that duplication facility 30, as depicted in Haritaoglu's Figure 1 (that transmits the copyright infringing media stream) is **a back-up media broadcast system**, to the production studio 10 media broadcast, within a broad but reasonable interpretation of Appellant's claim 1.

However, we agree with Appellant that

> a person of ordinary skill in the art would understand that **a back-up media broadcast system**, as its name implies, serves to back up the primary media-broadcast system, and take over for the

> primary media-broadcast system should the primary system become inoperative.

Appeal Br. 10 (emphasis added).

In particular, we find Appellant's argument persuasive:

> The duplicate video cannot, therefore, be generated by **a back-up media-broadcast system** for the original video broadcast, *because the duplicate video cannot exist until after the original video has already been broadcast*, such that *the duplicate video would not be available to be broadcast* in place of the original video broadcast *if the original video broadcast became inoperative*.

Appeal Br. 10 (emphasis added).

For this reason, we are constrained on this record to reverse the Examiner's obviousness Rejection A of independent claim 1. Remaining independent claims 9 and 17, also rejected under Rejection A, recite the disputed "**back-up media broadcast system**" limitation of claim 1 using similar language of commensurate scope. (emphasis added).

Therefore, for the same reasons, we also reverse the Examiner's Rejection A of independent claims 9 and 17. Because we have reversed the Examiner's Rejection A of each independent claim 1, 9, and 17 on appeal, we also reverse the Examiner's Rejection A of each associated dependent claim 7, 15, and 22.

Rejections B–F of the Remaining Dependent Claims under § 103

In light of our reversal of Rejection A of independent claims 1, 9, and 17, for the same reasons, we also reverse rejections B–F of all remaining dependent claims which variously and ultimately depend therefrom. On this record, the Examiner has not shown how the additionally cited secondary references overcome the aforementioned deficiencies of the base

combination of Arye, Haritaoglu, and Kwan, as discussed above regarding claim 1.

CONCLUSION

The Examiner erred in rejecting claims 1–7, 9–15, and 17–22 as being obvious under 35 U.S.C. § 103, over the cited combinations of references.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 7, 9, 15, 17, 22	103	Arye, Haritaoglu, Kwan		1, 7, 9, 15, 17, 22
2, 3, 10, 11, 18, 19	103	Arye, Haritaoglu, Kwan, Nesvadba		2, 3, 10, 11, 18, 19
4, 12	103	Arye, Haritaoglu, Kwan, Gotoh		4, 12
5, 13	103	Arye, Haritaoglu, Kwan, Gotoh, Nesvadba		5, 13
6, 14, 21	103	Arye, Haritaoglu, Kwan, Fan		6, 14, 21
20	103	Arye, Haritaoglu, Kwan, Nesvadba, Gotoh		20
Overall Outcome				1–7, 9–15, 17–22

REVERSED