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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KEITH R. MCNALLY

Appeal 2012-001503
Application 11/190,633[1]
Technology Center 3600

Before MURRIEL E. CRAWFORD, MICHAEL C. ASTORINO, and BART A. GERSTENBLITH, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 77–85, 89, 91, 92, and 97–107. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

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[1] Appellant identifies Ameranth, Inc. as the real party in interest. Br. 1.

Claim 77 is illustrative:

77. An information management and real time synchronous communications system for use with wireless handheld computing devices and the internet comprising:

a. a master database containing at least one hospitality application (s) and associated data,

b. application software enabled to configure hospitality data for display on the 'non pc standard' display sized screen of at least one wireless handheld computing device in which the at least one hospitality application is stored,

c. at least one Web server enabled by application software to interface with at least one hospitality application and its associated data,

d. application software enabled to configure hospitality data for display on at least one web page,

e. an applications programming software interface, and

f. a real time application software communications control module with a systemic communications relationship comprising:

- A communications controller
- A communications set up
- A web Hub
- A wireless Hub
- Linked Databases

wherein the system is enabled to perform an automated communications conversion via application software involving the data associated with the at least one hospitality application,

wherein the system is enabled via application software to synchronize the at least one hospitality application(s) and its associated data with the data in a second and different hospitality application in real time between the master database, the at least one Web server, the at least one wireless computing device and the at least one web page,

> wherein the communications control module is enabled via application software to act as an interface between the at least one hospitality application (s) and any applicable communications protocol.

Appellant appeals the following rejections:

A. Claims 77–79, 91, 92, 97–101, and 106 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,069,228 B1, issued June 27, 2006, (hereinafter "Rose") in view of U.S. Patent No. 6,415,138 B2, issued July 2, 2002, (hereinafter "Sirola") further in view of U.S. Patent No. 6,356,543 B2, issued Mar. 12, 2002, (hereinafter "Hall").

B. Claims 80–85 and 89 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rose in view of Sirola in further view of U.S. Patent No. 5,991,739, issued Nov. 23, 1999, (hereinafter "Cupps") or U.S. Patent No. 6,594,347 B1, issued July 15, 2003, (hereinafter "Calder") or U.S. Patent No. 6,366,650 B1, issued Apr. 2, 2002, (hereinafter "Rhie").

C. Claims 102–105 and 107 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rose in view of Sirola in further view of Cupps.

ISSUE

Did the Examiner err in rejecting the claims because the Examiner has not established that the cited references discloses "application software enabled to configure hospitality data for display on the 'non pc standard' display sized screen of at least one wireless handheld computing device," as recited in claims 77?

ANALYSIS

Appellant argues that the references do not disclose application software enabled to configure hospitality data for display on the non pc standard display sized screen of a wireless handheld device. We agree. The Examiner does not explain how this element of the claims is disclosed or suggested in the prior art. The Examiner finds that Rose discloses application software that is enabled to configure hospitality software for display on at least one web page (Ans. 5). The Examiner also finds that Sirola discloses a wireless device that is capable of displaying web data and that Hall discloses a wireless device that is capable of downloading, storing, and executing application software (Ans. 6). However, the Examiner does not find that any of these references discloses or suggests application software enabled to configure hospitality data for display on the non pc standard display sized screen of a wireless handheld device. In this regard, the Examiner does not find that the Sirola device is capable of displaying hospitality data or that Hall discloses downloading, storing, and executing application software that enables configuration of hospitality data on a wireless device.

We find that Sirola discloses a mobile phone that enables connection to the internet and includes a touch sensitive display wherein data such as telephone numbers can be displayed (*see* Sirola, col. 2, ll. 1–22). Sirola does not disclose application software that enables configuration of hospitality data for display on the mobile phone.

We find that Hall discloses the ability to customize a mobile phone with desired services through the downloading of applications (*see* Hall, col. 2, ll. 25–29). However, the Examiner does not direct our attention to a

disclosure in Hall of application software that relates to hospitality much less application software enabled for configuring hospitality data on a wireless device. It is unclear from the Examiner's rejection just how the teachings of the prior art may be combined to arrive at the application software recited in claims 77 and 97. Therefore, we hold that the Examiner has not established the factual basis to support the conclusion of obviousness.

We note that in rejecting claims under 35 U.S.C. § 103(a), the Examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). 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 view of the foregoing, we do not sustain the Examiner's rejections of claim 77 and claims 78, 79, 91, and 92 dependent therefrom. We also do not sustain the Examiner's rejections of claim 97 and claims 98–101 and 106 dependent therefrom because claim 97 also recites the application software enabled to configure hospitality data for display on a wireless device.

We will also not sustain the Examiner's rejections of: claims 80–85 and 89 under 35 U.S.C. § 103(a) as being unpatentable over Rose in view of Sirola and Cupps, Calder or Rhie; and claims 102–105 and 107 under 35 U.S.C. § 103(a) as being unpatentable over Rose in view of Sirola and Cupps. These rejections lack the reliance on the Hall reference and the Examiner has not explained in any way how the recitation in claims 77 and 97, from which each of these claims depend, of an application software, much less an application software enabled to configure hospitality data for

display on a wireless device, is either disclosed or suggested in the prior art relied on.

DECISION

The Examiner's decision rejecting claims 77–85, 89, 91, 92, and 97–107 is reversed.

REVERSED

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