



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.
09/978,144	10/15/2001	Scott A. Rosenberg	03-380	4095
20306	7590	01/29/2013	EXAMINER	
MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP			STAMBER, ERIC W	
300 S. WACKER DRIVE			ART UNIT	
32ND FLOOR			PAPER NUMBER	
CHICAGO, IL 60606			3622	
			MAIL DATE	
			DELIVERY MODE	
			01/29/2013	
			PAPER	

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.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SCOTT A. ROSENBERG and
MATTHEW H. SELF

Appeal 2010-008269
Application 09/978,144
Technology Center 3600

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Scott A. Rosenberg, et al. (Appellants) seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-3, 5, 7, 8, 11-15, 17-21, 23, 31, 38, 39, 61-63, 68-75, 78-81, and 84-89. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.¹

THE INVENTION

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method of re-evaluating an order of a plurality of ads, the method comprising:

a client receiving from a remote server the plurality of ads and a plurality of ad control files, wherein each of the ad control files is associated with a respective ad of the plurality of ads, wherein at least one of the ad control files includes a trigger parameter, wherein each of the ads is associated with a respective placement value, and wherein at least one of the ads is associated with a respective weight value;

the client determining the respective weight value for each ad that is associated with a respective weight value, wherein the client uses a weight rule contained in the ad control file associated with the ad so as to determine the weight value

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed Dec. 31, 2009) and Reply Brief ("Reply Br.," filed May 18, 2010), and the Examiner's Answer ("Ans.," mailed Mar. 24, 2010).

associated with the ad, and wherein the weight rule of at least one of the ad control files comprises an equation for calculating a weight value that increases proportionately to time passed;

the client maintaining a trigger table that includes at least one trigger parameter added to the trigger table from the ad control files, wherein each trigger parameter of the trigger table is associated with one or more ads of the plurality of ads; and

the client updating a parameter, checking the trigger table to determine if the updated parameter is a trigger parameter for any ad of the plurality of ads, and if so, reevaluating the placement value of each ad of the plurality of ads, and thereafter the client reevaluating the order of the plurality of ads to determine a next ad to be displayed,

wherein the order of the plurality of ads is indicated by a data structure, and

wherein the client re-evaluating the order of the plurality of ads includes (i) for each of the at least one of the ads associated with a respective weight value, the client multiplying the re-evaluated placement value associated with that ad by the weight value associated with that ad so as to determine a weighted placement value for that ad, and (ii) the client placing each ad associated with a weight value on the data structure in accordance with the weighted placement value for that ad.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Marsh	US 5,848,39	Dec. 8, 1998
Eldering	US 2002/0083439 A1	Jun. 27, 2002
Armstrong	US 7,017,173 B1	Mar. 21, 2006

The following rejections are before us for review:

1. Claims 1-3, 5, 7, 8, 11-15, 17-21, 23, 38, 61-63, 68-75, 78-81, and 84-89 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Eldering and Marsh.
2. Claims 31 and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Eldering, Marsh, and Armstrong.

ISSUE

Would the cited prior art combination lead one of ordinary skill in the art to a method of re-evaluating an order of a plurality of ads wherein, as claimed,

the client determining the respective weight value for each ad that is associated with a respective weight value, wherein the client uses a weight rule contained in the ad control file associated with the ad so as to determine the weight value associated with the ad, and wherein the weight rule of at least one of the ad control files comprises an equation for calculating a weight value that increases proportionately to time passed

(independent claim 1; similar language is used in the other independent claim 38)?

ANALYSIS

With respect to the claim limitations at issue, as part of establishing a prima facie case of obviousness, the Examiner found that

Eldering does not appear to teach a weighted placement value for an ad derived by a product of a re-determined placement value and the ad's weight value whereby the ad's weight value is based upon the ad control file's weight rule which includes an equation for proportionate weight value increase as time passes.

Ans. 5. Instead, the Examiner relied on Marsh. Ans. 5. According to the Examiner, one of ordinary skill in the art would have modified Eldering in light of Marsh and in doing so would have been led to the subject matter as claimed. Specifically, the Examiner concluded that

[i]t would have been obvious to one of ordinary skill at the time of the invention to have borrowed the time-dependent concepts from Marsh et al[.] and implemented them with the continually re-ordered advertising queue of Eldering's PVR's ad processing unit so as to enable advertisers to specify equations using particular time-based elements/coefficients, thereby offering the customized ability to prioritize particular ads according to time passed since it was last seen.

Ans. 5.

The Appellants challenge the conclusion that Eldering and Marsh would have led one of ordinary skill in the art to a method of re-evaluating an order of a plurality of ads as claimed. According to the Appellants, the difficulty with the Examiner's reasoning is that the references "do not reasonably lead to *wherein the weight rule of at least one of the ad control files comprises an equation for calculating a weight value that increases proportionately to time passed*, as recited in claims 1 and 38." App. Br. 7.

Emphasis original.

According to the Examiner,

In particular, Marsh et al[.] teaches that a server can deliver the advertising content as well as the metadata ("ad control information") such as expiration, maximum user impressions, etc.) needed for the client to determine queue sorting and advertisement placement [8:47-63]. One of the aspects deemed important to advertisement sorting and display is sorting the

queue based on "time since last seen" (tsls) as well as (advertiser-specified) criteria for each ad, namely a pre-defined weight such as $c_2 = \text{TSL_WEIGHT}$. These are used in a typical equation which multiplies terms with coefficients [10:30-53] to determine a queue order of ads. The ads can then be displayed in accordance with the queue.

Ans. 5. The Examiner's characterization of the scope and content of Marsh appears to be accurate. However, it does not fully address the claim limitation at issue, which calls for a weight rule comprising "an equation for calculating a weight value that increases proportionately to time passed." " $c_2 = \text{TSL_WEIGHT}$ " that Marsh discloses defines one of four weighting constants (*see* col. 10, ll. 34-38) to which four scheduling criteria (e.g., time since last seen (TSL)) are associated. "These constants [which are assigned predetermined values] may then be used to construct a separating hyperplane through the origin defined by the following hyperplane equation: $(c_1 * x_1) + (c_2 * x_2) + (c_3 * x_3) + (c_4 * x_4) = 0$ [where $x_2 = \text{tsls}$]." Col. 10, ll. 40-45. The hyperplane provides for "two halves: one half when the first of the two advertisements being sorted should be presented first, and one half when the second of the two advertisements should be presented first." Col. 10, ll. 53-57. Based on the values of c_1 - c_4 , one can decide "the order in which the advertisements should be presented by the advertisement display scheduler **700**" (col. 11, ll. 1-2). TSL_WEIGHT , in particular, accounts for "[i]f the first advertisement was seen more recently, the delta is negative (i.e., favors the first advertisement). Since it is desirable to present the advertisement which has not been seen recently, the sign of the delta is changed to favor the second advertisement." Col. 11, ll. 20-27. We do not see in this

disclosure “an equation for calculating a weight value that increases proportionately to time passed.” The hyperplane equation which contains the alleged time-dependent weighting constant (i.e., $c_2 = \text{TSLS_WEIGHT}$) simply establishes the order of display of two advertisements given the time since last seen (TSLS). We agree with the Appellants that this “does not amount to an ‘equation for calculating a weight value that increases proportionately to time passed,’ as recited in independent claims 1 and 38 and as provided for in Appellant[s]’ specification” (Reply Br. 3).

Accordingly, for the foregoing reasons, we find that the cited prior art combination would not lead one of ordinary skill in the art to a method of re-evaluating an order of a plurality of ads wherein, as claimed,

the client determining the respective weight value for each ad that is associated with a respective weight value, wherein the client uses a weight rule contained in the ad control file associated with the ad so as to determine the weight value associated with the ad, and wherein the weight rule of at least one of the ad control files comprises an equation for calculating a weight value that increases proportionately to time passed

(independent claim 1; similar language is used in the other independent claim 38). Therefore, the rejections are not sustained.

CONCLUSIONS

The rejections of claims 1-3, 5, 7, 8, 11-15, 17-21, 23, 38, 61-63, 68-75, 78-81, and 84-89 as being unpatentable over Eldering and Marsh and of claims 31 and 39 as being unpatentable over Eldering, Marsh, and Armstrong, are reversed.

Appeal 2010-008269
Application 09/978,144

DECISION

The decision of the Examiner to reject claims 1-3, 5, 7, 8, 11-15, 17-21, 23, 31, 38, 39, 61-63, 68-75, 78-81, and 84-89 is reversed.

REVERSED

hh