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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TIMO TAISTO HAATAJA and PERTTI TAPIO KASANEN

Appeal 2015-002932
Application 12/738,306
Technology Center 2400

Before CARLA M. KRIVAK, CARL W. WHITEHEAD JR, and ADAM J. PYONIN, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants are appealing the Final Rejection of claims 21–41 under 35 U.S.C. § 134(a). Appeal Brief 5. We have jurisdiction under 35 U.S.C. § 6(b) (2012).

We affirm.

Introduction

The invention is directed to pausing push services transmissions from the server when the user terminal is switched on but is not in actual use. Specification 2:15–17.

Representative Claim

21. A method, comprising:

transmitting messages of at least one push service from a server to a user terminal, the server sending the messages of the push service without a separate request for a single transmission by the user terminal;

defining for a user terminal at least two separate activation states, each of the activation states corresponding to a predefined functionality set of a switched-on user terminal, wherein the functionality set is presently applicable to the user;

detecting in the user terminal a current activation state of the user terminal;

sending an indication on the detected current activation state of the user terminal from the user terminal to the server; and

adjusting the sending of messages from the server to the user terminal according to the indication on the current activation state of the user terminal sent by the user terminal,

wherein at least one of the at least two activation states comprises a power-save mode.

Rejections on Appeal

Claims 21–25, 31, 32 and 36–41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhao (US Patent Application Publication Number 2004/0224694 A1; published November 11, 2004) and Narayanaswami (US Patent Number 8,117,299 B2; issued February 14, 2012). Final Rejection 7–11.

Claims 26–30 and 33–35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhao, Narayanaswami and Fleck (US Patent Application Publication Number 2005/0066006 A1; published March 24, 2005). Final Rejection 11–12.

ANALYSIS

Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed October 22, 2014), the Reply Brief (filed January 23, 2015), the Answer (mailed November 24, 2014) and the Final Rejection (mailed April 4, 2014) for the respective details. We have

considered in this decision only those arguments Appellants actually raised in the Briefs.

Appellants argue the Examiner's obviousness rejection of independent claim 21 is erroneous because: (a) there is "No Reason (such as teaching, motivation, or suggestion) to Combine [the] References;" (b) "'Reachable' and 'Unreachable' are not Activation States;" (c) there is "No Obvious Way to Modify Zhao in view of Narayanaswami;" and (d) there is "No Obvious Benefit of [the] Alleged Combination." Appeal Brief 15–22.

The Examiner finds the combination of Zhao and Narayanaswami discloses the claimed invention. Final Rejection 8. We agree with the Examiner's findings. Zhao discloses:

> A method and system of reachability indication between a wireless device and at least one push server, the method comprising the steps of: sending device status information from the wireless device to the at least one push server; and receiving the status information at the at least one push server; wherein the at least one push server is enabled to selectively start and stop serving the wireless device on the basis of the status information. Zhao Abstract.

This is—in essence—what the claimed invention is directed towards. *See* claim 21; Specification 2. The Examiner relies upon Narayanaswami to disclose having a power-save mode as an activation state, and finds that it would be obvious to one of ordinary skill in the art to modify Zhao's activation states to include a power save mode or state. Final Rejection 8–9; *see also* Narayanaswami 2:20–31, claim 1. We do not find Appellants' arguments persuasive because they are merely conclusory.[1] For the same

[1] Attorney "argument . . . cannot take the place of evidence." *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). *See, e.g.*, *In re Geisler*, 116 F.3d 1465,

reasons, we are not persuaded the Examiner erred in rejecting the remaining claims 22–41. *See* Appeal Brief 22–32. Rather than replicate the Examiner's findings, we 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 set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. *See* Final Rejection 7–12; Answer 10–22.

DECISION

The Examiner's obviousness rejections of claims 21–41 are 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)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

1470 (Fed. Cir. 1997) (attorney arguments or conclusory statements are insufficient to rebut a prima facie case).