

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER VEPREK,
TED H. APPLEBAUM, STEVEN PEARSON,
and ROLAND KUHN

Appeal 2008-0018
Application 10/365,235
Technology Center 2600

Decided: July 25, 2008

Before JOSEPH F. RUGGIERO, ROBERT E. NAPPI, and JOHN A.
JEFFERY, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of claims 1-16, 18-27, and 46-56. Claims 17, 28-45, and 57-63 have been canceled. As indicated at page 2 of the Brief, Appellants have withdrawn

the appeal of claims 46-56. Accordingly, the appeal as to claims 46-56 is hereby dismissed, and claims 1-16 and 18-27 are the only claims remaining before us on appeal. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellants' invention relates to speech processing systems in which speech parameters are customized across speech applications in a network environment. An intermediary speech processor is utilized to receive the customized speech parameters from a computing device and transform them for use on another computing device. (Spec. ¶ 0003).

Claim 1 is illustrative of the invention and reads as follows:

1. A speech processing system for customizing speech parameters across a networked environment, comprising:
 - a speech processing application residing on a first computing device, the speech processing application being operable to capture customized speech parameters for a given user and communicate the customized speech parameters across a network, wherein the customized speech parameters are further defined as acoustic models adapted to the given user; and
 - an intermediary speech processor residing on a second computing device in the networked environment, the second computing device being interconnected by the network to the first computing device;
 - said intermediary speech processor adapted to receive the customized speech parameters and operable to transform the

customized speech parameters for use on a third computing device based on hardware characteristics of the third computing device.

The Examiner relies on the following prior art references to show unpatentability:

Uppaluru	US 5,915,001	Jun. 22, 1999
Hwang	US 6,141,641	Oct. 31, 2000
White	US 6,408,272 B1	Jun. 18, 2002
Cyr	US 2003/0105623 A1	Jun. 5, 2003 (filed Nov. 30, 2001)
Zhou	US 2003/0191636 A1	Oct. 9, 2003 (filed Apr. 5, 2002)

Claims 1-8 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Cyr.

Claims 9, 12-16, and 18-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over White in view of Cyr and further in view of Hwang.

Claims 10, 11, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over White in view of Cyr and Hwang and further in view of Uppaluru.

Claims 25 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over White in view of Cyr and Hwang and further in view of Zhou.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs and Answer for the respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

ISSUES

- (i) Under 35 U.S.C § 102(e), does Cyr have a disclosure which anticipates the invention set forth in claims 1-8?
- (ii) Under 35 U.S.C § 103(a), with respect to appealed claims 9, 12-16, and 18-24, would one of ordinary skill in the art at the time of the invention have found it obvious to combine White, Cyr, and Hwang to render the claimed invention unpatentable?
- (iii) Under 35 U.S.C § 103(a), with respect to appealed claims 10, 11, and 27, would one of ordinary skill in the art at the time of the invention have found it obvious to modify the combination of White, Cyr, and Hwang by adding Uppaluru to render the claimed invention unpatentable?
- (iv) Under 35 U.S.C § 103(a), with respect to appealed claims 25 and 26, would one of ordinary skill in the art at the time of the invention have found it obvious to modify the combination of White, Cyr, and Hwang by adding Zhou to render the claimed invention unpatentable?

PRINCIPLES OF LAW

1. ANTICIPATION

It is axiomatic that anticipation of a claim under § 102 can be found if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984).

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992)). “Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.”) (internal citations omitted).

2. OBVIOUSNESS

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore,

“‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*

Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1741 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

ANALYSIS

35 U.S.C. § 102(e) REJECTION

With respect to the 35 U.S.C. § 102(e) rejection of independent claim 1 based on the teachings of Cyr, the Examiner indicates (Ans. 4-5) how the various limitations are read on the disclosure of Cyr. In particular, the Examiner directs attention to the illustration in Figure 1 of Cyr as well as the portion of the disclosure at ¶'s 0024, 0042, 0052, 0063, and 0082 of Cyr.

Appellants' arguments in response assert that the Examiner has not shown how each of the claimed features is present in the disclosure of Cyr so as to establish a prima facie case of anticipation. According to Appellants (App. Br. 6-7; Reply Br. 2), in contrast to the claimed invention, the Cyr reference provides no disclosure of an intermediary processor which operates to transform customized speech parameters based on the *hardware* characteristics of a target device. After reviewing the Cyr reference in light of the arguments of record, we are in general agreement with Appellants' position as stated in the Briefs.

Our interpretation of the disclosure of Cyr coincides with that of Appellants, i.e., although Cyr's intermediary processor (scrambler 24) functions (Cyr, ¶'s 0061 and 0063) to transform speech parameters to provide a common software interface for the different speech recognition engines, there is no indication that such transformation is based on any hardware characteristics of the target entities, i.e., Cyr's speech recognition engines, as claimed. We agree with Appellants (App. Br. 6-7; Reply Br. 6) that, at best, the scrambler intermediary processors 24 disclosed by Cyr

provide normalization of the interactions with the different speech recognition engines 14 on a software interface format level. As argued by Appellants, we find that such a disclosure by Cyr can only lead to the conclusion that the intermediary processors 24 will function the same way regardless on which hardware device a speech recognition engine may reside.

With the above discussion in mind, we simply find no basis for the Examiner's interpretation of the disclosure of Cyr as articulated at pages 4, 5, and 16 of the Answer. While the Examiner's stated position relies heavily on Cyr's disclosure that the various speech recognition engines 14 are from different manufacturers (e.g., Dragon Systems ¶ 0054 of Cyr) and, therefore, have differing hardware characteristics according to the Examiner, it is apparent to us from the disclosure of Cyr that the ordinarily skilled artisan would have recognized the different disclosed speech recognition engines as being software entities. Further, while Cyr discloses at ¶ 0055 that each speech recognition engine 14, i.e., the target entity, includes a logical server 36 enabling the engine to interact with differing hardware devices such as a PC, a telephone, etc., such a disclosure does not satisfy the claimed requirement that speech parameters be transformed based on the hardware characteristics of the target entity.

In view of the above discussion, since all of the claim limitations are not present in the disclosure of Cyr, we do not sustain the Examiner's 35 U.S.C. § 102(e) rejection of appealed independent claim 1, nor of claims 2-8 dependent thereon.

35 U.S.C. § 103(a) REJECTION

We also do not sustain the Examiner's obviousness rejection of independent claim 9 and its dependent claims 12-16 and 18-24 based on the combination of White, Cyr, and Hwang. In addressing the language of independent claim 9, the Examiner relies (Ans. 7-9) on White for a teaching of a speech recognizer or a speaker recognizer residing on a first device and an intermediary processor residing on a second device. The Hwang reference has been applied as teaching the selection of speech parameters from either the available memory space or the processing resources of the target device.

Further, the Cyr reference is added to the Examiner's proposed combination for the same reason that Cyr was used against previously discussed independent claim 1, i.e., a supposed teaching by Cyr of the transforming of speech parameters according to device parameters of the target device. For all of the reasons discussed previously, however, we simply find no basis in the disclosure of Cyr to support the Examiner's position that Cyr's intermediary processors 24 transform customized speech parameters based on the device parameters of the target devices, i.e., the speech recognition engines 14 of Cyr, as presently claimed.

We also do not sustain the Examiner's 35 U.S.C. § 103(a) rejection of dependent claims 10, 11, and 27 in which the Uppaluru reference has been added to the combination of White, Cyr, and Hwang, nor the 35 U.S.C. § 103(a) rejection of dependent claims 25 and 26 in which the Zhou reference has been added to the combination of White, Cyr, and Hwang. The Uppaluru and Zhou references have been applied to address, respectively, the speech recognizer and acoustic channel characteristics of dependent

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claims 10, 11, and 25-27. We find nothing, however, in the disclosures of Uppaluru or Zhou which overcomes the innate deficiencies of White, Cyr, and Hwang as discussed *supra*.

CONCLUSION

In summary, we have not sustained any of the Examiner's rejections of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-16 and 18-27 is reversed.

REVERSED

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