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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/656,519	03/12/2015	Steve GERVAIS	G4144-00075	1096
39290	7590	09/28/2020	EXAMINER	
Duane Morris LLP Duane Morris LLP 505 9th Street N.W. Suite 1000 Washington, DC 20004			MILLER, JAMES H	
			ART UNIT	PAPER NUMBER
			3694	
			MAIL DATE	DELIVERY MODE
			09/28/2020	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVE GERVAIS, ERIC KAISER, PETER HORVATH,
ANDREW CHAK, CHRISTIANNE MORETTI,
LAUREN VAN HEERDEN, ORIN DEL VECCHIO,
GUNALAN NADARAJAH, and TOMMY PHUNG

Appeal 2020-002547
Application 14/656,519
Technology Center 3600

Before JAMES R. HUGHES, LARRY J. HUME, and JAMES W. DEJMEK,
Administrative Patent Judges.

HUME, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision rejecting claims 1–10, 12–17, 19–21, 23, 24, 26, 27, and 29–31, which are all claims pending in the application. Appellant has canceled claims 11, 18, 22, 25, and 28. *See* Claims App. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as The Toronto-Dominion Bank. Appeal Br. 3.

STATEMENT OF THE CASE²

The claims are directed to systems and methods for providing populated transaction interfaces based on user-generated triggers. *See* Spec. (Title). In particular, Appellant’s disclosed embodiments and claimed invention “generally relate to systems and methods for account transactions, and more particularly, and without limitation, to systems and methods for automatically populating interfaces for electronic fund transfer transactions in response to user-generated trigger events.” Spec. ¶ 2.

Exemplary Claim

Claim 1, reproduced below, is representative of the subject matter on Appeal (*emphases* added to contested prior-art limitations):

1. A system, comprising:
 - a communications interface;
 - a memory storing instructions; and
 - one or more processors configured to execute the instructions to perform operations including:
 - detecting an occurrence of an event that triggers an account transfer transaction, the triggering event comprising a request to access an interface associated with the account transfer transaction at a first device;
 - [(a)] obtaining online session data that identifies (i) first elements of digital content presented within a first web page accessed by the first device during at least one prior online session and (ii) second elements of digital content presented*

² Our decision relies upon Appellant’s Appeal Brief (“Appeal Br.,” filed Sept. 16, 2019); Reply Brief (“Reply Br.,” filed Feb. 11, 2020); Examiner’s Answer (“Ans.,” mailed Dec. 23, 2019); Final Office Action (“Final Act.,” mailed Dec. 23, 2019); and the original Specification (“Spec.,” filed Mar. 12, 2015) (claiming benefit of US 61/951,795, filed Mar. 12, 2014).

within a second web page accessed by the first device during the at least one prior online session, the second web page being accessed subsequent to the first web page;

[(b)] determining an identifier of a first account based on a first portion of the online session data that corresponds to the first elements of digital content, and determining an identifier of a second account based on a second portion of the online session data that corresponds to the second elements of digital content;

determining a first amount of funds to transfer from the first account to the second account based on the online session data;

generating, based on a set of rules, first information for presentation in the interface, the first information including prefilled content identifying at least one of the first account as a first source account in the interface, the second account as a destination account in the interface, or the first amount in a first amount field of the interface; and

generating and transmitting a first signal to the first device via the communications interface, the first signal comprising the first information, and the first information instructing an application program executed by the first device to display the prefilled content on the interface without input from a first user.

Related Appeal

Although not identified by Appellant in their briefs, copending Application Serial No. 14/656,541 (Appeal No. 2020-002664) is related to this Appeal. Our Decision in that case, issued contemporaneously with this Decision, affirms the Examiner's rejections. *See* Ans. 3.

REFERENCES

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

Name	Reference	Date
Wehmer	US 7,873,571 B1	Jan. 18, 2011
Hoke et al. (“Hoke”)	US 2012/0290479 A1	Nov. 15, 2012
Schwarzkopf et al. (“Schwarzkopf”)	US 2013/0006782 A1	Jan. 3, 2013
Hinghole et al. (“Hinghole”)	US 8,560,447 B1	Oct. 15, 2013
Eigner et al. (“Eigner”)	US 9,639,597 B2	May 2, 2017

REJECTIONS

R1. Claims 1, 2, 4, 5, 7, 8, 13–16, 19, 24, 27, 29, and 31 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Hoke and Eigner. Final Act. 5.

R2. Claims 3, 12, 23, 26, and 30 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Hoke, Eigner, and Schwarzkopf. Final Act. 18.

R3. Claims 6 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Hoke, Eigner, and Hinghole. Final Act. 22.

R4. Claims 9, 10, 20, and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Hoke, Eigner, and Wehmer. Final Act. 25.

CLAIM GROUPING

Based on Appellant’s arguments (Appeal Br. 12–20) and our discretion under 37 C.F.R. § 41.37(c)(1)(iv), we decide the appeal of

obviousness Rejection R1 of claims 1, 2, 4, 5, 7, 8, 13–16, 19, 24, 27, 29, and 31 on the basis of representative claim 1.

Remaining claims 3, 6, 9, 10, 12, 17, 20, 21, 23, 26, and 30 in Rejections R2 through R4, not argued separately, stand or fall with the respective independent claim from which they depend.³

ISSUES AND ANALYSIS

In reaching this decision, we consider all evidence presented and all arguments actually made by Appellant. To the extent Appellant has not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. 37 C.F.R. § 41.37(c)(1)(iv).

We disagree with Appellant’s arguments with respect to claims 1–10, 12–17, 19–21, 23, 24, 26, 27, and 29–31 and, unless otherwise noted, we incorporate by reference herein and adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken, and (2) the reasons and rebuttals set forth in the Examiner’s Answer in response to Appellant’s arguments. We highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

³ “Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.” 37 C.F.R. § 41.37(c)(1)(iv). In addition, when Appellant does not separately argue the patentability of dependent claims, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

1. § 103 Rejection R1: Claims 1, 2, 4, 5, 7, 8, 13–16, 19, 24, 27, 29, 31

Issue 1

Appellant argues (Appeal Br.12–17; Reply Br. 2–12) the Examiner’s rejection of claim 1 under 35 U.S.C. § 103 as being obvious over the combination of Hoke and Eigner is in error. These contentions present us with the following issue:

Did the Examiner err in finding the cited prior art combination teaches or suggests a system comprising “one or more processors configured to execute the instructions to perform operations including,” *inter alia*:

(a) obtaining online session data that identifies (i) first elements of digital content presented within a first web page accessed by the first device during at least one prior online session and (ii) second elements of digital content presented within a second web page accessed by the first device during the at least one prior online session, the second web page being accessed subsequent to the first web page;

(b) determining an identifier of a first account based on a first portion of the online session data that corresponds to the first elements of digital content, and determining an identifier of a second account based on a second portion of the online session data that corresponds to the second elements of digital content,

as recited in claim 1?

Principles of Law

“[O]ne cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). “The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference Rather,

the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art.” *Id.* at 425.

The test for obviousness is what the combined teachings of the prior art would have suggested to the hypothetical person of ordinary skill in the art. *Keller*, 642 F.2d at 425.

In *KSR*, the Court stated “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007).

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill [A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

Id. at 417.

Further, the relevant inquiry is whether the Examiner has set forth “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (cited with approval in *KSR*, 550 U.S. at 418).

Analysis

The Examiner cites the combination of Hoke and Eigner as teaching or suggesting the contested limitations of claim 1. *See* Final Act. 5–9; *and see* Ans. 4–14 (incorporated herein by reference).

The Examiner cites Eigner as teaching or suggesting limitation (a) “obtaining online session data.” Final Act. 8. In particular, the Examiner finds Eigner teaches or suggests “session data that identifies (i) first elements of digital content presented within a first web page accessed by the first device during at least one prior online session,” and session data that identifies “(ii) second elements of digital content presented within a second web page accessed by the first device during the at least one prior online session, the second web page being accessed subsequent to the first web page.” *Id.* (citing Eigner Figs. 5 and 6, element 610).

In addition to arguing against Hoke teaching or suggesting the contested “obtaining” limitation (Appeal Br. 13–14), a finding the Examiner never propounded, Appellant further contends “*Eigner* fails to cure any of these quoted deficiencies of *Hoke*” (Appeal Br. 14), and specifically argues:

While *Eigner* may generate and securely store “user profile” data that includes user information captured, extracted, or collected from various electronic documents, electronic forms, and electronic or non-electronic records . . . nowhere does *Eigner* teaches or suggest any process that associates, within the comprehensive user profile, an element of user information with any data identifying a source of that element of user information, such as one of the claimed “first webpage” or the claimed “second web page.” []

Thus, even assuming that the “one or more data sources” in *Eigner* could include a first web page and a second web page, and that the “user profile” data could correspond to on

line session data . . . neither of which Applicant concedes, *Eigner* would still fail to teach or suggest [limitation (b)] “determining an identifier of a first account based on a **first portion of the online session data** that corresponds to the **first elements of digital content** [presented within the first web page], and determining an identifier of a second account based on a **second portion of the online session data** that corresponds to the **second elements of digital content** [presented within the second web page],” as recited [in] independent claim 1.

Appeal Br. 16 (citations omitted). Appellant concludes by alleging, “*Eigner* is **completely silent** regarding any classification or mapping techniques that associates one of more elements of the user profile data with a corresponding data source, e.g., the specific web page.” Appeal Br. 16.

In response, the Examiner finds “*Eigner* discloses what is claimed—the ‘obtaining limitation’—which is a ‘process that associates’ multiple types of user information captured from multiple web pages.” Ans. 6. The Examiner supports this finding by pointing out that

Eigner discloses “captur[ing],” “extract[ing],” and “upload[ing]” “field content (506)” from multiple web pages to the user's profile “for future use on the same or other forms.” [] First, *Eigner* discloses that “information may be extracted and populated even for a complete form that spans numerous pages.” [] As “pages” is plural, *Eigner* discloses at least two pages for “captur[ing],” “extract[ing],” and “upload[ing]” “field content (506)” “for future use on the same or other forms,” which Examiner contemplates is a first and second web page as claimed by Appellant.

Ans. 7 (citing *Eigner* 7:1–3, 6–8; 5:11–53; Fig. 2).

With respect to the “determining” step, Appellant argues, in passing without analysis, “even assuming that the ‘user profile data’ in *Eigner* could include elements of digital content presented within a ‘first web page’ and a

‘second web page,’ which Applicant does not concede, *Eigner* would still fail to teach or suggest [the recited ‘determining an identifier of a first account’ step].” Ans. 16.

In agreement with the Examiner (Ans. 13),⁴ we also note *Eigner* discloses

[t]he information obtained from the various information sources discussed above is used to build a user profile of an individual user which ideally includes *comprehensive information on the user’s finances*, contact information, health information and historical information. The user profile may include the user’s . . . *bank account numbers*, account balances. . . .

Eigner 8:57–65 (emphasis added).

Based upon the findings above, on this record, we are not persuaded of error in the Examiner’s reliance on the cited prior art combination to teach or suggest the disputed limitations of claim 1, nor do we find error in the Examiner’s resulting legal conclusion of obviousness. Therefore, we sustain the Examiner’s obviousness rejection of independent claim 1, and grouped claims 2, 4, 5, 7, 8, 13–16, 19, 24, 27, 29, and 31 which fall therewith. *See* Claim Grouping, *supra*.

⁴ “*Eigner* discloses first and second elements of digital content may be bank account numbers, stored in the user profile, ‘obtained from the various information sources discussed above . . . to build a user profile of an individual user which ideally includes comprehensive information on the user’s finances.’ [] *Eigner* discloses ‘field mapping’ techniques to determine ‘which information belongs in which fields.’” Ans. 13 (citing *Eigner* 7:28–30, Fig. 6, 8:67–66, 937–11:55).

2. Rejections R2–R4 of Claims 3, 6, 9, 10, 12, 17, 20, 21, 23, 26, and 30

In view of the lack of any substantive or truly separate arguments directed to obviousness Rejections R2 through R4 of claims 3, 6, 9, 10, 12, 17, 20, 21, 23, 26, and 30 under § 103 (*see* Appeal Br. 17–20), we sustain the Examiner’s rejection of these claims. Arguments not made are waived.⁵

REPLY BRIEF

To the extent Appellant *may* advance new arguments in the Reply Brief (Reply Br. 1–12) not in response to a shift in the Examiner’s position in the Answer, arguments raised in a Reply Brief that were not raised in the Appeal Brief or are not responsive to arguments raised in the Examiner’s Answer will not be considered except for good cause (*see* 37 C.F.R. § 41.41(b)(2)), which Appellant has not shown.

CONCLUSION

The Examiner did not err with respect to obviousness Rejections R1 through R4 of claims 1–10, 12–17, 19–21, 23, 24, 26, 27, and 29–31 under 35 U.S.C. § 103 over the cited prior art combinations of record, and we sustain the rejections.

⁵ Appellant generally alleges these dependent claims in Rejections R2 through R4 are allowable by virtue of their dependence on independent claims 1 and 13 in Rejection R1. *See* Appeal Br. 18–20.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Basis / References	Affirmed	Reversed
1, 2, 4, 5, 7, 8, 13–16, 19, 24, 27, 29, 31	103	Obviousness Hoke, Eigner	1, 2, 4, 5, 7, 8, 13–16, 19, 24, 27, 29, 31	
3, 12, 23, 26, 30	103	Obviousness Hoke, Eigner, Schwarzkopf	3, 12, 23, 26, 30	
6, 17	103	Obviousness Hoke, Eigner, Hinghole	6, 17	
9, 10, 20, 21	103	Obviousness Hoke, Eigner, Wehmer	9, 10, 20, 21	
Overall Outcome			1–10, 12–17, 19–21, 23, 24, 26, 27, 29–31	

FINALITY AND 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)(1)(iv). See 37 C.F.R. § 41.50(f).

AFFIRMED