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TROP, PRUNER & HU, P.C. 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631			LAROSE, COLIN M	
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

VOLKSWAGEN GROUP OF AMERICA, INC.
Requester, Appellant, and Cross-Respondent

v.

AFFINITY LABS OF TEXAS, LLC
Patent Owner, Respondent, and Cross-Appellant

Appeal 2014-002024
Reexamination Control 95/001,281
Patent 7,634,228
Technology Center 3900

Before STEPHEN C. SIU, JEREMY J. CURCURI, and
IRVIN E. BRANCH, *Administrative Patent Judges*.

BRANCH, *Administrative Patent Judge*

BACKGROUND

An *inter partes* reexamination was filed on behalf of Third Party Requester, Volkswagen Group of America, Inc. (“Requester”), on February 3, 2010, of United States Patent 7,634,228 B2 (hereinafter the “’228 patent”).¹ The ’228 patent includes claims 1–30. The Examiner rejected claims 1–5, 7–27, 29, and 30, and confirmed claims 6 and 28.

DECISION ON APPEAL

Requester appeals under 35 U.S.C. §§ 134 and 315 the Examiner’s decision declining to adopt Requester’s proposed rejections of claims 1–30 over various references. TPR App. Br. 4–29.² Patent Owner, Affinity Labs of Texas, LLC (“Patent Owner”), cross-appeals under 35 U.S.C. §§ 134 and 315 the Examiner’s decision to reject claims 1–5, 7–27, 29, and 30, under different grounds. PO App. Br. 6–22.

We have jurisdiction under 35 U.S.C. §§ 134 and 315. We affirm-in-part, affirming the Examiner’s decision to reject claims 1–5, 7–27, 29, and 30, and reversing the Examiner’s decision not to reject claims 6 and 28.

¹ The ’228 patent issued to White, et al., on December 15, 2009, from Application 11/681,444, filed March 2, 2007.

² Throughout this opinion, we refer to (1) the Right of Appeal Notice mailed October 22, 2011 (“RAN”); (2) Requester’s Appeal Brief filed January 23, 2012 (“TPR App. Br.”); (3) Patent Owner Respondent’s Brief filed February 22, 2012 (“PO Resp. Br.”); (4) the Examiner’s Answer mailed May 15, 2012 (“Ans.”) (incorporating the RAN by reference); (5) Patent Owner’s Appeal Brief filed January 20, 2012 (“PO App. Br.”); and (6) Requester’s Respondent Brief filed February 21, 2012 (“TPR Resp. Br.”).

STATEMENT OF THE CASE

The '228 patent describes supplying content (e.g., a media file) from a portable electronic device to a different electronic device through which the content is played. The separate device at least partially controls the portable device. *See generally* '228 patent, Abstract. Claim 1 is illustrative of the claimed subject matter:

1. A media managing method comprising:
 - storing a media file in a memory system of a portable hand-held device that is not a conventional personal computer or a laptop computer, wherein the portable hand-held device further has a display and a processor;
 - storing a collection of information about the media file in the memory system, wherein the collection includes data representing a name for the media file;
 - communicating at least some of the collection from the portable hand-held device to a different electronic device in order to allow a user to view a soft button comprising the name on an associated display of the different electronic device; and
 - thereafter receiving a signal in the portable hand-held device to begin playing the media file by the portable hand-held device in response to a selection of the soft button at the different electronic device; and
 - outputting a played version of the media file across a physical interface of the portable hand-held device while the media file remains stored on the portable hand-held device, wherein the physical interface is configured to facilitate a communicative coupling of the portable handheld device and the different electronic device, further wherein the physical interface is not circular and has a width dimension and a length dimension that is longer than the width dimension.

RELATED PROCEEDINGS

We are informed this appeal is related to the following proceedings:

- (1) *Affinity Labs of Texas, LLC v. BMW North America, LLC, et al.*, Case

Appeal 2014-002024
Reexamination Control 95/001,281
Patent 7,634,228

No. 9:08-cv-00164-RC (E.D. Tex.), involving the '228 patent and U.S. Patent No. 7,324,833 (the “'833 patent”); (2) *Affinity Labs of Texas, LLC v. Dice Electronics, LLC, et al.*, Case No. 9:08-cv-00163-RC (E.D. Tex.), involving the '833 patent; (3) *Affinity Labs of Texas, LLC v. Alpine Electronics of America, Inc., et al.*, Case No. 9:08-cv-00171-RC (E.D. Tex.), involving the '228 and '833 patents; (4) *Affinity Labs of Texas, LLC v. Volkswagen Group of America, Inc., et al.*, Case No. 1:11-cv-00036-RC (E.D. Tex.), involving the '228 and '833 patents and U.S. Patent No. 7,778,595 (the “'595 patent”); (5) *Affinity Labs of Texas, LLC v. Hyundai Motor America, Inc., et al.*, Appeal Nos. 2011-1350, - 1365, -1386 (Fed. Cir.), involving the '228 and '833 patents; (6) *Affinity Labs of Texas, LLC v. Apple Inc. and AAMP of Florida, Inc.*, Case No. 11-cv-00349 (E.D. Tex.), involving the '228 and '595 patents; and (7) Reexamination Control No. 95/001,263, involving U.S. Patent No. 7,486,926 (Bd. Pat. Appeals & Inter.).

See TPR App. Br. 1.

THE APPEALED REJECTIONS AND PROPOSED REJECTIONS

Requester appeals the Examiner's not adopting the following proposed rejections:

- A. Claims 1–30 as anticipated by Abecassis³ under 35 U.S.C. § 102(b);
- B. Claims 1, 3, 4, 6–10, 12, 14, 16–19, and 21, as anticipated by Schulhof et al. (“Schulhof”)⁴ under 35 U.S.C. § 102(b);

³ Abecassis, US Patent No. 6,192,340, issued Feb. 20, 2001.

⁴ Schulhof et al., US Patent No. 5,557,541, issued Sep. 17, 1996.

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