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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GUDURU SAI NIHAS and SALIM BATLOUNI

Appeal 2024-003965
Application 17/009,855
Technology Center 2600

Before ALLEN R. MacDONALD, AARON W. MOORE, and
PHILLIP A. BENNETT, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner’s decision to reject claims 1–22. *See* Final Act. 13–43. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Shopify Inc. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to methods and devices for capturing images of items and, in particular, capturing item images for insertion into item display pages. *See Spec.* ¶ 1.

Claim 1, reproduced below, illustrates the claimed subject matter:

1. A computer-implemented method for capturing product images for online retail using a mobile device having a camera, the method comprising:
 - retrieving an item record for a product item from memory, the item record including data regarding the product item;
 - displaying a product item display page for online retail of the product item in an online merchant store, the product item display page having a defined layout and graphical elements set by a theme selected for the online merchant store, including a designated portion defined for display of an image of the product item and one or more item detail areas displaying the data regarding the product item from the item record for the product item;
 - obtaining a real-time live stream of images from the camera showing the product item;
 - processing the live stream from the camera to create a processed live stream showing the product item;
 - displaying the processed live stream showing a real-time view of the product item displayed within the designated portion in the product item display page; and
 - storing a processed image for the product item in association with the item record for the product item.

Appeal Br. 23 (Claims App.).

REFERENCES

The Examiner relies on the following references²:

Name	Reference	Date
Piramuthu	US 2017/0163882 A1	June 8, 2017
Zverina	US 2019/0141410 A1	May 9, 2019
Barkas	US 2019/0220922 A1	July 18, 2019
Stansell	US 2019/0244436 A1	Aug. 8, 2019
Srikanth	US 2021/0174087 A1	Dec. 5, 2019
Koci	US 2021/0386219 A1	Dec. 16, 2021
Yang	US 2022/0239988 A1	July 28, 2022

REJECTIONS

Claims 1, 11, and 21 stand rejected under 35 U.S.C. § 103 as unpatentable over Zverina, Barkas, Yang, Piramuthu, and Stansell. *See* Final Act. 13–29.

Claim 22 stands rejected under 35 U.S.C. § 103 as unpatentable over Zverina, Barkas, Piramuthu, and Stansell. *See* Final Act. 30–31.

Claims 2 and 12 stand rejected under 35 U.S.C. § 103 as unpatentable over Zverina, Barkas, Yang, Piramuthu, and Stansell. *See* Final Act. 31–32.

Claims 3, 5, 6, 13, 15, and 16 stand rejected under 35 U.S.C. § 103 as unpatentable over Zverina, Barkas, Yang, Piramuthu, Stansell, and Koci. *See* Final Act. 32–36.

² Yang was filed on April 15, 2022, as a continuation of a US application filed on May 10, 2021, which in turn claimed priority to Chinese Patent Application No. 202010460986.6, filed on May 27, 2020. *See* Yang ¶ 1. Appellant does not argue that Yang is not prior art. The Examiner asserts that Koci and Srikanth are entitled to the filing dates of their provisional applications. *See* Final Act. 33, 42. Appellant does not argue otherwise.

Claims 7–10 and 17–20 stand rejected under 35 U.S.C. § 103 as unpatentable over Zverina, Barkas, Yang, Piramuthu, and Stansell. *See* Final Act. 36–42.

Claims 4 and 14 stand rejected under 35 U.S.C. § 103 as unpatentable over Zverina, Barkas, Yang, Piramuthu, Stansell, Koci, and Srikanth. *See* Final Act. 42–43.

OPINION

The specification describes how “[a]n inventory item record may contain details regarding the physical item, including its name or label and other details regarding the item” and that “[t]here may be an image or images of the physical item stored in the inventory item record or in association with the inventory item record.” Spec. ¶ 2. The specification further explains that “[i]t can be time-consuming, wasteful of computing resources, and frustrating for users to capture an image of an item, attempt editing of the image, upload the image for use in developing an item display page only to find the image is unsuitable, and then reattempt to capture a suitable image, iteratively.” *Id.* ¶ 3.

To address these issues, the specification further describes “a computer-implemented method for capturing product images for online retail using a mobile device having a camera.” Spec. ¶ 13. The method includes (a) “obtaining a product item display page for a product item,” where “the product item display page [has] a designated portion defined for display of an image of the product item,” (b) “obtaining a real-time live stream of images from the camera,” (c) “processing the live stream from the camera to create a processed live stream,” (d) “displaying the product item display page with the processed live stream displayed within the designated

portion,” and (e) “storing a processed image for the product item in association with an item record for the product item.” *Id.*

For independent claims 1, 11, and 21, the Final Action first combines Zverina and Yang, citing various passages of the two references as apparently satisfying each of the claim limitations, but not specifically identifying which reference is relied upon for each limitation, without providing an explanation of how the references would be combined, and without identifying a motivation to make the combination. *See* Final Act. 14–22. The Final Action then adds Barkas for “a theme selected for the online merchant store.” *Id.* at 23.

The Final Action next turns to Piramuthu and Stansell and returns to the “displaying a product item display page” limitation, citing passages from both references, and asserting that it “would have been obvious . . . to have customized the color/style of the virtual shelves as well as the layout of the items on the virtual shelves according to the categories of the items” and “to have configured the look and feel of the virtual shelves according to the user preferences.” Final Act. 23–25. The Examiner then cites Piramuthu for the “processing the live stream,” “displaying the processed live stream,” and “storing a processed image” limitations, but fails to explain how those citations relate to the portions of Zverina and Yang previously cited for those same limitations, and fails to explain how or why the teachings would be combined. *Id.* at 25–28.

Appellant argues that the rejections are “deficient in presenting a prima facie case of obviousness” because they do not provide “clear findings of fact, supported by evidence in the form of prior art documents, and to provide a reasoned explanation as to why a person of ordinary skill in the art

would have found the claimed invention obvious.” Appeal Br. 9 (citing MPEP 2143). We agree, because we are unable to discern from the Final Action which portions of which references are relied upon for the various limitations and what might have motivated one of ordinary skill in the art to combine this prior art to realize the claimed subject matter, suggesting that hindsight may have been involved. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) (“The Patent Office has the initial duty of supplying the factual basis for its rejection” and “may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.”); 37 C.F.R. § 1.104(c)(2) (“The pertinence of each reference, if not apparent, must be clearly explained.”).

Moreover, beyond the lack of clarity in the Final Action, we fail to see how these references might be combined to result in the claimed invention. As noted above, Appellant’s claims are generally directed to a system that retrieves a record for an item, displays a product display page for online retail of the product in an online merchant store, obtains a real-time live stream of images from the camera showing the product, creates a processed live stream showing the product, displays the processed live stream showing a real-time view of the product displayed within the designated portion in the product display page, and stores a processed image for the product in association with the record for the product item. Essentially, the product display page is shown and a processed live stream showing the product is displayed in real time in the product display page.

Zverina describes a system “to identify one or more of a store or a product depicted in a live stream video,” where “[a]n advertisement associated with the store or the product can be generated [and] inserted into

the live stream video.” Zverina ¶ 4. Yang similarly discloses a method for “displaying a live stream image, the live stream image comprising a live stream host performing in a live stream environment and at least one item located in the live stream environment” and, “in response to an item recognition operation, displaying an item tag corresponding to the at least one item.” Yang ¶¶ 8–9. Neither reference seems particularly pertinent to the claimed method of displaying a product item display page and displaying a processed live stream showing a real-time view of the product item within a designated portion in the product item display page.

As Appellant acknowledges, Piramuthu “is aimed at a similar problem as the present application.” Appeal Br. 16. However, we agree with Appellant that Piramuthu differs from Appellant’s method in that it does not display a product item webpage for online retail of the product item in an online merchant store, including a designated portion defined for display of an image of the product item, and display a processed live stream showing a real-time view of the product item within the designated portion in the product item display page. Instead, Piramuthu describes generating an item listing using information inferred from an image during a guided image capture. *See* Piramuthu ¶ 31. The system completes an item listing form, which is then used to display the item “within an augmented reality environment of a seller’s online store.” *Id.* We do not agree that either the unfilled listing form or the augmented virtuality shelves are reasonably equated to the claimed “product item webpage.”

For these reasons, we do not sustain the rejection of independent claims 1, 11, and 21, or their dependent claims 2–10, 12–20, and 22.

CONCLUSION

The Examiner's rejections are reversed.

DECISION SUMMARY

The following table summarizes our decision:

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 11, 21	103	Zverina, Barkas, Yang, Piramuthu, Stansell		1, 11, 21
22	103	Zverina, Barkas, Piramuthu, Stansell		22
2, 12	103	Zverina, Barkas, Yang, Piramuthu, Stansell		2, 12
3, 5, 6, 13, 15, 16	103	Zverina, Barkas, Yang, Piramuthu, Stansell, Koci		3, 5, 6, 13, 15, 16
7–10, 17–20	103	Zverina, Barkas, Yang, Piramuthu, Stansell		7–10, 17–20
4, 14	103	Zverina, Barkas, Yang, Piramuthu, Stansell, Koci, Srikanth		4, 14
Overall Outcome				1–22

REVERSED