

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS MESSERGES, RONALD BUSKEY,
and EZZAT A. DABBISH

Appeal 2007-4277
Application 10/338,375
Technology Center 2100

Decided: April 30, 2008

Before LANCE LEONARD BARRY, JAY P. LUCAS, and STEPHEN C.
SIU, *Administrative Patent Judges*.

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DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 1-14. We have jurisdiction under 35 U.S.C.
§ 6(b). We affirm.

A. INVENTION

The invention at issue involves supporting digital rights management (DRM) systems (Spec. 1). In particular, a system determines a DRM protocol necessary to obtain or access digital content and downloads the necessary DRM protocol into memory (*id.* 3).

B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows:

1. A method for supporting multiple digital-rights management (DRM) systems, the method comprising the steps of:
 - determining a DRM protocol necessary to obtain or access digital content;
 - determining if the DRM protocol is resident in a memory;
 - based on whether or not the DRM protocol is resident in memory, downloading the DRM protocol into the memory; and
 - replacing a resident DRM protocol with the downloaded DRM protocol.

C. REJECTIONS

Claims 1, 2, 3, 5, 6, 8-10, 12, and 13 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,944,776 (“Lockhart”). Claims 4 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lockhart and U.S. Patent Publication No. 2004/0139208 (“Tuli”). Claims 7 and 14 stand rejected under 35 U.S.C. § 103(a) as being

unpatentable over Lockhart and U.S. Patent Publication No. 2006/0015201 (“Lapstun”).

II. CLAIM GROUPING

“When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. 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)(vii) (2006).¹

Appellants argue claims 1-3, 5, 6, 8-10, 12, and 13 as a first group (App. Br. 5-6), claims 4 and 11 as a second group (App. Br. 6), and claims 7 and 14 as a third group (App. Br. 6). We select claim 1 as the sole claim on which to decide the appeal of the first group, claim 4 as the sole claim on which to decide the appeal of the second group, claim 7 as the sole claim on which to decide the appeal of the third group.

III. CLAIMS 1-3, 5, 6, 8-10, 12, AND 13

As set forth above, we select claim 1 as the sole claim on which to decide the appeal of the first group. “Rather than reiterate the positions of

¹ We cite to the version of the Code of Federal Regulations in effect at the time of the Appeal Brief. The current version includes the same rules.

parties *in toto*, we focus on the issue therebetween.” *Ex Parte Filatov*, No. 2006-1160, 2007 WL 1317144, at *2 (BPAI 2007).

Appellants argue that “since all of Lockhart’s DRM architectures are already stored in memory, it is unnecessary for him to download the DRM protocol into memory” (App. Br. 6) and that “the ‘DRM protocol’ as claimed by the Applicants corresponds to Lockhart’s ‘DRM architectures’” and “[b]ecause of this, the Examiner is incorrect in equating the Applicants’ ‘DRM protocol’ with Lockhart’s ‘permit’” (App. Br. 6). In response, the Examiner states that “the use of permit has the same functionality as the claimed interchangeable protocol” (Ans. 7).

Lockhart discloses that a digital rights management (DRM) architecture “defines the process for packaging and granting rights to content” (col. 6, ll. 44-45) and that permits, which are “digital devices that allow consumers to access protected content” (col. 5, ll. 60-62), are “generated according to a data rights management (DRM) architecture” (col. 6, ll. 43-44). Also, a “consumer negotiates a permit and downloads and installs that permit from a content provider, content packager, web retailer, or clearing house” (col. 5, ll. 62-65). Thus, Lockhart discloses determining a DRM permit necessary to obtain or access digital content and downloading the DRM permit into memory if not already resident in memory.

The Specification discloses that a “DRM protocol” or “DRM core” includes “a group of functions that are implemented for a specific DRM protocol, vendor, or standard” and “are needed to download/access the

digital content” (Spec. 5). We therefore adopt a broad but reasonable interpretation of the term “DRM protocol” that is consistent with the Specification as functions that are needed to download or access digital content. Because Lockhart discloses that “DRM permits” are needed to download/access to digital content and because claim 1 recites that a “DRM protocol” provides the same functionality as the DRM permit of Lockhart, we agree with the Examiner that Lockhart’s DRM permit “has the same functionality as the claimed . . . (DRM) protocol” (Ans. 7). “[T]he PTO gives claims their 'broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). Appellants have failed to demonstrate substantial differences between the “DRM protocol” of claim 1 and Lockhart’s “permits.”

It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claim 1. Therefore, we affirm the rejection of claim 1 and of claims 2, 3, 5, 6, 8-10, 12, and 13, which fall therewith.

IV. CLAIMS 4 AND 11

Appellants argue that Lockhart and Tuli fail to disclose features of claim 1 (App. Br. 7). We find Appellants’ arguments unpersuasive for reasons set forth *supra*.

It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claims 4 and 11.

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V. CLAIMS 7 AND 14

Appellants argue that Lockhart and Lapstun fail to disclose features of claim 1 (App. Br. 7). We find Appellants' arguments unpersuasive for reasons set forth *supra*.

It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claims 7 and 14.

VII. ORDER

In summary, the rejection of claims 1-3, 5, 6, 8-10, 12, and 13 under § 102(e) is affirmed and the rejections of claims 4, 7, 11, and 14 under § 103(a) are affirmed.

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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