Ex parte Godwin

U.S. Patent and Trademark Office
Board of Patent Appeals and Interferences

Appeal No. 2008-0130
Decided November 13, 2008

(Nonprecedential)

PATENTS

[1] Patent grant — Inventions patentable ($105.05)
Patent construction — Specification and drawings — Defining terms ($125.1103)
Patent construction — Claims — Defining terms ($125.1305)

Construction of term “server” as “provider of services,” in claims of patent application for invention directed to styling of portal view in display of pervasive agent, will not be recharacterized on rehearing as new ground of rejection, and is reasonable and consistent with specification and interpretation of those skilled in art, since specification indicates that invention is not limited solely to hardware embodiments, and in context of software embodiment, server is reasonably construed as “provider of services,” since “portal server system” and “portal server” recited in preambles of claims each provide service, and since software device, which would be considered statutory subject matter, is not positively recited in claims at issue; construction of preambles of claims did not constitute new ground of rejection, since preambles are broadly but reasonably construed as servers intended to be used as portal servers, since bodies of claims are each directed to purely software components, and thus broadly encompass software process, since claims, which do not sufficiently invoke machine, or transformation of subject matter, are therefore unpatentable under 35 U.S.C. § 101, and since examiner rejected claims under Section 101.

[2] Patent grant — Inventions patentable ($105.05)
Patentability/Validity — Subject matter ($115.05)

Claims that includes nonstatutory subject matter is not patentable, since four categories enumerated in 35 U.S.C. § 101 together describe exclusive reach of patentable subject matter, and if claim covers material not found in any of those four categories, claim falls outside plainly expressed scope of Section 101, even if subject matter is otherwise new and useful.

[3] Patent grant — Inventions patentable ($105.05)
Patentability/Validity — Subject matter ($115.05)

Program code required by claims in patent application directed to styling of portal view in display of pervasive agent, which is programmed to transform one form of data into another form of data, is not statutory subject matter under 35 U.S.C. § 101, since claims do not transform physical subject matter, and purported transformation of data, without use of machine, is insufficient to establish patent eligibility under Section 101.

[4] Patent grant — Inventions patentable ($105.05)
Patentability/Validity — Subject matter ($115.05)

Claim that includes nonstatutory subject matter is not patentable, since four categories enumerated in 35 U.S.C. § 101 together describe exclusive reach of patentable subject matter, and if claim covers material not found in any of those four categories, claim falls outside plainly expressed scope of Section 101, even if subject matter is otherwise new and useful.


Patent applicants have not shown that Board of Patent Appeals and Interferences erred in ruling that application claims at issue, for invention directed to styling of portal view in display of pervasive agent, were properly rejected as anticipated by prior art reference, since weight of evidence supports examiner’s finding that cited reference discloses claimed “loading style sheet defining theme for portal,” since examiner correctly found that claimed “pervasive agent” is disclosed by reference, in that applicants’ specification describes pervasive device as including handheld devices, cellular phones, and the like, and reference describes devices such as personal computers and Web access devices, and since examiner properly determined that claimed pervasive agent of “specific type” broadly but reasonably includes communication device that is HTML-enabled, such as devices disclosed in reference.

Patentability/Validity — Anticipation — Prior art ($115.0703)

JUDICIAL PRACTICE AND PROCEDURE

Procedure — Burden of proof ($410.35)

Patent examiner’s rejection of claims in application for anticipatory rejection under 35 U.S.C. § 102(b) was not incomplete, since examiner responded to applicants’ arguments in final rejection and in answer, stating that arguments do not explain how language of claims patentably distinguishes them from references, and do not clearly point out patentable novelty of claims in view of state of art disclosed by references cited or objections made, and that arguments therefore do not comply with 37 C.F.R. § 1.111(c); applicants’ contentions that they do not have burden of responding to “incomplete” rejection is without merit, and they have failed to meet their burden of demonstrating error in examiner’s position.

Patent application of James Russell Godwin and Michael C. Wanderski (no. 10/4539,857). Applicants request rehearing of decision on appeal from final rejection of claims 1-20 in application under 35 U.S.C. §§ 101, 102(b), and 103(a), which was affirmed in large part, with new ground of rejection entered for two claims. Request for rehearing granted; request for changes to prior decision denied.

Prior decision: 90 USPQ2d 1319.
[Editor’s Note: The Board of Patent Appeals and Interferences has not designated this opinion as a precedential opinion of the board.]

Before Blankenship, MacDonald, and Courtenay, administrative patent judges.

Courtenay, J.

Appellants have filed a Request for Rehearing under 37 C.F.R. § 41.52(e)(1) (hereinafter “Request”) on September 2, 2008, for reconsideration of our Decision mailed June 30, 2008 (hereinafter “Decision”).

The Decision affirmed the Examiner’s rejection of claims 7-14 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Decision affirmed the Examiner’s rejection of claims 1, 5, 7-15, and 19 under 35 U.S.C. § 102(b) as being anticipated by Anuff, and affirmed the Examiner’s rejection of claims 2, 6, 16, and 20 under 35 U.S.C. § 103(a) as being unpatentable over Anuff in view of Griffin. The Decision further affirmed the Examiner’s rejection of claims 3, 4, 17, and 18 under 35 U.S.C. § 103(a) as being unpatentable over Anuff in view of Griffin and Lynch.

We also pro forma reversed the Examiner’s obviousness rejections of claims 2 and 16 and set forth new grounds of rejection for claims 2 and 16. Using our authority under 37 C.F.R. § 41.50(b), we rejected claims 2 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Anuff in view of Griffin and Lynch.

We have reconsidered our Decision of June 30, 2008, in light of Appellants’ comments in the Request for Rehearing, and we find no errors therein. We decline to change our prior Decision for the reasons discussed infra.

ISSUES

We address in sequence the following issues raised by Appellants’ contentions in the Request:

1. Appellants contend that our claim construction regarding the claim term “server” as a “provider of services” constitutes a new thrust of the rejection and therefore constitutes

Arguments not raised in the Briefs before the Board and evidence not previously relied upon in the Brief and any Reply Brief(s) are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) and (a)(3) of this section. 37 C.F.R. § 41.52(a)(1).
a new ground of rejection (Request 4). Appellants' arguments are specifically directed to claims 7 and 12 that stand rejected under 35 U.S.C. § 101 (Request 4).

Issue 1

Have Appellants shown that our claim construction regarding the claim term “server” as a “provider of services” introduces a new thrust of the rejection and therefore constitutes a new ground of rejection (claims 7 and 12)?

1. We do not agree with our claim construction as a new ground of rejection. No new rejection has been applied to claims 7 and 12. In response to Appellants' contention, we reaffirm our claim construction as set forth on page 3 of our Decision. Appellants' Specification at paragraph [0036] clearly indicates that Appellants' invention is not limited solely to hardware embodiments. (“The present invention can be realized in hardware, software, or a combination of hardware and software.”). In the context of a software embodiment, we maintain that a server is broadly but reasonably interpreted as a provider of services. (See Issue 2 discussion infra). Accordingly, Appellants' Request does not persuade us to modify our Decision to designate the rejection of claims 7 and 12 affirmed therein as a new ground of rejection pursuant to 37 C.F.R. § 41.50(b).

2. Appellants contend that our claim construction regarding the claim term “server” as a provider of services is unreasonable and inconsistent with both the Specification and the interpretation of those skilled in the art. We do not agree with Appellants' contention for the reasons stated above regarding Issue 1. We further note that the preamble of the claims recites a server system and the preamble of claim 12 recites a portal server. We note that paragraph [0012] of Appellants' Specification describes a portal server system and paragraph [0013] describes a portal server. Each of paragraphs [0012] and [0013] further disclose that “a visual service extension to the portal aggregator can be provided.” (emphasis added). Appellants' Specification at paragraph [0017] discloses “in accordance with the present invention, the rendering logic for individual portalts can access a visual service in a portal aggregator in the portal server.” (emphasis added). Thus, the claimed portal server (claim 7) and portal server system (claim 12) each provide a service (i.e., a visual service). Therefore, it is our view that our claim construction regarding the claim term “server” as a provider of services is reasonable and consistent with both the Specification and the interpretation of those skilled in the art. While Appellants' position is that the “broadest reasonable interpretation of the terms ‘portal server’ and ‘portal server system’ yields a claim construction that includes a hardware device which is statutory subject-matter,” (Request 8), we find paragraph [0036] of the Specification contravenes Appellants' contention (“The present invention can be realized in hardware, software, or a combination of hardware and software.”). A hardware device (i.e., computer) is not positively recited in claims 7 and 12. We note that “the present invention” includes all claims before us on appeal.

3. Appellants contend that the preambles of claims 7 and 12 should be given patentable weight and also that our preamble claim construction constitutes a new ground of rejection (Request 9).

Issue 3

Have Appellants shown that the preambles of claims 7 and 12 should be given patentable weight and also that our preamble claim construction constitutes a new ground of rejection (Request 9).

We disagree with Appellants' contentions for the reasons set forth in our Decision. We do not agree that our claim construction is a new ground of rejection. No new rejection has been applied to claims 7 and 12. In addition, we note that the body of claim 7 and the body of claim 12 are silent regarding the server recited in the preambles of claims 7 and 12. We broadly but reasonably construe the preambles

2 Cf. When limitations in the body of the claim rely upon and derive antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention. See Electro Sci. Indus. v. Dynemic Devices, Inc., 301 F.3d 1343, 1348 [64 USPQ2d 1781] (Fed. Cir. 2002); Robert Repport v. Dement, 254 F.3d 1053, 1059 [99 USPQ2d 1315] (Fed. Cir. 2001); Pittery Bowers, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1306 [51 USPQ2d 1161] (Fed. Cir. 1999).

of claims 7 and 12 as servers intended to be used as portal servers. Moreover, the body of claim 7 and body of claim 12 are each directed to purely software components. Therefore, we conclude that argued claims 7 and 12 broadly encompass a software process. Claims 7 and 12 do not sufficiently invoke a machine or a transformation of subject matter, and are therefore unpatentable under 35 U.S.C. § 101, as set forth on page 4 of our Decision. Because the Examiner has rejected these claims under 35 U.S.C. § 101, our analysis does not constitute new grounds of rejection. Moreover, Appellants' Request provides Appellants' due process with respect to our preamble claim construction that Appellants consider a new ground of rejection (see Request 13).

4. Appellants contend that the claimed invention recited in claims 7 and 12 is not directed to software per se (Request 13).

Issue 4

Have Appellants shown that the claimed invention recited in claims 7 and 12 is not directed to software per se?

2 In response, we again note that the body of claim 7 and body of claim 12 are each directed to purely software components. As previously discussed, Appellants' Specification at paragraph [0036] clearly indicates that Appellants' invention is not limited solely to hardware embodiments. (“The present invention can be realized in hardware, software, or a combination of hardware and software.”). As per our discussion above, in the context of a software embodiment, we maintain that a server is broadly but reasonably interpreted as a provider of services. Therefore, we are not persuaded by Appellants' argument that the scope of independent claims 7 and 12 requires hardware (i.e., a machine) in addition to the recited software components. We also note that software components can be communicatively linked in the abstract sense (see Request 14, ¶1, regarding Appellants' assertion that the server and the portal aggregator communicatively linked to said portal rendering logic requires hardware; see also claim 7).

To the contrary, Appellants' Specification describes the claimed portal rendering logic as software that can be compiled (see Spec. ¶5, para. [0010], “the portal rendering logic can be compiled for use in producing a view for the specified portal.”). Likewise, the claimed portal aggregator is described as a component that may be extended (Spec. ¶6, para. [0012], “Finally, a visual service extension to the portal aggregator can be provided.”). It is our view that the disclosed extendable aspect of the claimed portal aggregator strongly suggests software. We note that software components necessarily implement a process or series of steps (when executed by a machine), and it is our view that independent claims 7 and 12 do not positively recite implementing the invention on a specific apparatus. Accordingly, we find unavailing Appellants' arguments regarding the 35 U.S.C. § 101 rejection of claims 7 and 12.

5. Appellants contend that even if the transformation requirement was applied to claims 7 and 12, that each claim recites a visual service extension that transforms one form of data into another form of data (Request 16).

Issue 5

Have Appellants shown that program code that is programmed to transform one form of data into another form of data is statutory subject matter under 35 U.S.C. § 101?

As discussed above, it is our view that independent claims 7 and 12 do not positively recite a machine. The Court of Appeals for the Federal Circuit recently held that “the applicable test to determine whether a claim is drawn to a patent-eligible process under § 101 is the machine-or-transformation test set forth by the Supreme Court and clarified herein. In re Bilski, 545 F.3d 943, 2008 WL 4757110, slip opinion 2007-1130, p. 32, ¶2 [88 USPQ2d 1385] (Fed. Cir. 2008). Appellants' claims 7 and 12 do not transform physical subject matter, and the purported transformation of data, without a machine, is insufficient to satisfy the test set forth by the Supreme Court under § 101. See In re Bilski, 545 F.3d 943, 2008 WL 4757110, slip opinion 2007-1130, p. 32, ¶2 [88 USPQ2d 1385] (Fed. Cir. 2008) (“[E]ven a claim that recites "physical steps" but neither recites a particular machine or apparatus, nor transforms any article into a different state or thing, is not drawn to patenteligible subject matter.”).
6. Appellants contend that the question to be asked is whether the claimed subject matter encompasses statutory subject matter, and not whether the claimed subject matter includes non-statutory subject matter (Request 17).

**Issue 6**

Have Appellants shown that the proper question to be asked is whether the claimed subject matter encompasses statutory subject matter, and not whether the claimed subject matter includes non-statutory subject matter?

[4] In response, we note that our reviewing court has clearly stated that "[t]he four categories of § 101 together describe the exclusive reach of patentable subject matter. If a claim covers material not found in any of the four statutory categories, that claim fails outside the plainly expressed scope of § 101 even if the subject matter is otherwise new and useful." "It is not the only view, 300 F.3d 1346, 1354 [84 USPQ2d 1495] (Fed. Cir. 2007).

7. Regarding the anticipation rejection of claim 1, Appellants contend that the Board has not identified any substantial evidence that supports the assertion that the HTML web page 18 disclosed by Annu (see column 3, lines 44-45) is reasonably a type of "style sheet" for Annu's web page portal (Request 19).

**Issue 7**

Have Appellants shown that the Board has not identified any substantial evidence that supports the assertion that the HTML web page 18 disclosed by Annu (see column 3, lines 44-45) is reasonably a type of "style sheet" for Annu's web page portal?

[5] While we acknowledge Appellants' statement that cascading style sheets (CSS) and extensible stylesheet language (XSL) are World Wide Web Consortium standards (see Request 19-20), we note that independent claim 1 is silent regarding the CSS and XSL style sheet standards. We also note that CSS is disclosed in paragraph [0006] of Appellants' Specification. Thus, Appellants are arguing limitations found in the Specification that are not claimed. Moreover, we note that Appellants assert that "[b]y definition, a style sheet describes how a document is presented on a screen." (Request 20, ¶ 4). Because HTML also describes how a document is presented on a screen (e.g., paragraphs, line breaks, font type and size, etc.), we find Appellants' arguments unavailing.

Regarding the argued distinction between a portal and a style (Request 21), we note that Annu discloses that modules are objects that encapsulate a portion of content such as "news, sports scores; stock quotes, or weather forecasts." (Col. 6, ll. 22-26). Annu also discloses that "the portal server keeps only one instance of the module, which persists for the lifetime of a web server session." (Col. 6, ll. 30-32). Because Annu's portal server provides the content of only one module per session, it is our view that the module defines the theme for the portal. As pointed out by the Examiner, Annu explicitly discloses "an XML style sheet that generates the HTML for display as the content of a module." (Ans. 9, ¶ 3; see also Annu, col. 7, ll. 19-20). Therefore, we maintain our view that Appellants have not shown error in the Examiner's reading of the claimed style sheet on Annu's XML document. Accordingly, it is our view that the weight of the evidence supports the Examiner's finding that Annu discloses "loading a style sheet defining a theme for the portal, as claimed." (Claim 1).

8. Appellants contend that "[i]nstead of providing an explicit style sheet, the Honorable Board's analysis focuses on the phrase 'the like' found in Appellants' specification and appears to be asserting that the phrase 'the like' somehow broadens the ordinary meaning of 'permissive device' so as to encompass the devices taught by Annu." (Request 23).

**Issue 8**

Have Appellants shown that the supporting phrase "the like" found in Appellants' Specification (Spec. 2, ¶ [0003]) does not broaden the ordinary meaning of "permissive device" so as to encompass the devices taught by Annu?

We note that Appellants claim a "permissive device" (claims 1, 7, 12, and 15) and not a "permissive device." Thus, Appellants are arguing subject matter that is not on the pages 22-25 of the Request. To the extent that Appellants intended to argue "permissive agent," we have considered Appellants' arguments, but find them unavailing for the reason set forth on page 8 of our Decision. In particular, we note that Appellants' Specification describes a "permissive device" as including handheld computers, cellular phones, and the like. (Spec. 2, ¶ [0003]). Paragraph [0009] of Appellants' Specification further describes permissive agents to include handheld computing devices (Spec. 5, ¶ [0009]). "The present invention is a system, method and apparatus for processing portable style conformity across disparate pervasive agents, including handheld computing devices." Thus, it remains our view that the language of Appellants' Specification supports a broad but reasonable interpretation of the claimed pervasive agent that reads on the communication devices described in Annu. We note that Annu discloses communication devices as personal computers, workstations, web access devices, and like the to view informational content (Annu, col. 3, ll. 4-8). Therefore, we agree with the Examiner that the claimed pervasive agent is disclosed by Annu.

9. Appellants contend that neither the Examiner nor the Board has established that Annu teaches "mark-up language tags specific to a specific type of pervasive agent." (Request 27; see also claim 1). Instead, Appellants assert that "Annu teaches that HTML or XML is a format associated with a browser application." (Request 28).

**Issue 9**

Have Appellants shown that Annu does not disclose mark-up language tags specific to a specific type of pervasive agent?

We note that Annu discloses that "[a]t its basic level of operation, the browser permits a user to connect to a given network site, and download informational content from that site, such as an HTML document, for display at the user's computer." (Col. 1, ll. 16-21). The browser is an integral part of the computer device (i.e., pervasive agent or device), as disclosed by Annu.

To view the content provided by the servers, the devices run a browser application. At the server 12, the available content and services are stored on suitable storage media, such as magnetic or optical disk drives, in a format that is capable of being read by the browser applications, such as HTML or XML.

(Annu, col. 3, ll. 11-17).

As pointed out in our Decision, the claim term "type" is not defined in the claims (Decision 8). It is our view, given the breadth of the argued limitations (i.e., "mark-up language tags specific to a specific type of pervasive agent") that Annu discloses specific mark-up language tags on a mark-up language (e.g., HTML or XML) that enable web content to be displayed on a device that includes an integral browser that accepts specific mark-up languages, such as HTML or XML that have specific mark-up language tags. Thus, we agree with the Examiner that Annu teaches a pervasive agent of a "specific type" broadly that reasonably includes a communication device, that is HTML-enabled (versus XML-enabled), as stated in our Decision on page 8. We note again that Annu describes communication devices as personal computers, workstations, web access devices, and like the to view informational content (Annu, col. 3, ll. 4-8) (Decision 5, FF 3). Therefore, we find Appellants' arguments unavailing.

10. Regarding the anticipation rejection of claims 5, 7, 9, and 10 under 35 U.S.C. 102(b) as being anticipated by Annu, Appellants contend that the Examiner has (1) made an incomplete rejection, and (2) that Appellants do not have a burden to respond to an incomplete rejection (Request 29).

**Issue 10**

Have Appellants shown that the Examiner's rejection of claims 5, 7, 9, and 10 under 35 U.S.C. 102(b) is incomplete, and if so, are Appellants relieved of the burden of responding to an incomplete rejection?

[6] As stated in our Decision on page 9, we disagree on both counts. With respect to each of claims 5, 7, 9, and 10, we note that Appellants merely argue in their principal Brief that the Examiner failed to recite the limitations recited in these claims are identically disclosed by the Annu reference (see App. Brief 11-13). We note the Examiner has responding to Appellants' arguments on page 7 of the Final Rejection and also page 11 of the Answer regarding claims 1, 5, 7-15, and 19 as being anticipated by Annu under 35 U.S.C. 102(b). The Examiner states that Appellants' arguments do not comply with 37 C.F.R. § 1.11(c) in that they (1) amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patently distinguishes them from the references, and (2),
Appellants' arguments do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. We further note that the Examiner has set forth rejections for each of claims 5, 7, 9, and 10 on pages 3 and 4 of the Final Rejection and as shown on page 4 of the Answer.

We find unpersuasive Appellants' second contention that Appellants do not have a burden to respond to an incomplete rejection. To the contrary, Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. See In re Kahn, 441 F.3d 977, 985-86 [78 USPQ2d 13299] (Fed. Cir. 2006). It is our view that Appellants have not met that burden, for the reasons discussed on pages 9 and 10 of our Decision.

11. Regarding the obviousness rejections of claim 6 as being unpatentable over Anuff and Griffin, Appellants have merely incorporated the same arguments previously presented with regard to claims 5, 7, 9, and 10 (Request: 40).

 ISSUE 11

Have Appellants shown that claim 6 is patentable over Anuff and Griffin?

In response, we find Appellants' argument unavailing regarding claim 6 for the same reasons discussed supra regarding claims 5, 7, 9, and 10.

CONCLUSION

We have carefully considered the arguments raised by Appellants in the Request for Rehearing, but none of these arguments are persuasive that our original Decision was in error. We are still of the view that the invention set forth in claims 1-20 is unpatentable over the applied prior art based on the record before us in the original appeal. We are still of the view that the invention set forth in claims 7-14 is directed to non statutory subject matter under 35 U.S.C. § 101 based on the record before us in the original appeal. This Decision on Appellants' Request for Rehearing is deemed to incorporate our earlier Decision (mailed June 30, 2008) by reference. See 37 C.F.R. § 41.52(a)(1).

DECISION

We have granted Appellants' request to the extent that we have reconsidered our Decision of June 30, 2008, but we deny the request with respect to making any changes therein.

COPIRUGHTS

[1] Rights in copyright: infringement — Right to reproduction — Access, copying, and substantial similarity — In general (§ 213.0503.01)

Plaintiff in action alleging infringement of its copyright for plush toy tree frog is likely to succeed on issue of substantial similarity, since even realistic reproduction of natural phenomenon may enjoy copyright protection, and many features of plaintiff's copyrighted toy are elements of original expression that are not dictated by effort to portray Puerto Rican tree frog, since there are certain major disparities between parties' toys, but they are virtually identical with respect to many elements of protected expression, including stitching, color combination, posture, size, and placement of Puerto Rican flag on frog's belly, since plaintiff presented testimony of seasoned vendor of plush toys who stated that he unwrittenly received shipments of defendants' toys and did not notice difference until much later date, when he closely examined products to ascertain their provenance, and since this testimony is strong evidence that ordinary observer would overlook any differences between parties' toys.


Samuel F. Panias-Portalatin, of Hogland & Panias, San Juan, P.R.; Carla Ferraro-Lugo, of Ramos-Diaz, Acevedo & Gonzalez Law Offices, San Juan, for appellants.

Marie Elise Lopez-Adames, of Gonzalez-Lopez & Lopez-Adames, San Juan, for appellee.

Before Torruella and Selya, circuit judges, and Leval, circuit judge (Second Circuit, sitting by designation).

Selya, J.

A famous fairy tale, of ancient vintage, tells of an ugly frog who, when befriended by a beautiful damsel, turns into a handsome prince, marries his rescuer, and (presumably) lives happily ever after. See Jacob Grimm & Wilhelm Grimm, The Frog-King, reprinted in 17 The Horn Book Classics 47 (Charles W. Eliot ed., P.F. Collier & Son 1909). The coqui is a tree frog indigenous to Puerto Rico. Plaintiff-appellee Coquico, Inc. has not yet managed to turn the coqui into an imperial possession. It has, however, fashioned a popular stuffed-animal rendering of the coqui and, thus, turned the frog into dollars.

Coquico secured a copyright on its stuffed animal to protect this amphibian revenue source. When the defendants, Angel Edgardo Rodriguez-Miranda (Rodriguez) and Identiko, Inc., began selling a competing coqui, Coquico sued for, among other things, copyright infringement. The district court previously enjoined the defendants from infringing Coquico's copyright.

The defendants appeal. Concluding, as we do, that the district court did not abuse its discretion in granting the preliminary injunction, we affirm.

I. BACKGROUND

We rehearse the factual and procedural antecedents of this appeal. "credit[ing] the undisputed facts presented below and adopt[ing] the district court's findings as to controverted matters in the extent they are supported by the record and not clearly erroneous." United Elec., Radio & Mach. Workers v. 165 Pleasont St., 960 F.2d 1080, 1083 (1st Cir. 1992).

Coquico manufactures and distributes plush-toy depictions of animals. Pertinently, it produces a line of plush toys portraying the coqui coqui, a small brown tree frog much beloved in Puerto Rico. This litigation concerns Coquico's standard plush-toy coqui, registered as a work of visual art with the United States Copyright Office on June 22, 2001, under the application "Coqui." In designing Coquis, Coquico hired a scientist, a photographer, and a recording engineer with an eye toward reproducing key features of the coqui's appearance and avoiding