

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte QIN ZHOU

Appeal 2007-0039
Application 09/799,413
Technology Center 2100

Decided: September 28, 2007

Before LEE E. BARRETT, HOWARD B. BLANKENSHIP,
and MAHSHID D. SAADAT, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1-47, which are all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

Appellant invented an interactive multimedia story authoring system and method, allowing users to create their own stories from their own

content or from the content stored on a computer server (Specification 3:14 through 4:4).

Claim 1 is representative of the claims on appeal and reads as follows:

1. A method of creating a story in a multimedia story authoring system, said method comprising the steps of:

providing a database of information including data to be used as components in making up a multimedia story within the authoring system;

providing a host computer server for storing and manipulating said database;

making said database available for access by users through a hosting website;

providing a plurality of user interface screens, said screens including user executable commands enabling a user logged onto said hosting website to access said database, and use selected data therein corresponding to components of a story, said components of said story comprising a story text field for entering story text composed by the user, and characters/objects; and

creating a story by executing the commands on said user interface screens to select data corresponding to the components of the story, and entering desired story text.

The prior art reference relied upon by the Examiner in rejecting the claims on appeal is:

Ferrel

US 6,584,480 B1

Jun. 24, 2003

(effectively filed Jul. 17, 1995)

The rejection as presented by the Examiner is as follows:

1. Claims 1-47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ferrel.

ISSUE

Under 35 U.S.C § 103(a), with respect to appealed claims 1-47, would one of ordinary skill in the art at the time of the invention have found it obvious to modify Ferrel to render the claimed invention unpatentable?

FINDINGS OF FACT

The following findings of fact (FF) are relevant to the issues involved in the appeal and are believed to be supported by a preponderance of the evidence.

1. Ferrel relates to a method and apparatus for publishing documents on a computer system which are used to; for example, create newsletters or brochures to promote a particular company. In addition, publications can be used to disseminate information to a variety of customers (col. 1, ll. 21-27). Specifically, Ferrel relates a new authoring system for creating on-line stories (col. 3, ll. 47-48).

2. Ferrel further discloses a method of publishing structured documents in a computer network comprising publisher, server, and customer computers comprising creating tagged content and storing a plurality of tagged objects representative of the tagged content in a document in the publisher computer (col. 4, ll. 6-12).

3. In the Multimedia Publishing (MP) system of Ferrel, content and design are stored as separate objects so that many different pieces of content can be viewed with the same appearance (col. 6, ll. 54-57). The system also keeps track of the links between a piece of content and its associated page layout, but does not actually format the data in the content with a particular style (col. 6, ll. 64-67). Among the objects used for authoring, Ferrel describes content objects as stories, images, audio, etc. (col. 8, ll. 2-3). The MP system objects are stored using “caching object stores” (COSs), which are present at the publisher workstation and in each MPS server at the publication storage and distribution center (FIG. 2). Each customer workstation also has a COS so that the customer can store and retrieve MP system objects when assembling content into controls on pages (col. 8, ll. 7-19).

4. In the MP system of Ferrel, titles, such as a title A 140, title B 142, or title P 144 can be divided into two parts: the content (148, 152, 156) -- the information such as bitmaps, video clips, audio, animation, or stories that make up a title -- and the title layout, also termed the design (146, 150, 154) -- the overall look and feel of a title (col. 9, ll. 20-25). Using this technique a publisher can change a title on an ongoing basis by merely updating the content 112, 114, 116 which has been placed into various folders or containers within the master title. Using what is called dynamic title synthesis or dynamic synthesis, content can be continually updated without any need to modify and update the title design (col. 9, ll. 33-41), noting flexibility as its advantage (col. 9, ll. 42-44).

5. Ferrel further discloses a user interface including a set of tools for designing, developing, and viewing multimedia on-line applications. A publisher, such as the publisher 102, utilizes a publisher workstation 182 and a Designer software environment 194 to create and publish the title layouts 110 and content 112 or just create content and use the title layouts of another publisher, which are later stored (col. 10, ll. 17-33).

6. Designer software environment 194 includes project editor 184 and other media editors for authoring text as well as images, sounds, and content objects (col. 10, ll. 34-47).

7. As shown in Figure 3 of Ferrel, multiple publisher workstations 102, 104, 106 and customer workstations 160, 164 are connected to a host data center 242 by a wide area network (WAN) 240. The network allows end users (i.e., publishers and customers) over a wide geographic area to access the host data center 242 via modem (col. 12, ll. 27-41).

8. Ferrel discloses content authors as editors, writers, reporters, and forum managers who generate content, including structured stories, using the content authoring environment. Writers compose the textual content that appears in a title (or a release of a title). They hand their materials off to the editorial staff. The editorial staff is in charge of the overall content of the title (col. 15, ll. 24-32).

9. Once the editorial staff has chosen the stories they wish to include in a release and are satisfied with the content of those stories, they pass them on to the art department to select and insert appropriate artwork, and to the production staff to place in content folders (col. 15, ll. 49-53).

10. Ferrel further shows in Figure 11 the process of creating content, publishing the content to a server, and having that content retrieved by a customer so that it can be viewed on a page within a title. Ferrel further discloses the process for creating content in an on-line publishing system with a story editor, as shown in Figure 12 (col. 25, ll. 21-27).

PRINCIPLES OF LAW

To reach a conclusion of obviousness under section 103, the Examiner bears the burden of producing factual basis supported by teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a prima facie case. *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984).

Furthermore, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987-88, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), *In re Young*, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991), and *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734, 82 USPQ2d 1385, 1391 (2007).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Leapfrog Enter., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161, 82 USPQ2d 1687, 1691 (Fed. Cir. 2007) (quoting *KSR Int’l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1739, 82 USPQ2d 1385, 1395 (2007)). “One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent’s claims.” *KSR*, 127 S. Ct. at 1742, 82 USPQ2d at 1397.

ANALYSIS

Rejection of claims 1-7, 9-12, and 16-22

Appellant contends that Ferrel stores only completed stories on a database instead of the components of a story for use in making or creating a story (Br. 7). The Examiner’s position is based on characterizing the content objects of Ferrel as the components stored in a database (Answer 10). We agree with the Examiner. Ferrel uses objects as components for authoring, which include both design and content. The objects are stored using a caching object store (COS) which functions as the publication storage and distribution center in each server (FF 3).

Appellant further argues that a story is released and stored after its creation, which means that publishers have access only to the complete stories, and not to the data stored as components to be used in making up the story (Br. 8). The Examiner’s response is focused on Ferrel’s content objects stored in the servers connecting the publisher and the customer’s

workstations (Answer 11-12). Again, we agree with the Examiner and note that Ferrel teaches that both the content object database and the stored completed project are available to end users, i.e., publishers and customer, by accessing the data center in the host (FF 3 & 7). Ferrel also provides for an on-line or web-based MP for creating content in an on-line publishing and editing system (FF 10).

Appellant contends that Ferrel does not teach or suggest providing user interface screens with user executable commands, as recited in claim 1 (Br. 9). The Examiner responds by pointing to Ferrel's teaching of a server hosting on-line applications (Answer 12) and concludes that the organization of such system, which have storage and sharing functionalities, are well known by the skilled artisan (*id.*). We agree with the Examiner's arguments and find that the host database is available to both publishers and users over the network (FF 5-7). Contrary to Appellant's argument that only the publisher workstation has access to the components (Br. 10), Ferrel's network, as depicted in Figure 3, allows access to both publishers and users to host data center 242 (FF 7). We also observe that the publishers are also users of the database when publishers access the content objects and create a story.

Thus, in light of these findings, we find that one of ordinary skill in the art would have found that Ferrel suggests the subject matter recited in Claim 1, as well as claims 2-7, 9-12, and 16-22, argued together as one group. *See Young*, 927 F.2d at 590, 18 USPQ2d at 1091. *See also* 37 C.F.R. § 41.37(c)(1)(vii).

Rejection of claims 8 and 30

Appellant argues that Ferrel allows only the publisher to create a story, whereas claim 8 requires a user to create stories by selecting components and also to add new components to the database for others to use (Br. 11-12). Initially, we observe that the claim only requires user data selected by the user and uploaded by the user to be stored in the database. There is no requirement for the uploaded data to be used by other users in creating stories. We also disagree with Appellant that only the publishers may create and store a story where the users retrieve the completed stories (*id.*). As discussed above, we do not see the publishers of Ferrel to be different than the claimed users since publishers use the database containing content objects for creating stories. Therefore, we find the Examiner's position reading the subject matter of claim 8 on the database available to the end users for storing the user created contents, even if created by the publishers, to be reasonable (FF 5-7). Appellant provides no additional arguments for claim 30, which includes a similar limitation, and relies on the arguments made for the patentability of claim 8 (Br. 18). Therefore, for the same reasons discussed here, we find that the teachings of Ferrel suggest the subject matter of claims 8 and 30.

Rejection of claims 13 and 35

Appellant argues that, unlike claim 13, Ferrel teaches that publishers create complete stories on a workstation and store that completed story to a network (Br. 12-13). The Examiner refers to Ferrel's dynamic editing functionality and argues that using the editing function, the publisher can

edit the existing stories (Answer 14). We agree with the Examiner that the dynamic title synthesis of Ferrel adds flexibility to the system by allowing editing of the created story without the need for modifying the title design (FF 4). Appellant provides no additional arguments for claim 35, which includes a similar limitation, and relies on the arguments made for the patentability of claim 13 (Br. 18). Therefore, for the same reasons discussed here, we find that the teachings of Ferrel suggest the subject matter of claims 13 and 35.

Rejection of claims 14 and 36

Appellant argues that Ferrel does not teach or suggest the step of editing a story by logging onto the website to add or modify the components used in creating the story, as recited in claim 14 (Br. 13). Similar to the arguments made above for claim 13, we find the examiner's position to be reasonable as Ferrel provides for editing the story as claimed (FF 4-6). Appellant provides no additional arguments for claim 36, which includes a similar limitation, and relies on the arguments made for the patentability of claim 14 (Br. 18-19). Therefore, for the same reasons discussed here, we find that the teachings of Ferrel suggest the subject matter of claims 14 and 36.

Rejection of claims 15 and 37

Regarding claim 15, Appellant argues that Ferrel publishes completed stories and therefore, cannot benefit from providing feedback in the form of approval or disapproval (Br. 14). The Examiner responds by taking Official

Notice that an “offensive-content editor” means is common in the art and its inclusion in the system of Ferrel would have been obvious (Answer 15). Additionally, the Examiner argues that the editing functionalities in Ferrel would have limited the availability of offensive material to the viewer in the form of non-publication of the material (*id.*).

We agree with the Examiner that the selection of the stories by the Editorial Staff (FF 8-9) encompasses an editor review to determine the existence of any offensive content. Furthermore, the Examiner is correct to conclude that non-publication of a story, whose content was not approved by the Editorial staff, constitutes the feedback to the user indicating disapproval, whereas publication of the story indicates approval to the user. Appellant provides no additional arguments for claim 37, which includes a similar limitation, and relies on the arguments made for the patentability of claim 15 (Br. 19). Therefore, based on our discussion above and for the same reasons discussed here, we find that the teachings of Ferrel suggest the subject matter of claims 15 and 37.

Rejection of claims 23-29, 31-34, and 38-43

Appellant provides no new arguments for these claims and merely relies on the arguments made in support of the patentability of claims 1-7, 9-12, and 16-22 (Br. 15-17). Therefore, in light of our findings above with respect to claim 1, we find that the teachings of Ferrel suggest the subject matter of claims 23-29, 31-34, and 38-43. *See Young*, 927 F.2d at 590, 18 USPQ2d at 1091. *See also* 37 C.F.R. § 41.37(c)(1)(vii).

Rejection of claim 44

Appellant argues that Ferrel lacks any teachings indicating the step of entering the story into a contest and posting the results on a user interface (Br. 20). Appellant further argues that Ferrel is a publishing system and gains no benefit from modifying the reference teachings to include the publishers' participation in a contest (Br. 21). The Examiner responds by characterizing a contest as a popular way to promote the publishing system (Answer 18). While the Examiner's observation about contests may be reasonable, we observe that Ferrel's selection of the stories to be published by the editorial staff may reasonable be considered as a contest (FF 8-10). In that regard, the stories submitted to the editorial staff for selection are actually stories entered into a contest wherein selections of stories for release based on the content and other criteria by the editorial staff is the same as announcing the results by posting the published stories. Therefore, in view of our discussion above, we find that Ferrel suggests the subject matter of claim 44.

Rejection of claim 45

Appellant provides no additional arguments for claim 45 and relies on similar arguments that were made for the patentability of claims 1, 8, 13, and 14 (Br. 21-23). Therefore, for the same reasons discussed *supra*, we find that Ferrel suggests the subject matter of claim 45.

Rejection of claim 46

Appellant merely repeats the recited features of claim 46 and basically relies on similar arguments made for the patentability of claim 14 (Br. 23). As discussed above, Ferrel teaches that the end users may access the content objects and edit the created stories that are stored on the host storage (FF 4-7). Therefore, for the same reasons discussed *supra*, we find that Ferrel suggests the subject matter of claim 46.

Rejection of claim 47

Appellant repeats the same arguments raised for the patentability of claim 1 (Br. 23-25). As discussed above, Ferrel teaches a publishing system that includes a storage means for storing a database and a software for creating user interfaces enabling the user to access the database through the worldwide web for creating stories using the components of a story from the database (FF 3-7). Therefore, for the same reasons discussed *supra*, we find the subject matter of claim 47 to be suggested by Ferrel.

CONCLUSION OF LAW

Because Appellant has failed to point to any error in the Examiner's position, we sustain the 35 U.S.C. § 103 rejection of claims 1-47 over Ferrel.

DECISION

The decision of the Examiner rejecting claims 1-47 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)(iv).

Appeal 2007-0039
Application 09/799,413

AFFIRMED

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