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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT DEAN VERES and
CHING-JYE LIANG

Appeal 2010-009647
Application 10/252,128
Technology Center 3600

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

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1 to 3, 6 to 22 and 25 to 38. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

BACKGROUND

Appellants' invention is directed to a method and system to customizing a network based transaction facility seller application.

Claim 1 is illustrative:

1. A method of customizing a seller application that facilitates communication of listings to a network-based transaction facility, the method comprising:

configuring a seller application according to a default targeted site, the default targeted site being the site from which a user downloaded the seller application;

facilitating selection of at least one targeted site from a plurality of targeted sites presented to the user, the plurality of targeted sites being supported by a network-based transaction facility; and

configuring the seller application according to the at least one targeted site selected instead of the default targeted site.

The Examiner relies on the following prior art reference as evidence of unpatentability:

Kumhyr	US 2003/0005159 A1	Jan. 2, 2003
Lakritz	US 6,623,529	Sep. 23, 2003

Appellants appeal the following rejections:

Claims 1 to 3, 6 to 22 and 25 to 38 under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 1 to 3, 6 to 22 and 25 to 38 under 35 U.S.C. § 103(a) as being obvious over Lakritz in view of Kumhyr.

FACTUAL FINDINGS

We adopt all of the Examiner's findings on pages 4 to 5 of the Answer as our own. Ans. 4 to 5.

ANALYSIS

Indefiniteness

We will sustain this rejection. The Appellants make reference to the MPEP and cite case law but do not apply the MPEP section or the case law to the claims rejected or the rejection made by the Examiner. The Appellants do not otherwise respond to the rejection and thus we are not persuaded of error on the part of the Examiner.

Obviousness

We are not persuaded of error on the part of the Examiner by Appellants' argument that the Abstract of Lakritz, relied on by the Examiner, fails to reference the step of "configuring the seller application according to a default targeted site, the default targeted site being the site from which the user downloaded the seller application" in as recited in claim 1. We find that Lakritz discloses in the Abstract that the method determines the language and country of the user from which the user downloads the seller application and delivers or *configures* the seller application and content in that language and necessary font to the user. As such, Lakritz does disclose "configuring the seller application according to a default targeted site, the default targeted site being the site from which the user downloaded the seller application" as broadly recited in claim 1. In addition, we find this

disclosure of Lakritz to also disclose a module “to initially configure the seller application according to a default targeted site, the default targeted site being the site from which the seller application is downloaded” as recited in claim 20.

In view of the foregoing, we will sustain the Examiner’s rejection of claims 1 and 20.

We will not sustain the Examiner’s rejection of claims 2 to 19 and 21 to 38 because we agree with the Appellants that the Examiner fails to state specifically where in Lakritz and Kumhyr the elements recited in the dependent claims are found. In this regard, we note that the Examiner has not addressed the disclosures of Lakritz or Kumhyr specifically in regard to the dependent claims and as such the rejection fails in regard to these claims on this basis alone. In addition, the Examiner states only that the combination is *capable* of performing the various steps but does not state much less prove that the steps would have been obvious in view of the combination at the time of the invention. Therefore, we will not sustain the rejection as to the dependent claims.

DECISION

We affirm the Examiner’s § 112 rejection.

We also affirm the Examiner’s § 103 rejection of claims 1 and 20.

We do not affirm the Examiner’s § 103 rejection of claims 2, 3, 6 to 19, 21 to 38.

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TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)).

ORDER

AFFIRMED-IN-PART

JRG