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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL MULLER and AMY D. TRAVIS

Appeal 2014-009641
Application 13/526,438
Technology Center 2400

Before CAROLYN D. THOMAS, DEBRA K. STEPHENS, and
JEREMY J. CURCURI, *Administrative Patent Judges*.

CURCURI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–7. Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

Claims 1–7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting over Application No. 12/828,263. Ans. 4.

Claim 3 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Ans. 4–5.

Claims 1–7 are rejected under 35 U.S.C. § 103(a) as obvious over Kenoyer et al. (US 2006/0256738 A1, published Nov. 16, 2006) and Colby et al. (US 6,625,643 B1, published Sept. 23, 2003). Ans. 5–8.

We affirm.

STATEMENT OF THE CASE

Appellants' invention relates to "scheduling e-meetings in a collaborative computing environment." Spec. ¶ 1. Claim 1 is illustrative and reproduced below:

1. A method for e-meeting requirements assurance in e-meeting management, the method comprising:

selecting a scheduled e-meeting for an invitee in memory of a computer;

retrieving resource requirements published in a document for the selected scheduled e-meeting, the document indicating required resource requirements for the selected scheduled e-meeting, the required resource requirements including at least one of a particular Web browser, a particular revision of the particular Web browser, and a pre-installed computer program;

inspecting local computing resources of the invitee;

comparing the local computing resources to the retrieved resource requirements to identify local resource deficiencies; and,

generating a notice of the local resource deficiencies to the invitee prior to a scheduled date and time for the e-meeting.

ANALYSIS

THE WRITTEN DESCRIPTION REJECTION OF CLAIM 3

The Examiner finds claim 3 fails to comply with the written description requirement. Ans. 4–5. The Examiner finds "Applicant discloses 'extracting a reference....' which is not described in the disclosure." Ans. 5.

Claim 3 (emphasis added) is reproduced below:

3. The method of claim 1, wherein retrieving resource requirements published for the selected scheduled e-meeting, comprises:

extracting a reference to a remote resource requirements document from the scheduled e-meeting; and,

retrieving resource requirements from the referenced remote resource requirements document.

Appellants present the following principal arguments:

i. “[C]laim 3 of Appellants’ originally filed specification recites the language ‘extracting a reference to a remote resource requirements document from the scheduled e-meeting.’” App. Br. 4; *see also* Reply Br. 2–3.

ii. Appellants’ originally filed Specification (§ 16) describes the recited (claim 3) extracting a reference. App. Br. 4–5; *see also* Reply Br. 3.

In response, the Examiner explains “‘extracting a reference...’ is definitely not the same as ‘determining the resource requirements of a e-meeting by using a reference in an e-meeting invite which points to a remotely disposed requirements document, which lists the required resources of the e-meeting’. Furthermore, such limitation was nowhere to be found in the cited paragraph 16.” Ans. 9.

Appellants have persuaded us that the Examiner erred in rejecting claim 3 for failing to meet the written description requirement.

“[T]he test for sufficiency [of the written description] is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.” *Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc).

Currently pending claim 3 is the same as original claim 3.

Appellants' original Specification¹ (§ 16) discloses:

The invite 130 can include a requirements reference 150 to requirements document 160 of required resources for the invitee. The e-meeting 140 can be scheduled in calendar 120 of the computer 110. Thereafter, before the scheduled date and time of the e-meeting 140, the resources of the computer 110 can be inspected by resource inspector 170 and compared to those of the requirements document 160.

First, original claim 3 provides a satisfactory description to support currently pending claim 3 because currently pending claim 3 is the same as original claim 3, and we determine a skilled artisan would have recognized that Appellants had possession of the claimed subject matter based on the content of original claim 3.

Second, the original Specification (§ 16) provides a satisfactory description to support currently pending claim 3 because a skilled artisan would have understood that the original Specification (§ 16) disclosures — “The invite 130 can include a requirements reference 150 to requirements document 160” and “the resources of the computer 110 can be inspected by resource inspector 170 and compared to those of the requirements document 160” — describe extraction of the reference 150 from the invite 130 to permit access to the requirements document 160.

Thus, we find the above disclosures in the Specification adequate to convey reasonably to those skilled in the art that Appellants had possession of the recited “extracting a reference to a remote resource requirements document from the scheduled e-meeting” as of the filing date.

¹ In our analysis, to decide whether or not the inventors had possession of the claimed subject matter as of the filing date, we refer to the original Specification at paragraph 16.

In addition, in response to the Final Action, on December 3, 2013, Appellants filed amendments to Specification ¶¶ 16, 22. The Advisory Action mailed December 19, 2013 indicates that these amendments will be entered. However, in the Response to Arguments section of the Examiner's Answer, the Examiner states that the amended paragraphs 16 and 22 were not entered. *See* Ans. 9. Although we did not rely on the amendments in determining sufficient written description was present, should prosecution of this application continue, the Examiner should clarify the status of these amendments to the Specification ¶¶ 16, 22. Because we find Appellants had possession of the recited "extracting a reference to a remote resource requirements document from the scheduled e-meeting" as of the filing date, for the same reasons, we find that Appellants proffered amendments to the Specification paragraphs 16 and 22 do not introduce new matter.

We, therefore, do not sustain the Examiner's rejection of claim 3.

THE OBVIOUSNESS REJECTION OF CLAIMS 1–7 OVER KENOYER AND COLBY

The Examiner finds Kenoyer and Colby teach all limitations of claim 1. Ans. 5–6. The Examiner relies on Colby's microphone and camera check for teaching the recited (claim 1) "retrieving resource requirements published" and the recited (claim 1) "inspecting local computing resources of the invitee." Ans. 6 (citing Colby col. 32, l. 38 – col. 33, l. 35); *see also* Ans. 10 (Colby's microphone and camera check are resource requirements). The Examiner relies on Colby and Kenoyer for teaching the recited (claim 1) "the required resource requirements including at least one of a particular Web browser, a particular revision of the particular Web browser, and a pre-installed computer program." Ans. 11 ("In paragraph 35, Kenoyer discloses

the video conferencing system components including a display, which Examiner construes as ‘the web browser’ satisfying one of the requirement[s] of ‘at least one [of] a...’ Furthermore, Colby discloses an IE4 browser (i.e. particular browser) ([col. 30, ll. 32–36; col. 31, ll. 19–24]).”).

Appellants present the following principal arguments:

i. “Colby discloses retrieving resource requirements from a database and performing checks via an ActiveX control on a microphone and a camera. But Colby fails to teach or suggest that the retrieved resource requirements are published *in a document* for a selected scheduled e-meeting.” App. Br. 8–9; *see also* Reply Br. 6 (“Colby suggests that the resource requirements are used to configure the network for a broadcast, so to establish an ASF stream path. As such, ‘Check Microphone’ and ‘Check Camera’ are not resource requirements.”).

ii. “There is nothing in Kenoyer that indicates that the required resource requires a *particular* Web browser, a *particular* version of the Web browser, or a preinstalled computer program.” App. Br. 10; *see also* Reply Br. 6–7 (Kenoyer’s display is not a Web browser).

Appellants persuade us that the Examiner erred in finding Colby teaches retrieving published resource requirements.

First, we agree with Appellants (*see* App. Br. 8–9, Reply Br. 5–6) that Colby’s “Check Microphone” and “Check Camera” are not resource requirements published in a document. Colby discloses:

The resource requirements will be retrieved from the InterVU database and passed to the InterVU network topology manager using ASP technology when the “Start” button on the ActiveX control is selected. The topology manager will configure the network for the broadcast and return the connection information to the ActiveX control. This will establish the ASF stream path

through the firewall tunnel, from the encoder to the NetShow servers.

Colby col. 32, ll. 55–63.

Thus, Colby’s “resource requirements” relate to the network configuration and are not directed to resource requirements for an invitee. Colby further discloses the publisher performing microphone and camera checks. *See* Colby col. 33, ll. 1–6. However, these checks are unrelated to Colby’s resource requirements. Further, even to the extent these checks could be considered as related to resource requirements, these checks are performed using ActiveX controls, and the Examiner has not shown how ActiveX controls relate to the inspecting and comparing of local computing resources, as recited in claim 1.

In addition, Appellants also persuade us that the Examiner erred in finding Kenoyer and Colby teach the recited (claim 1) “the required resource requirements including at least one of a particular Web browser, a particular revision of the particular Web browser, and a pre-installed computer program.”

We adopt the plain meaning of “Web browser” in the computer context. The plain meaning of “Web browser” in the computer context is “Software that lets a user view HTML documents and access files and software related to those documents.” MICROSOFT COMPUTER DICTIONARY 562 (5th ed. 2002). In light of this plain meaning, we find the Examiner erred in finding Kenoyer’s display teaches the recited Web browser or revision thereof.

Second, although Colby discloses (Colby col. 30, ll. 32–36; col. 31, ll. 19–24) initiating an IE4 browser, which is a particular Web browser, the Examiner does not explain how or why, nor do we readily see how or why,

Colby's IE4 browser is related to Colby's "resource requirements" which relate to the network configuration. *See* Colby col. 32, ll. 55–63. Thus, neither Kenoyer nor Colby teaches the recited (claim 1) "the required resource requirements including at least one of a particular Web browser, a particular revision of the particular Web browser, and a pre-installed computer program."

We, therefore, do not sustain the Examiner's rejection of claim 1, or of claims 2–7, which depend from claim 1.

THE PROVISIONAL REJECTION OF CLAIMS 1–7
OVER APPLICATION NO. 12/828, 263

The Examiner provisionally rejected claims 1–7 on the ground of nonstatutory obviousness-type double patenting over Application No. 12/828,263. Ans. 4.

Appellants do not present any arguments with respect to this provisional rejection. *See* App. Br. 3, FN 1.

We, therefore, *pro forma* sustain the Examiner's provisional rejection of claims 1–7.

ORDER

The Examiner's decision rejecting claims 1–7 is affirmed.

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).

AFFIRMED