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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MICHAEL CHEN, MIKE TUDISCO, and JACK BIRNBAUM

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Appeal 2011-010937  
Application 10/826,671  
Technology Center 2400

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*Before* THU A. DANG, JAMES R. HUGHES, and  
GREGORY J. GONSALVES, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

## I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1, 4, 5, 7-11, 13, 18-25, 27-32, 37, 38, 41-43, and 48-52 (App. Br. 2). Claims 2, 3, 6, 12, 14-17, 26, 33-36, 39, 40, and 44-47 have been canceled (App. Br. 18- 23). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### A. INVENTION

Appellants' invention is directed to a video content delivery system and method that provides advertising content to the user based upon the potential interests of the user based (user preference); wherein, the user preference may represent the content viewing or ordering habits of the user (Abstract; Spec. 3:25-4:7).

### B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary:

1. A method for creating at least one targeted integrated image for delivery to a user, the method comprising:

determining content of potential interest to the user based on at least one user preference comprising content ordering habits of the user while the user is receiving a first image comprising a video file for viewing via digital cable television;

determining content previously ordered or viewed by the user;

in a queue of available barker advertisements, removing barker advertisements corresponding to the content previously ordered or viewed by the user;

selecting a second image comprising a barker advertising the content of potential interest to the user from advertising barkers remaining in the queue; and

combining the second image comprising the barker advertising the content of potential interest to the user with the first image to form an integrated image for delivery to the user; and

delivering the integrated image to the user.

### C. REJECTIONS

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Plotnick	US 2002/0184047 A1	Dec. 5, 2002
O’Kane	US 2003/0105831 A1	June 5, 2003
Knudson	US 2003/0110499 A1	June 12, 2003
Sie	US 2004/0030599 A1	Feb. 12, 2004

Claims 1, 4, 5, 7-10, 13, 18-25, 27-32, 37, 38, 41-43, 48-50, and 52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Plotnick in view of O’Kane.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Plotnick in view of O’Kane and Knudson.

Claim 51 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Plotnick in view of O’Kane and Sie.

## II. ISSUE

The dispositive issue before us is whether the Examiner has erred in determining that the combination of Plotnick and O’Kane teaches or would have suggested “in a queue of available barker advertisements, *removing barker advertisements corresponding to the content previously ordered or viewed by the user*” (claim 1, emphasis added).

## III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

### *Plotnick*

1. Plotnick discloses a content delivery system that delivers advertisements (ads) to targeted subscribers of a specific area, group of households, individual households, a group of subscribers, individual subscribers or other means (¶ [0037]). Targeted groups or individuals may consist of all subscribers having similar traits or the ads can be targeted based on demographics, viewing habits, purchasing habits, interests, or other characteristics of the subscriber (¶ [0101]).

2. A Universal Ad Queue (UAQ) links ads to be played in the advertisement opportunity (“avail”) in the form of playlists with specific ad queues (i.e., Electronic Program Guide (EPG) ads); wherein, the UAQ is updated each time an individual ad queue needs to be updated because it is out of ads (i.e., played maximum number of times, ad campaign over, new advertisers have purchased avails, existing advertisers have opted out of their avails, or any other number of reasons that would be obvious) (¶ [0081]).

*O’Kane*

3. O’Kane discloses gaming art sharing system that matches an advertising company to a user’s pre-selected preferences before a unique digital acknowledgement trigger 125 is assigned to the user (¶ [0075]).

4. After the commercial is played, the digital acknowledgement trigger (software) can be or removed by the user, such that the end user will only hear the commercial once per download when that specific song or video is played (¶ [0077]).

IV. ANALYSIS

*Claims 1, 4, 5, 7-10, 13, 18-25, 27-32,  
37, 38, 41-43, 48-50, and 52*

Appellants contend that “neither Plotnick nor O’Kane, alone or in combination, teaches a removal of barker advertisements, from a queue, where those barker advertisements correspond to content previously ordered by a user,” since “O’Kane teaches the exact same removal criteria that Plotnick does, i.e., removal based upon a predetermined number of views” (App. Br. 12-13). Appellants argue that “O’Kane removes advertisements from the user’s system, not a queue, after the advertisement has been viewed” (App. Br. 14).

However, the Examiner finds that “Plotnick clearly teaches that, based on user preferences, the system creates a queue or playlist of advertisement that would be inserted to the ordered or selected content” (Ans. 12). The Examiner finds further that “Plotnick additionally teaches that the system can remove advertisement” (*id.*). In addition, the Examiner finds that “O’Kane states that once a commercial is played (viewed by the user), the commercial is removed” (*id.*).

We give the claim its broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Claim 1 does not place any limitation on what “barker advertisements” means, includes, or represents. Thus, we give “in a queue of available barker advertisements, removing barker advertisements corresponding to the content previously ordered or viewed by the user” its broadest reasonable interpretation as removing ads related to previously ordered or viewed content, as consistent with the Specification and as specifically defined in claim 1.

Plotnick discloses a content delivery system that delivers advertisements (ads) to targeted subscribers; wherein, the ads can be targeted based on demographics, viewing habits, purchasing habits, interests, or other characteristics of the subscriber (FF 1). The UAQ is updated when a certain ad has been played (viewed) a maximum number of times (FF 2). We find that the selection of ads based upon the user’s viewing and purchasing habits indicates that ads are selected or excluded based upon whether a program has been previously viewed and ordered. We also find that removal of an ad from the UAQ (queue) comprises removal of an ad corresponding to the content previously viewed. That is, we find that Plotnick’s system comprises “in a queue of available barker advertisements, removing barker advertisements corresponding to the content previously ordered or viewed by the user” (claim 1).

In addition, O’Kane discloses gaming art sharing system; wherein, an advertising company is matched to the users pre-selected preferences before a unique digital acknowledgement trigger is assigned to the user (FF 3). After the ad is played, the digital acknowledgement trigger can be or

removed by the user, such that the end user will only hear the commercial once per download of that specific song or video is played (FF 4). We find that removal of the ad after being viewed once comprises removing the ad relating to content previously ordered or viewed by the user. In particular, we find that O’Kane’s system and method also comprises “removing barker advertisements corresponding to the content previously ordered or viewed by the user” (claim 1).

Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) over Plotnick in view of O’Kane. Further, independent claim 25 having similar claim language and claims 4, 5, 7-10, 13, 18-25, 27-32, 37, 38, 41-43, 48-50, and 52 (depending from claims 1 and 25) which have not been argued separately, fall with claim 1.

*Claims 11 and 51*

Appellants argue that claims 11 and 51 are patentable over the cited prior art for the same reasons asserted with respect to claim 1 (App. Br. 15 and 16).

As noted *supra*, however, we find that Plotnick and O’Kane *at least suggests* all the features of claim 1. We therefore affirm the Examiner’s rejection of claim 11 under 35 U.S.C. § 103 over Plotnick in view of O’Kane and Knudson and of claim 51 under 35 U.S.C. § 103 over Plotnick in view of O’Kane and Sie for the same reasons expressed with respect to parent claim 1, *supra*.

Appeal 2011-010937  
Application 10/826,671

V. CONCLUSION AND DECISION

The Examiner's rejection of claims 1, 4, 5, 7-11, 13, 18-25, 27-32, 37, 38, 41-43, and 48-52 under 35 U.S.C. § 103(a) 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

llw