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EXAMINER
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DURAN, ARTHUR D

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* FRANK C. NICHOLAS, IAN B. CARSWELL,  
and PAUL M. HLETKO

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Appeal 2011-006647  
Application 10/456,826  
Technology Center 3600

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*Before:* BIBHU R. MOHANTY, MICHAEL W. KIM, and  
JAMES A. TARTAL, *Administrative Patent Judges.*

KIM, *Administrative Patent Judge.*

DECISION ON APPEAL

## STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1-13 and 21-27<sup>1</sup>. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6.

The invention relates to targeted distribution of advertisements over a network. (Spec. 1:18-20).

Claims 1 and 7, reproduced below, are further illustrative of the claimed subject matter.

1. A method of online advertising over a network comprising:
  - receiving, at an ad server node, at least one generic ad request from a generic advertiser, the generic ad request including a number of requested impressions;
  - an ad server of the ad server node providing availability information to one or more child advertisers of the generic advertiser based on the number of requested impressions for the generic ad request and a web site designation for the generic ad request;
  - receiving, at the ad server node, targeted ad requests including target information from at least one of the one or more child advertisers;
  - an ad server of the ad server node determining a media buy output based on the received targeted ad requests and the generic ad request.

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<sup>1</sup> Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed November 8, 2010) and Reply Brief ("Reply Br.," filed March 9, 2011), and the Examiner's Answer ("Ans.," mailed December 9, 2010).

7. A method of operating an online target advertising system, the method comprising:  
an ad server node providing a generic ad run comprising a number of requested impressions and a web site designation;  
an ad server of the ad server node providing availability information relating to the number of requested impressions and the website designation of the generic ad run;  
receiving, at the ad server node, target ad run input from an advertiser corresponding to the availability information at an ad server node, the target ad run input including target information;  
an ad server of the ad server node determining a generic ad or target ad to be served based on the target information while the generic ad run is in effect.

Claims 1-13 and 21-27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Holtz (US 2002/0053078 A1; publ. May 2, 2002) in view of Armstrong (US 2002/0087352 A1; publ. Jul. 4, 2002) in view of Gerace (US 5,848,396; iss. Dec. 8, 1998)

We AFFIRM-IN-PART.

## ANALYSIS

### *Independent Claims 1 and 27*

We are persuaded the Examiner erred in asserting that a combination of Holtz, Armstrong, and Gerace discloses or suggests “providing availability information to one or more child advertisers of the generic advertiser based on the number of requested impressions for the generic ad request and a web site designation for the generic ad request,” as recited in independent claims 1 and 27. (Appeal Br. 6-10; Reply Br. 6-8). The

Examiner admits that Holtz does not disclose the aforementioned aspect of independent claims 1 and 27. (Ans. 5-6, 17). The Examiner then asserts that

Holtz discloses “[77]... Priorities can be set to determine local versus national, along with cost per thousand (CPM) downloads.” And, Holtz discloses ad comparison reports where advertiser and ad firm ad placement purchases can be compared ([241, 245]). And, Gerace discloses that the ranking [of] advertiser ad priority can be affected by number of impressions requested by an advertiser (14:65-15:25). Hence, it is obvious that ad requested information of the national/generic advertiser can be provided to the child/local advertiser. One would be motivated to do this so that the child advertiser can better make ad purchase decisions.

(Ans. 6; emphasis in original). However, paragraph [0077] of Holtz is directed to determining local versus national priority of *advertisements served*, and not the recited generic ad requests. Similarly, paragraphs [0241] and [0245] of Holtz are directed to compiling reports for *advertisements served*, and again, not the recited generic ad requests. The same goes for the cited portions of Gerace, which are directed to ranking advertiser ad priority for ads that have already been purchased by a sponsor, and thus are not related to the recited generic ad requests. In this context, the proffered rationale for modifying Holtz to meet the aforementioned aspect of independent claim 1 is an unsupported conclusory assertion. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”).

The Examiner later cites paragraphs [0077], [0239], [0246], [0313], [0315], and [0318] of Holtz for support that

since Holtz knows how many ad impressions the national advertiser has purchased, and Holtz knows how many ad impressions have actually been shown, and Holtz synchronizes the national and local advertising, and since Holtz reports on national and local ad metrics and performance, it is obvious that Holtz can share the number of national ads requested and shown information with the local/child advertiser.

(Ans. 17-21). While the Examiner has accurately summarized what the aforementioned paragraphs of Holtz disclose, we are unclear as to how any of those paragraphs can serve as a rationale underpinning for “shar[ing] the number of national ads requested and shown information with the local/child advertiser.” For example, just because paragraph [0239] of Holtz discloses that a sales manager knows the parameters of an advertising order, which includes hit limits, it does not follow that this information would be made available to other parties. In another example, just because Holtz discloses synchronizing and reporting national and local advertising, it does not follow that particular generic/national ad requests are made available to child/local parties.

Accordingly, because the Examiner has not set forth an adequately supported rationale for modifying Holtz to include “providing availability information to one or more child advertisers of the generic advertiser based on the number of requested impressions for the generic ad request and a web site designation for the generic ad request,” we cannot sustain the rejection of independent claims 1 and 27, or their respective dependent claims.

*Independent Claim 7*

We are not persuaded the Examiner erred in asserting that a combination of Holtz, Armstrong, and Gerace discloses or suggests “an ad server of the ad server node providing availability information relating to the number of requested impressions and the website designation of the generic ad run,” as recited in independent claim 7. In contrast to independent claims 1 and 27, independent claim 7 does not recite a generic advertiser/child advertiser relationship. Accordingly, the fact that managers 1402, 1408, and 1410, disclosed in paragraphs [0241], [0245], and [0246] of Holtz, are configured to compile advertising exposure reports based on an advertised customer (i.e., sponsor) meets the aforementioned aspect of independent claim 7.

DECISION

The decision of the Examiner to reject claims 1-6 and 21-27 is REVERSED.

The decision of the Examiner to reject claims 7-13 is AFFIRMED.

AFFIRMED-IN-PART

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