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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS HARRY SPENCE III

Appeal 2014-006164
Application 13/309,572¹
Technology Center 3600

Before JOSEPH A. FISCHETTI, JAMES A. WORTH, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 14 and 21–33. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

¹ Appellant identifies Mr. Thomas Harry Spence III as the real party in interest. Br. 2.

THE INVENTION

Appellant claims “a method of offering advertisements on the Internet.” (Spec. ¶6).

Claim 14, reproduced below, is representative of the subject matter on appeal.

14. A system for offering advertisements on the Internet, said system comprising a server computer configured to exchange data with a network, said server computer having a processor, an area of main memory for executing program code under the direction of said processor, a storage device for storing data and program code and a bus connecting said processor, main memory and said storage device; said code being stored in said storage device and executing in said main memory under the direction of said processor, to perform the steps of:

(a) providing, to a plurality of users, one or more advertisements at an Internet site;

(b) allowing for an individual user to click or view said one or more advertisements;

(c) establishing an account point balance for said individual user, wherein said account point balance is not a balance of cash;

(d) during or after said one or more advertisements are clicked or viewed by said individual user, increasing said account point balance associated with said individual user;

(e) calculating relative values of account point balances for selected users within a selected pool of account point balances associated with at least a portion of said plurality of users, wherein said relative values of

account point balances for selected users further depend on user profiles associated with each of said selected users; and

(f) offering cash or a non-cash equivalent to at least one selected user, based at least in part on said selected pool of account point balances.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Pacella	US 5,829,746	Nov. 3, 1998
Goldhaber	US 5,855,008	Dec. 29, 1998
Churchill	US 7,461,022 B1	Dec. 2, 2008
Donahue	US 2009/0055256 A1	Feb. 26, 2009
Padgette	US 7,877,308 B1	Jan. 25, 2011

The following rejections are before us for review.

Claims 14, 21, 22, 24, 27–30, 32, and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Goldhaber in view of Churchill.

Claim 23 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Goldhaber in view of Churchill, and further in view of Pacella.

Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldhaber in view of Churchill and further in view of Donahue.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldhaber in view of Churchill and further in view of Padgette.

FINDINGS OF FACT

1. We adopt the Examiner's findings as set forth on pages 3 through 14 of the Answer, and on pages 2 through 20 of the Final Action.

2. Churchill discloses:

The account database **134** comprises a user database (UDB) **151** and a relational database (RDB) **152**, as shown in FIG. 2, which will be maintained in synchronization with each other. The user database (UDB) **151** is used for speed-intensive applications, such as real-time access from production websites. When the offer server **139** awards points, the user's UDB record will be modified to reflect the transaction. The offer server 139 notifies the user that his account balance has been increased (via email or the website). The UDB **151** is also used for redemptions. Upon some redemption action, the Yahoo! Auction System checks the UDB **151** for available points for a specific user and a specific transaction, determines eligibility, and either debits the account for the desired number of points for an actual transaction or places the desired number of points on reserve for a potential transaction.

Col. 16 l.61– col. 17 l.9.

3. Churchill discloses

Certain awards can be checked to make sure that they are not being credited more than the requisite number of times for the same action. Thus, a banner ad, which offers one-time-only points for clicking on the ad, may appear on a website for all to see. If a user clicks on that ad, he will earn his points. When he returns to that website, he will see that ad again. By click on the ad again, he should not be awarded points again since he earned them once already and this is a one-time-only promotion.

Col. 22, ll. 37–45.

ANALYSIS

The Appellant argues claims 14 and 21–33 as a group (Appeal Br. 13), selecting claim 14 as the representative claim for this group; thus the remaining claims standing or falling with claim 14. 37 C.F.R. § 41.37(c)(1)(iv) (2012).

Appellant argues, “Goldhaber does not disclose establishing an account point balance for an individual user, wherein the account point balance is not a balance of cash.” (Appeal Br.10).

That argument is not well taken because the Appellant is attacking the Goldhaber reference individually when the rejection is based on a combination of references, and the Examiner relies on Churchill, and not Goldhaber, to disclose account point balance values. (Final Act. 5). *See In re Keller*, 642 F.2d 413 (CCPA 1981); *In re Young*, 403 F.2d 754, 757–58 (CCPA 1968).

Appellant further argues that, “...Goldhaber says nothing about calculating relative values, i.e. of one user compared to other users. There would be no reason to do so in Goldhaber, since a non-cash point system is not utilized; instead, cash is transferred directly and instantly to each user.” (Appeal Br. 11).

Appellant’s arguments fail from the outset because they are not based on limitations appearing in the claims which do not recite, “calculating relative values, i.e. of one user compared to other users”. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). Appellant’s claims only require “calculating relative values of account point balances for selected users within a selected pool. . . ,” without mention of any comparison (*see, e.g.*, Claim 14 (e)). Notwithstanding, we agree with the Examiner’s findings that

Churchill discloses this feature in the relational database (RDB) 152. (Final Act. 9, (FF. 2)). This is because Appellant’s Specification does not specifically define the term *relative*, nor does it utilize the term contrary to its customary meaning. The ordinary and customary definition of the term *relative* is “a thing having a relation to or connection with or necessary dependence on another thing.”² Thus, we find that the arrangement of award point values in the relational database 152 of Churchill meets claim requirement of relative values given that the award point values, once arranged in the database, stand in relation to one another.

Appellant further argues that:

The Examiner erred in equating “limiting the number of points a user can obtain by clicking an ad” (from Churchill) to “calculating relative values of account point balances within a selected pool of account point balances” of claim 14. The calculation of relative values of account point balances, within a selected pool, has nothing to do with a limitation of points for a particular user. The calculations must reference other users within a selected pool.

(Appeal Br. 12).

We disagree with Appellant because as found *supra*, we find the relative values of award point balances in Churchill, once calculated under the rules of the system (FF. 3), stand in relative relationship in the RDB 152. (FF. 2). Even still, we find no error with the Examiner’s finding that limiting award point crediting to all users in Churchill constitutes “calculating relative values of account point balances” because Churchill discloses certain awards are not “credited more than the requisite number of times for the same action”. (FF. 3). That is, because actions by web users in

² <http://www.merriam-webster.com/dictionary/relative> (last visited on 11/10/2016).

the database are all made relative to a given number of actions rule to warrant credit, we find that the stored award credits stand in relation to one another. (*See*, note 2, *supra*).

Appellant argues that, “Churchill describes **auction systems** that can use points, rather than money, as currency. Churchill does not disclose a system for offering advertisements on the Internet.” (Appeal Br. 11).

That argument is not well taken because the Appellant is attacking the Churchill reference individually when the rejection is based on a combination of references and the Examiner relies on Goldhaber for disclosing a system for offering advertisements on the Internet. (Final Act. 3). *See In re Keller*, 642 F.2d at 426; *In re Young*, 403 F.2d at 757–58.

Appellant further argues that:

Regarding step (f) of claim 14, the Examiner states... [w]hen the offer server 139 awards points, the user’s UDB record will be modified to reflect the transaction. The offer server 139 notifies the user that his account balance has been increased.” This teaching is somehow equated with the fact that offering cash or a noncash equivalent to at least one selected user, is “based at least in part on said selected pool of account point balances” in claim 14. However, the disclosure of Churchill quoted above is in reference to an individual’s account, and makes no mention at all of other users, as is necessary when the step is based on a selected pool (including other users beyond the individual user) of account point balances.

(Appeal Br. 12).

We disagree with Appellant. We find that the claims do not limit the term “selected pool of account users” to any specific standard of selection. Thus, we construe the term to apply to the users whose data was selected to reside in the RDB 152. (FF. 2). As found *supra*, (FF. 2, 3), Churchill discloses applying crediting rules to all users of the database pool.

CONCLUSIONS OF LAW

We conclude that the Examiner did not err in rejecting:

(1) claims 14, 21, 22, 24, 27–30, 32, and 33 under 35 U.S.C. § 103(a) as being unpatentable over Goldhaber in view of Churchill.

(2) claim 23 under 35 U.S.C. § 103(a) as being unpatentable over Goldhaber in view of Churchill, and further in view of Pacella.

(3) claims 25 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Goldhaber in view of Churchill and further in view of Donahue.

(4) claim 31 under 35 U.S.C. § 103(a) as being unpatentable over Goldhaber in view of Churchill and further in view of Padgette.

DECISION

The decision of the Examiner to reject claims 14 and 21–33 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).

AFFIRMED