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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID JESKE and GAKU UEDA

Appeal 2010-010742
Application 10/949,441
Technology Center 2100

Before CARL W. WHITEHEAD JR., ERIC S. FRAHM, and
ANDREW J. DILLON, *Administrative Patent Judges*.

DILLON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-16 and 18-22. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellants describe the present invention as follows:

Methods, systems, and graphical user interfaces that automatically personalize and prioritize links to online groups are disclosed. A server automatically generates a set of prioritized links to online groups based at least in part on a

computer user's browsing patterns with respect to online groups and sends these links to a client for display in a navigation region in a graphical user interface.

Abstract.

The Examiner relies on the following references as evidence of unpatentability:

Horvitz	US 7,203,909 B1	Apr. 10, 2007
Blagsvedt	US 2005/0091314 A1	Apr. 28, 2005

THE REJECTIONS

The Examiner rejected claims 1-16 and 18-22 under 35 U.S.C. § 103 as unpatentable over Horvitz and Blagsvedt. Ans. 3-9.¹

ILLUSTRATIVE CLAIMS

Independent claims 1 and 16 are illustrative. We have reproduced claims 1 and 16, below, with emphasis on key disputed limitations and added bracketed language, e.g., “[limitation 1],” denoting those limitations for easier subsequent reference. Given the manner in which Appellants have addressed the claims (see below), we list claim 16 and then claim 1.

16. A computer implemented method comprising:

at a computer comprising memory, a display, and a processor:

automatically generating a set of prioritized links to web sites based at least in part on a computer user's

¹ Throughout this opinion, we refer to the Appeal Brief filed January 19, 2010 (“App. Br.”) and the Examiner’s Answer mailed March 15, 2010 (“Ans.”).

browsing patterns with respect to said websites, *each link in the set of prioritized links corresponding to a respective website having new activity since a respective last visit by said user to the respective [website]² [limitation 1]*, the new activity comprising one or more postings of new content, and

displaying said set of links in a group in a graphical user interface.

1. A computer implemented method comprising:

at a server system having one or more processors and memory storing programs executed by the one or more processors:

automatically generating a set of prioritized links to online groups based at least in part on a computer user's browsing patterns with respect to online groups, *each link in the set of prioritized links corresponding to a respective online group having new activity since a respective last visit by said user to the respective online group, the new activity comprising one or more new postings [limitation 2]*,

automatically generating indicia of a quantity of new activity since the respective last visit by said user for at least some of said online groups, the quantity of new activity comprising a number of new postings,

automatically generating a set of links to online groups most recently visited by said user,

² This bracketed language, "website," is added to address a clear typographical error of claim 16. In addition to being self-evident from the claim, the intended language "website" is acknowledged by Appellants' arguments. *See e.g.*, App. Br. 11 ("Claims 16 and 18-20 are patentable over Horvitz and Blagsvedt because neither reference displays links to web sites with new postings since respective last visits by a user[.]").

sending said set of prioritized links, said indicia, and said set of links to online groups most recently visited by said user to a client computer for display in a graphical user interface, said set of prioritized links to be displayed in a group, and

updating said set of prioritized links and said indicia as said user views content from a plurality of online groups,

wherein said browsing patterns with respect to online groups include said user's browsing behavior after new activity is indicated for at least some of said online groups [limitation 3], and

wherein said set of prioritized links includes links to online groups that have had the most activity since a prior visit by said user [limitation 4].

ISSUES

Appellants present five sets of claim groupings A-E. Appellants argue that each claim of a given set requires one or more of the four claim limitations 1-4, which are alleged to distinguish the invention over Horvitz and Blagsvedt. The groupings are as follows:

Group A) Appellants argue that claims 16 and 18-20 each require limitation 1. App. Br. 12-15.

Group B) Appellants argue that claims 2, 4, 6-15, 21, and 22 each require limitation 2. *Id.* at 16-17.

Group C) Appellants argue that claim 3 requires limitations 2 and 3. *Id.* at 16-17.

Group D) Appellants argue that claim 5 requires limitations 2 and 4. *Id.* at 18-20.

Group E) Appellants argue that claim 1 requires limitations 2-4. *Id.* at 16-18.

Because limitations 1 and 2 differ only with respect to their recitations of “websites” (limitation 1) versus “online groups” (limitation 2), which are patentably indistinct (explained *infra*), we need only address whether limitations 2-4 patentably distinguish the invention over Horvitz and Blagsvedt. We will address each of limitations 2-4, below, with respect to claim 1. All claims accordingly stand or fall with claim 1.

We note Appellants’ contention that the rejected claims do not stand and fall together. App. Br. 11. However, Appellants have not addressed – and we likewise will not attempt to address – how the claim scopes may differ for each and every claim. *See In re Baxter Travenol Labs*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an appellant[.]”).

ANALYSIS

We construe claim 1 *de novo*. *See In re Donaldson Co., Inc.*, 16 F.3d 1189, 1192 (Fed. Cir. 1994). As noted *supra*, we construe the “online groups” of claim 1 as patentably indistinct from websites. We do so because the meaning of “group” – a user group discussion (Spec., ¶¶ [0002-3]) – limits only the information content of a respective website and accordingly carries no patentable weight. *See In re Lowry*, 32 F.3d 1579, 1583 (Fed. Cir. 1994). Thus, in conducting our patentability analysis, we construe the “online group/s” of claim 1 as reading on any website/s. By extension, we construe the related “postings” of claim 1 as reading on any entry of displayed data, e.g., a website update or comment.

Given the above interpretations, all but limitations 3 and 4 of claim 1 can be met by the following steps:

- recording the links of websites visited by a user;
- generating a first set of the links based upon the user's interest in each website, as inferred from the user's browsing patterns ("based at least in part on a computer user's browsing patterns," as claimed);
- generating a second set of the links based upon how recently each website was visited by the user ("generating a set of links to online groups most recently visited by said user," as claimed);
- deleting the links, in each set, for websites lacking a new post by other users ("each link in the set of prioritized links corresponding to a respective online group having new activity since a respective last visit by said user to the respective online group, the new activity comprising one or more new postings," as claimed);
- ranking the remaining links, in each set, by their number of new posts ("generating indicia of a quantity of new activity," as claimed); and
- displaying the ranked two sets of links ("sending said set of prioritized links, said indicia, and said set of links ... most recently visited ... to a client computer for display," as claimed).

Horvitz's system infers a user's topic interest and page interest in website based upon the user's browsing patterns. Horvitz col. 10, ll. 9-17; Fig. 4. Displaying (and thus also generating) a first set of links for websites of highest topic interest and second set of links for websites of highest page interest would have been an expected implementation of these distinct user

interests. *See KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (“If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.”).

Horvitz system also determines each website’s utility based upon a plurality of users’ interactivity therewith (Horvitz, col. 10, ll. 11-15; col. 12, ll. 55-61) and sorts links based upon each websites’ respective utility (*id.* at col. 12, ll. 25-27). Deleting links of un-posted websites and then ranking each remaining link based upon the respective website’s quantity of new postings, by other users, would have been an expected result of emphasizing the recentness and degree of other users’ interactivity with websites.

Turning to limitation 3, Horvitz updates the montage when revisited and thus implicitly updates the topic interest filters based upon a user’s most recent browsing behavior. *Id.* at col, 10, ll. 57-61 (“Because the montage 214 can depend on a user’s current browsing context 282, a new montage page 220 or display can be created each time the user revisits his or her montage[.]”). In light of this teaching, the monitored browsing patterns would include the user’s most recent browsing behavior and, in turn, behavior “after new activity is indicated” for some websites, as claimed.

Turning to limitation 4, if a set of websites (and thus links) of highest topic interest is inferred from the user’s browsing patterns, that set would be expected to include websites having a greatest amount of activity by the user. That is, one would reasonably expect that websites of greatest topical interest to the user would also be websites of greatest activity by the user, i.e., “most activity since a prior visit by said user,” as claimed. *See In re Preda*, 401 F.2d 825, 826 (CCPA 1968) (“[I]t is proper to take into account

not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom”).

Appellants' Arguments

We have carefully reviewed Appellant's arguments. Each of the arguments is either insufficient *per se* and/or self-evidently moot in view of our claim construction and analysis. Generally speaking, some arguments fail to “proffer a serious explanation” of the difference between the claimed invention and applied art. *See Jung*, 637 F.3d 1356,1365 (Fed. Cir. 2011). Some arguments are incommensurate with the scope of claim 1 and/or attack the Examiner's reliance on Blagsvedt. The remaining arguments are addressed by our findings that Horvitz's system would expectedly track highly recent website activities.

Conclusion

Limitations 1-4 are distributed amongst the claims in the manner described *supra*, pp. 2-3, and asserted by Appellant as distinguishing their respective claims over Horvitz and Blagsvedt. Given the above analysis, we hold that limitations 2-4 do not patentably distinguish the claimed invention over Horvitz and Blagsvedt. Further, in view of our failure to find a patentable distinction between limitation 1 and limitation 2, as discussed above, we find that all of the argued limitations 1-4 are shown or suggested by Horvitz and Blagsvedt.

Accordingly, the obviousness rejection of claims 1-16 and 18-22 over Horvitz and Blagsvedt is sustained.

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ORDER

The Examiner's decision rejecting claims 1-16 and 18-22 is affirmed.

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

AFFIRMED

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