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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* ANDREA TITTEL, GEOFF THOMAS, ANDREW FAULKNER, and WILLIAM L. KOLESZAR

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Appeal 2012-002835
Application 12/483,476
Technology Center 3600

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Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and NINA L. MEDLOCK, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

## DECISION ON APPEAL

## STATEMENT OF THE CASE[1]

Andrea Tittel, Geoff Thomas, Andrew Faulkner, and William L. Koleszar (Appellants) seek review under 35 U.S.C. § 134 of a final rejection of claims 1–4, 6–10, and 12, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

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[1] Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed July 11, 2011) and the Examiner's Answer ("Ans.," mailed September 1, 2011).

The Appellants invented a way of establishing and administering a savings plan that offers incentives bonuses to customers that participate in the plan (Specification para. 2).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

> 1. A method establishing a bank account that is administered by a bank service provider comprising:
> [1] establishing a bank account
>     at a bank service provider
>     for the benefit of an account holder;
> [2] setting a savings goal
>     within the bank account
>     when the bank account is established
>     for the account holder to meet;
> [3] depositing an incentive amount
>     into the account
>     when the account is established,
>     access to said incentive amount being restricted;
> [4] setting a time period
>     for the account holder
>     to meet said savings goal;
> [5] the account holder making periodic deposits
>     into the bank account
>     until said savings goal is met;
> and
> [6] the bank service provider distributing
>     a value of the account
>         including said incentive amount
>     to the account holder
>     after the savings goal is met.

The Examiner relies upon the following prior art:

| | | |
|---|---|---|
| Ferrari | US 2007/0198382 A1 | Aug. 23, 2007 |
| Tabaczynski | US 2009/0063332 A1 | Mar. 5, 2009 |

Claims 1–4, 6–10, and 12 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1–4, 6–10, and 12 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Tabaczynski and Ferrari.

## ISSUES

The issues of obviousness turn primarily on whether the art applied describes depositing an incentive amount into a bank account when opened and withdrawing the incentive amount after a savings goal is reached.

## FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

*Facts Related to the Prior Art*

*Tabaczynski*

01. Tabaczynski is directed to automatic savings programs or processes implemented by financial institution(s) for automatically transferring funds, on behalf of an enrolled customer, from source financial account(s) to target financial account(s). Tabaczynski para. 1.

02. Tabaczynski describes automatic savings programs in which a consumer is presented with multiple options for automatic savings to be applied to transactions, such that savings amounts are transferred from a first account to a second account automatically for qualified accounts and transactions. A financial institution can assist the consumer select one of the options to apply to automatic transfers. Transfer policy can thus be customized for a consumer according to their savings needs and goals. Tabaczynski para. 10.

03. Tabaczynski describes how customers can set their total savings goal at the time of opting in to the program. Tabaczynski para. 32. This may occur when creating an account. Tabaczynski para. 59.

04. Tabaczynski describes safeguards for automatic savings programs that operate to limit the ways in which savings can be added to and/or withdrawn from a transferee account, such as restricting certain kinds of transactions that result in savings for a transferee account or placing restrictions on withdrawal. Conversely, benefits can be provided for the transferee account, which are better than a typical savings account. Such benefits operate to incentivize a customer to keep savings in the account, or penalize withdrawal from the transferee account. Tabaczynski para. 35.

05. Tabaczynski describes how the customer opens either a qualified type of checking account and/or a qualified type of savings account. The customer enrolls in the automatic savings program, selecting or determining a savings amount. Tabaczynski para. 59.

06. Tabaczynski describes a bonus program. At a designated time, e.g., before interest is posted for the day, the savings account system is accessed and, it is determined whether the bonus applies to the account by discovering the presence of a bonus indicator for the account. If the savings account is a part of the bonus program, then it is determined whether the bonus due date is equal to the current date. In other words, it is determined if it is time to pay the bonus. If the bonus is due to the savings account on the given day, then it is determined whether the savings account meets any

pre-defined criteria set for achieving the bonus. Tabaczynski para. 69.

07. Tabaczynski describes how, if the savings account qualifies for bonus treatment on that day and meets the pre-defined criteria, then the balance is computed based on the total of eligible amounts saved in the automatic savings program for a given period. Then the bonus amount is further computed by multiplying the eligible savings balances by an applicable formula for determining the actual amount to be transferred to the consumer as a bonus. Then the savings account is credited with the bonus amount calculated. Tabaczynski para. 70.

08. Tabaczynski describes how check card transactions are rounded up using one of a set of rounding options and the round up amount is transferred to a savings or investment account with common ownership according to a customer's transfer relationships. As another example benefit and incentive to the customer enrolling in one of the financial institution’s savings programs, a percentage of the transfer amount can be paid by the financial institution, e.g., deposits are made into a designated savings or investment account for the customer. The deposits by the financial institution can be made according to a set frequency: daily, weekly, monthly, annually or on an account anniversary date. Tabaczynski para. 71.

09. Tabaczynski describes how for a customer enrolling in the banking program, or switching to the banking program from another bank, a bank can offer a bonus of X%, where X% can be up to 100%, of the dollars transfers for an initial time period, and

Y% thereafter, where Y% is less than X%. Alternatively, the offer can be an annual bonus X%, where X% can be up to 100% of the dollars transfers and retained in the account. Tabaczynski para. 74.

*Ferrari*

10. Ferrari is directed to savings for a time delayed purchase, and more specifically a method of saving utilizing an electronic network. Ferrari para. 2.
11. Ferrari describes saving for a time delayed purchase that includes establishing a savings account through a website provided by a third party service provider. The savings account establishes the savings goal, the time frame, the recommended contribution, and the savings category and/or category of retailer(s). Ferrari para. 8.
12. Ferrari describes how a customer names the savings account, sets a desired savings goal, and determines a time frame for reaching the savings goal. Through the controller that is in electronic communication with the website, the processor automatically calculates the weekly and/or monthly contribution needed and transmits this information to the customer. The customer may either accept the calculated amount which will automatically be withdrawn from their checking account, or the customer may edit the savings goal or savings time period until an acceptable withdrawal amount is calculated. Ferrari para. 15.
13. Ferrari describes how, once the savings goal has been met, the service provider sends a payment document to the customer for the saved amount along with any interest earned. Ferrari para. 23.

## ANALYSIS

### *Claims 1–4, 6–10, and 12 rejected under 35 U.S.C. § 103(a) as unpatentable over Tabaczynski and Ferrari*

The Examiner found that Tabaczynski described the limitations of claim 1 except for setting a time period for the goal. Tabaczynski describes establishing a bank account (FF 05); setting a savings goal when the account is established (FF 03); depositing an incentive amount into the account when the account is established (FF 09); access to said incentive amount, and indeed all amounts, being restricted (FF 04); and the account holder making periodic deposits into the bank account until said savings goal is met (FF 08). Ferrari describes setting a time period for the account holder to meet the savings goal (FF 12) and distributing amounts after the savings goal is met (FF 13). Ferrari's payment, as applied to Tabaczynski's bonus, would necessarily include such bonus.

We are not persuaded by the Appellants' argument that "none of the programs deposit[s] an incentive amount into the account at the establishment of the account that operates in connection with a reestablished initial condition on the account." Br. 9. Tabaczynski provides a bonus at the time of account creation for amounts transferred in. FF 09. Claim 1 recites no initial condition.

We are not persuaded by the Appellants' argument that "[t]here is no interaction between the provision of the bonus and the periodic deposits until a goal is achieved." Br. 9. Claim 1 recites no such interaction. To the extent Appellants are referring to the timing of the transfer in limitation [6], this limitation is just that, one of timing and not of condition. Ferrari describes waiting until such time.

We are not persuaded by the Appellants' argument that "the base reference is fully devoid of any teaching that suggests the provision of an incentive that actively works in conjunction with a period deposit that releases the incentive amount once a predetermined goal is reached." Br. 10. Claim 1 recites no such releases once a goal is reached, only after a goal is reached. Again, claim 1 recites timing rather than condition. As Ferrari shows, it was notoriously known, not to say self-defining, to wait for a savings goal to be reached before withdrawing the goal amount.

*Claims 1–4, 6–10, and 12 rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter*

The issues raised in the rejection for nonstatutory subject matter are not those that remain pertinent after the Supreme Court's recent case of *Alice Corp. Pty. Ltd. v CLS Bank Intl.,*134 S.Ct. 2347 (2014). As the art rejection is dispositive as to the case, we need not reach this rejection.

## CONCLUSIONS OF LAW

The rejection of claims 1–4, 6–10, and 12 under 35 U.S.C. § 101 as directed to non-statutory subject matter is not reached.

The rejection of claims 1–4, 6–10, and 12 under 35 U.S.C. § 103(a) as unpatentable over Tabaczynski and Ferrari is proper.

DECISION

The rejection of claims 1–4, 6–10, and 12 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). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED

Klh