

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INTER PARTES REEXAMINATION

Reexam
Control No. : 95/000,479 Confirmation No. : 2572

Filed : May 28, 2009

For Reexamination of
Patent No. : 7,161,506

Issued : January 9, 2007

For : SYSTEMS AND METHOD FOR DATA COMPRESSION
SUCH AS CONTENT DEPENDENT DATA
COMPRESSION

Patent Owner : Realtime Data LLC

Art Unit : 3992

Examiner : Christina Y. Leung

New York, New York 10036
March 15, 2010

Mail Stop *INTER PARTES* REEXAM
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY TO OFFICE ACTION IN *INTER PARTES* REEXAMINATION

Sir:

Patent Owner hereby replies to the December 15, 2009 Office Action in *Inter Partes* Reexamination of the above-identified patent (“patent-in-reexamination” or “506 Patent”).

Remarks begin on page 2 of this Reply to Office Action in *Inter Partes* Reexamination.

REMARKS

Summary of Office Action

The patent-in-reexamination includes claims 1-99. Claims 1-9, 11, 16-17, 20-23, 27, 39, 41-43, 69-73, 79, 81-82, 84-90, 96, and 98 are subject to reexamination.

Claims 69-73, 79, 81, 84-90, 96 and 98 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent 5,794,229 to French.

Claims 1-6, 8, 9, 11, 17, 21-23, 41-43, 69, 72, 73, 79 and 81 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent 6,253,264 to Sebastian.

Claims 1-7, 9, 11, 17, 20, 23, 39, 41-43, 69-73, 79, 81, 82, 84-90, 96 and 98 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent 5,870,036 to Franaszek ("Franaszek '036").

Claim 16 has been rejected under 35 U.S.C. § 103 as allegedly being obvious from Sebastian in view of U.S. Patent 4,988,998 to O'Brien or U.S. Patent 5,627,534 to Craft.

Claim 20 has been rejected under 35 U.S.C. § 103(a) as allegedly being obvious from Sebastian in view of Franaszek '036 or U.S. Patent 5,951,623 to Reynar.

Claims 27 and 39 have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious from Sebastian in view of CCITT Recommendation V.42bis or Reynar.

Claim 82 has been rejected under 35 U.S.C. § 103(a) as allegedly being obvious from Sebastian in view of U.S. Patent 5,167,034 to MacLean.

Claims 70, 71, 84-90, 96 and 98 have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious from Sebastian in view of CCITT Recommendation V.42bis or WO95/29437 to Kawashima.

Claims 8 and 16 have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious from Franaszek '036 in view of O'Brien or Craft.

Claim 22 has been rejected under 35 U.S.C. § 103(a) as allegedly being obvious from Franaszek '036 in view of U.S. Patent 4,956,808 to Aakre.

Update Regarding Litigation Involving Requestor ("Related Litigation")

Patent Owner hereby notifies the Patent and Trademark Office that the patent infringement suit involving the '506 Patent, *Realtime Data LLC d/b/a IXO v. Packeteer, Inc.*

et al., (Civil Action No. 6:08-cv-00144-LED) (E.D. Texas), has been dismissed with prejudice as of February 1, 2010 pursuant to a settlement and license agreement, and that the settling defendants include Requester. Patent Owner does not expect Requester to participate further in this reexamination proceeding.

Patent Owner's Reply to the Prior Art Rejections

A. Applicable Standard For Rejection Under 35 U.S.C. § 102

Each of claims 1-9, 11, 17, 20-23, 39, 41-43, 69-73, 79, 81-82, 84-90, 96, and 98 of the patent-in-reexamination has been rejected under 35 U.S.C. § 102. With respect to a rejection under 35 U.S.C. § 102, the MPEP states that “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP § 2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Each of the rejections under 35 U.S.C. § 102(b) and § 102(e) fails to meet this standard.

B. Applicable Standard For Rejection Under 35 U.S.C. § 103(a)

Claims 8, 16, 20, 27, 39, 70-71, 82, 84-90, 96 and 98 of the patent-in-reexamination also have been rejected under 35 U.S.C. § 103(a). With respect to a rejection under 35 U.S.C. § 103, the Examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. MPEP § 2142. If the examiner determines there is factual support for rejecting the claimed invention under 35 U.S.C. § 103, the Examiner must consider any evidence supporting the patentability of the claimed invention, such as any evidence in the specification or any other evidence submitted by the Patent Owner. The ultimate determination of patentability is based on the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence. The legal standard of “a preponderance of evidence” requires the evidence to be more convincing than the evidence which is sought in opposition to it. *See Id.*, citing *In re Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992).

Further, in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), the Supreme Court affirmed that the factors identified in *Graham v. John Deere Co.*, 383 U.S. 1 (1966)

continue to define the controlling inquiry. See MPEP § 2141 and *Id.* at 1729-30.¹ The Supreme Court recognized that the presence or absence of a “teaching, suggestion or motivation” to combine prior art to meet the claimed subject matter could provide a helpful insight, regardless of the particular form of the “teaching, suggestion or motivation.” *Id.* at 1731, 1741-43. The rejections of claims 8, 16, 20, 27, 39, 70-71, 82, 84-90, 96 and 98 under 35 U.S.C. § 103(a) fails to meet these standards because a necessary showing has not been made by a preponderance of the evidence.

C. Applicable Standard for Claim Interpretation in Inter Partes Reexamination

The words of a claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. MPEP § 2111.01, citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). This plain meaning, or ordinary and customary meaning, is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. In addition, the ordinary and customary meaning of a term may be evidenced by a variety of sources, including “the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.” MPEP § 2111.01, citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005).

During reexamination, claims are given the broadest reasonable interpretation consistent with the specification and limitations in the specification are not read into the claims. MPEP § 2258(G), citing *In re Yamamoto*, 740 F.2d 1569 (Fed. Cir. 1984). While Patent Owner recognizes the Examiner’s duty to give the claims their broadest reasonable interpretation without reading limitations from the specifications into the claims, such interpretation must be not only reasonable, but also consistent with the specification of the ’506 patent.

¹ “Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” *Graham*, 383 U.S. at 17-18.

D. Introduction

1. Summary of the Claims Under Reexamination

Patent Owner's invention, as defined in independent claims 1, 69, and 86, is directed to methods for compressing data. According to claim 1, the method comprises analyzing a data block of an input data stream to identify a data type and, if the data type is identified, performing content dependent data compression on the data block. If the data type is not identified, compression is performed with a single data compression encoder.

Independent claim 69 recites a method for compressing data that includes receiving a data block in uncompressed form, analyzing the data block to determine the data type, and compressing the data block if one or more encoders are associated with the data type, or else compressing the data block with a data compression encoder. The else limitation is practiced if the data block is not associated with the determined data type.

Independent claim 86 recites a method for compressing data that includes receiving a data block, determining whether to output the data block in received form or compressed form and, based on the determination, outputting the data block in received form or compressed form. If the data block is output in compressed form, the determining limitation includes determining whether to compress the data block with content dependent compression based on the data type or compress the block with a single data compression encoder.

2. The broadest reasonable interpretation of "data stream"

A fundamental distinction between Patent Owner's invention, as defined in independent claims 1, 69, and 86, and the cited prior art stems from the broadest reasonable interpretation of the claim terms "input data stream" and "data stream." The words of a claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. MPEP § 2111.01, citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). This plain meaning is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. MPEP § 2111.01, citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Patent Owner's specification refers to a received data stream as including one or more data blocks input into the Patent Owner's data compression system. ('506 Patent at 8:11-14.)² Further, at col. 6, lines 59-63, the patent-in-reexamination

² As used herein, the notation "x:y-z" refers to "col. x, lines y-z."

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