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GOODWIN PROCTER LLP 901 NEW YORK AVENUE, N.W. WASHINGTON, DC 20001			BROWNE, LYNNE HAMBLETON	
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PERSONALIZED MEDIA COMMUNICATIONS, LLC¹

Appeal 2009-6825
Reexamination Control Nos. 90/006,563 & 90/006,698
U.S. Patent 5,335,277²
Technology Center 3900

Decided: January 19, 2010

Before KENNETH W. HAIRSTON, SCOTT R. BOALICK, and
KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

¹ Personalized Media Communications, LLC is the real party in interest (App. Br. 2).

² Issued May 3, 1993 to Harvey, et al.

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DECISION ON APPEAL

Personalized Media Communications, LLC appeals under 35 U.S.C. §§ 134(b) and 306 from a final rejection of claims 2, 4, 6, 7, 10-15, 17-20, 22, 23, 27, 28, 30, 32, 33, 35, 38, 41, 42, 44-52, 55, and 56.³ We have jurisdiction under 35 U.S.C. § 306.

An oral hearing was held on July 1, 2009. The record includes a written transcript of the oral hearing.

We AFFIRM-IN-PART.

STATEMENT OF THE CASE

Reexamination proceeding

A first request for reexamination of U.S. Patent 5,335,277 (the '277 patent), entitled "Signal Processing Apparatus and Methods," was filed on March 14, 2003 by a first third party requester Thomson, Inc. (First Requester), Reexamination Control No. 90/006,563. The '277 patent issued August 2, 1994, to John C. Harvey and James W. Cuddihy, based on Application 08/056,501 (the '501 application), filed May 3, 1993. The real party in interest is the patent owner, Personalized Media Communications, LLC. The '277 patent is said to be a continuation of Application 07/849,226, filed March 10, 1992, now U.S. Patent 5,233,654 (hereinafter referred to as the '654 patent), which is said to be a continuation of Application 07/588,126, filed September 25, 1990, now U.S. Patent 5,109,414

³ Claims 1, 3, 5, 8, 9, 16, 21, 24-26, 29, 31, 34, 36, 37, 39, 40, 43, 53, and 54 have been confirmed as patentable.

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(hereinafter referred to as the '414 patent), which is said to be a continuation of Application 07/096,096, filed September 11, 1987, now U.S. Patent 4,965,825 (hereinafter referred to as the '825 patent), which is said to be a continuation in part (CIP) of Application 06/829,531, filed February 14, 1986, now U.S. Patent 4,704,725 (the '725 patent), which is said to be a continuation of Application 06/317,510, filed November 3, 1981, now U.S. Patent 4,694,490 (hereinafter referred to as the '490 patent).

A second request for reexamination of the '277 patent was filed on July 7, 2003 by a second third party requester Scientific-Atlanta, Inc. (Second Requester), Reexamination Control No. 90/006,698. A Decision was made on December 3, 2004 to merge the reexamination proceedings (Paper #16) per 37 C.F.R. § 1.565(c).

Related proceedings

The Brief indicates that the '277 patent is part of a chain of patents that includes additional later issued patents and various pending patent applications (App. Br. 3). The Brief identifies six related patents that are each involved in reexamination proceedings (*id.*).

The Brief identifies a number of related U.S. Patent and Trademark Office (USPTO), International Trade Commission, and court proceedings. (App. Br. 3-5). The Brief indicates (App. Br. 5-6) that the '277 patent is asserted in *Pegasus Development Corp. v. DIRECTV Inc.*, No. CA 00-1020 (D. Del. filed Dec. 4, 2000), which has been stayed, and is also asserted in *Personalized Media Communications, LLC v. Scientific-Atlanta, Inc. et al.*,

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No. 1:02-CV-824 (CAP) (N.D. Ga. filed Mar. 28, 2002), which also has been stayed.

Appellant's invention

The claimed invention relates to signal processing apparatus and methods to automate operations at an intermediate transmission station. ('277 patent, abstract).

The Specification teaches that various disclosed embodiments of signal processing apparatus "can be used to automate the operations of intermediate transmission stations that receive and retransmit programming." ('277 patent, col. 181, ll. 58-60.) "The stations so automated may transmit any form of electronically transmitted programming, including television, radio, print, data, and combined medium programming and may range in scale of operation from wireless broadcast stations that transmit a single programming transmission to cable systems that cablecast many channels simultaneously." ('277 patent, col. 181, ll. 60-66).

In particular, "FIG. 6 illustrates Signal Processing Apparatus and Methods at an intermediate transmission station that is a cable television system 'head end' and that cablecasts several channels of television programming." ('277 patent, col. 181, l. 67 – col. 182, l. 2). "The station receives programming from many sources," ('277 patent, col. 182, ll. 4-5) such as: (1) transmissions from a satellite received by satellite antenna 50, low noise amplifiers 51 and 52, and TV receivers 53, 54, 55, and 56; (2) microwave transmissions received by microwave antenna 57 and television video and audio receivers 58 and 59; (3) conventional TV broadcast transmissions received by antenna 60 and TV demodulator 61; and

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