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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* STEPHANE KASRIEL

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Appeal 2012-004435  
Application 10/128,595  
Technology Center 2400

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Before JEAN R. HOMERE, STANLEY M. WEINBERG, and  
LINZY T. McCARTNEY, *Administrative Patent Judges*.

McCARTNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a rejection of claims 1–5, 7–9, 13–22, 24–32, 35, 36, 38, and 40–56. We have jurisdiction under 35 U.S.C. § 6(b).

We **AFFIRM**.

## STATEMENT OF THE CASE

Appellant's "invention relates to the field of computer networks, and in particular to a system and method that facilitates an analysis of the performance of sites on a network." (Spec. 1:8–9.) The appealed independent claims (claims 1, 18, and 30) illustrate the claimed subject matter:

1. A web-page performance toolbar system, comprising:
  - a first display component that is configured to effect a display of a web-page in a browser display; and
  - a second display component that is configured to effect a display of performance data associated with the web-page in a tool bar providing an interface to a web-page performance analysis system simultaneously along with the web-page in the browser display, the performance data includes data about the web-page relative to other pages of the web-site.
18. A method performed by a browser for displaying performance data associated with a web-page, comprising steps of:
  - displaying the web-page in a browser display; and
  - displaying the performance data simultaneously in a toolbar in the browser display simultaneously with the web-page, the toolbar providing an interface to a web-page performance analysis system, the performance data includes data about the web-page relative to other pages of the web-site.
30. A web-based service providing web-analysis for web-sites, the web-based service being operatively configured to perform steps of:
  - providing a performance display system to a browser that is configured to display performance data associated with a web-page in a tool bar in a browser display while the web-page is also displayed by a web-page display system in the browser display; and

sending performance data from the web-based service to the performance display system in the browser, the performance data includes data about the web- page relative to other pages associated with the web page that are part of a single web-site.

### REJECTIONS

Claims 1–5, 7–9, 13–22, 24–32, 35, 36, 38, and 40–56 stand rejected under 35 U.S.C. § 101 because the claims fail to fall within a statutory category of invention.

Claims 1–5, 7–9, 13–22, 24–32, 35, 36, 38, 40–56 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Becker (US 6,834,372 B1; Dec. 21, 2004) and Leshem (US 5,870,559; Feb. 9, 1999).

### ISSUES

(1) Do claims 1–5, 7–9, 13–22, 24–32, 35, 36, 38, and 40–56 encompass non-statutory subject matter?

(2) Does the Examiner’s combination of Becker and Leshem teach or suggest displaying “performance data [that] includes data about the web-page relative to other pages of the web-site” as recited in claims 1, 18, and 30?

### ANALYSIS

#### § 101

The Examiner found the appealed claims encompass non-statutory subject matter because the claims “are directed to [a] program . . . [and] not limited to tangible embodiments since they do not claim physical articles or objects.” (Ans. 5.) In response, Appellant argues the “physical nature” of the claims is “directed to a machine and [therefore] not software *per se*.” (App. Br. 13.) In particular, Appellant asserts independent claim 1 recites a

“web-page performance toolbar system” that “is describing an apparatus (i.e., a display).” (*Id.* at 11; *see also* Reply Br. 3–4.) Appellant makes a similar argument regarding independent claim 18: According to Appellant, claim 18 “positively recite[s] performing the method steps within a physical structure (i.e., a browser display).” (App. Br. 11.) As for independent claim 30, Appellant asserts the recited “web-based service” includes “features . . . [that] by their very nature are parts of a machine.” (*Id.* at 12.)

Contrary to Appellant’s arguments, under the broadest reasonable interpretation in light of Appellant’s specification, claims 1, 18, and 30 are not limited to a machine or physical structure. For example, Appellant’s specification indicates the “system” recited in claim 1 is simply a toolbar integrated with a web browser: “These objects and others are achieved by providing an integration between a web-site performance system and a web-site navigation system. A user is provided a toolbar that is synchronized with a web-site navigation system, *such as the Microsoft Internet Explorer or Netscape Navigator browser systems. The toolbar provides an interface . . .*” (Spec. ¶ 13 (emphasis added); *see also id.* Figs. 1A, 1B.) And although claims 1 and 18 use the word “display” in various contexts, none of these uses limits claim 1 or claim 18 to a machine or physical structure. For example, claim 1 recites first and second “display components” and both claim 1 and claim 18 recite a “browser display.” As admitted by Appellant, the recited “display components” are parts of a web browser, (*see* App. Br. 17), and Appellant’s drawings indicate a “browser display” consists of the entire web browser, (*see* Spec., Figs. 1A, 1B).

The extrinsic evidence cited by Appellant also suggests Appellant’s various uses of the word “display” do not limit claims 1 or 18 to a machine

or physical structure. Appellant notes the *Merriam-Webster Online Dictionary* defines “display” as a noun including “an electronic device ([such] as a cathode-ray tube) that presents information in visual form; also: the visual.” (Reply Br. 4.) But Appellant neglects the latter portion of *Merriam-Webster’s* definition, which is truncated in Appellant’s brief: “*also* : the visual information.” *Display Definition*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/display> (last visited Dec. 23, 2014). Thus, the word “display” when given its broadest reasonable interpretation, encompasses simply visual information.

As for claim 30, Appellant cites a definition that makes clear claim 30 is not limited to a machine or physical structure. Claim 30 recites a “web-based service,” and Appellant contends the definition of “web service” from a W3C Working Group establishes that a web service includes parts of a machine. (App. Br. 12.) But that definition states that a “web service” is “[a] *software system* designed to support interoperable machine-to-machine interaction over a network.” (*Id.* at 12 (emphasis added).) Accordingly, the term “web-based service” encompasses software.

At bottom, based on the record before us and Appellant’s arguments, we disagree with Appellant that the appealed claims are limited to a machine or physical structure. We therefore sustain the Examiner’s rejection of claims 1, 18, and 30 and their respective dependent claims under 35 U.S.C. § 101.

§103

Claim 1 recites “a second display component that is configured to effect a display of performance data” that “includes data about the web-page *relative to* other pages of the web-site.” (App. Br. 28 (emphasis added).)

Claims 18 and 30 recite similar limitations. (*Id.* at 30, 32.) The Examiner found Becker teaches these limitations because Becker discloses a database that includes data for two webpages from the same website. (*See* Ans. 6, 18–19; *see also* Becker, Table 1.) Appellant asserts Becker’s database contains data for a *single page*; Appellant contends Becker does not teach or suggest performance data “about [a] web-page *relative to* other pages of [a] web-site,” much less displaying such data. (*See* App. Br. 18 (emphasis added).)

We agree with Appellant. Although the Examiner correctly found Becker’s database contains information concerning two webpages from the same website, (*see* Ans. 6, 18–19), the Examiner has not established the cited portions of Becker teach or suggest displaying performance data that “includes data about the web-page *relative to* other pages of the web-site” as recited in the claims. Accordingly, we do not sustain the obviousness rejection of claims 1, 18, and 30. Because the remaining appealed claims depend from either claims 1, 18, or 30, we do not sustain the obviousness rejection of the remaining claims.

#### DECISION

For the above reasons, we affirm the rejection of claims 1–5, 7–9, 13–22, 24–32, 35, 36, 38, and 40–56 under 35 U.S.C. § 101, and we reverse the rejection of these claims under 35 U.S.C. § 103. Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner’s decision is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

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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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