



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/297,313	12/08/2005	Zachary Adam Garbow	ROC920050186US1	3479
37691	7590	02/01/2013	EXAMINER	
WOOD, HERRON & EVANS, I.L.L.P. (IBM) 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			NGUYEN, LE V	
			ART UNIT	PAPER NUMBER
			2174	
			NOTIFICATION DATE	DELIVERY MODE
			02/01/2013	ELECTRONIC

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

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptodock@whe-law.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* ZACHARY ADAM GARBOW, CANDACE TRIELLE  
PEDERSON, and MICHAEL ANTHONY NELSON JR.

---

Appeal 2010-005975  
Application 11/297,313  
Technology Center 2100

---

Before, ERIC S. FRAHM, DAVID M. KOHUT, and  
JASON V. MORGAN, *Administrative Patent Judges*.

KOHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1-22. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse the Examiner's rejection of these claims.

### INVENTION

The invention is directed to a method, program product, service, and apparatus for maintaining a plurality of rulesets related to likeness data wherein a brokering service controls the incorporation of likeness data based upon the plurality of rulesets. Spec. 3. Claim 1 is representative of the invention and is reproduced below:

1. A method of controlling the incorporation of likeness data for an individual into a media presentation, the method comprising:

maintaining a broker service that manages and distributes a plurality of rulesets respectively associated with a plurality of individuals, wherein each of the plurality of rulesets restricts incorporation of likeness data associated with the associated individual into media presentations, and wherein each of the plurality of rulesets includes at least one rule configured to define a condition under which the likeness data for the associated individual may or may not be incorporated into a media presentation; and

receiving a request for the ruleset for a selected individual with the broker service and in response thereto using the broker service to initiate communication of the ruleset to a requesting entity.

### REFERENCES

Brush, II	US 5,884,029	Mar. 16, 1999
Sitrick	US 2003/0190954 A1	Oct. 9, 2003

Park	US 2007/0063999 A1	Mar. 22, 2007 (filed Sep. 22, 2005)
Wells	US 7,208,669 B2	Apr. 24, 2007 (filed Aug. 25, 2004)
Funge	US 2007/0260567 A1	Nov. 8, 2007 (filed July 6, 2004)

#### REJECTIONS AT ISSUE

Claims 1, 2, 4, 6-12, and 16-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Brush and Sitrick.<sup>1</sup> Ans. 3-7.

Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Brush, Sitrick, Funge. Ans. 7-8.

Claims 5 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Brush, Sitrick, and Wells. Ans. 8-9.

Claims 14 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Brush, Sitrick, Wells, and Park. Ans. 9-10.

#### ISSUE

Did the Examiner err in finding that the combination of Brush and Sitrick teaches or suggests a plurality of rulesets that restrict incorporation of likeness data associated with the associated individual into media presentations, as required by independent claims 1 and 17-19?<sup>2</sup>

---

<sup>1</sup> The Examiner inadvertently left out claims 4 and 6-12 from the statement of rejection but included them in the body of the rejection. We have included the claims in the statement of the rejection here.

<sup>2</sup> Appellants make additional arguments with respect to claims 2-22. App. Br. 15-20. We will not address the additional arguments as this issue is dispositive of the Appeal.

## ANALYSIS

Claim 1 recites “wherein each of the plurality of rulesets restricts incorporation of likeness data associated with the associated individual into media presentations.” Independent claims 17-19 contain similar limitations. Claims 2-16 and 20-22 depend upon claims 1 and 19. The Examiner finds that Brush teaches this limitation since Brush teaches restricting how an avatar interacts with objects in certain scenarios. Ans. 11. We disagree. As correctly indicated by Appellants, Brush teaches avatar artificial intelligence, not rules that restrict likeness data based upon the media presentation. App. Br. 10. Additionally, Appellants contend that the artificial intelligence only controls how the avatars interact with one another. App. Br. 10. In other words, even if we are to assume that the avatar’s artificial intelligence is equivalent to the avatar’s personality, and thus arguably “likeness data,” the avatar’s artificial intelligence never changes based on the media presentation. Thus, the Examiner has not provided sufficient evidence nor do we find that the references teach or suggest restricting the incorporation of likeness data based on the media presentation. As a result, we cannot sustain the Examiner’s rejection of claims 1-22.

## CONCLUSION

The Examiner erred in finding that the combination of Brush and Sitrick teaches or suggests a plurality of rulesets that restrict incorporation of likeness data associated with the associated individual into media presentations, as required by independent claims 1 and 17-19.

Appeal 2010-005975  
Application 11/297,313

**SUMMARY**

The Examiner's decision to reject claims 1-22 is reversed.

**REVERSED**

msc