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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LAURENCE B. LINIETSKY, RALPH C. MUNSEN, and
ALAN L. CARLSON

Appeal 2014-006648[1]
Application 12/949,600[2]
Technology Center 3600

Before HUBERT C. LORIN, ANTON W. FETTING, and AMEE A. SHAH,
Administrative Patent Judges.

SHAH, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's

final rejection of claims 1–18. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE and ENTER a NEW GROUND OF REJECTION

pursuant to our authority under 37 C.F.R. § 41.50(b).

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[1] Throughout this opinion, we refer to the Appellants Appeal Brief ("Appeal
Br.," filed Nov. 20, 2013), Reply Brief ("Reply Br.," filed May 20, 2014),
and Specification ("Spec.," filed Nov. 18, 2010), and the Examiner's
Answer ("Ans.," mailed Mar. 27, 2014), and Final Office Action ("Final
Act.," mailed June 25, 2013).
[2] According to the Appellants, the real party in interest is Clear Channel
Management Services, Inc. Appeal Br. 3.

STATEMENT OF THE CASE

The Appellants' invention "generally relates to audience data gathering, and more particularly to a method of correlating behavioral information regarding a single user from multiple sources, and awarding promotional credits to the user based on the behavioral information." Spec. 1, ll. 10–13.

Claims 1, 7, and 13 are the independent claims on appeal. Claims 1 is illustrative of the subject matter on appeal and is reproduced below (bracketing added for reference):

> 1. A computer-implemented method of gathering data pertaining to an individual's behavior, comprising:
>
> [(a)] obtaining first behavioral information from a single user when the user visits a first website and assigning a first user identifier to the single user, by executing first program instructions in a computer system;
>
> [(b)] obtaining second behavioral information from the single user when the user visits a second website that provides a different product from the first website and assigning a second user identifier to the user, by executing second program instructions in the computer system;
>
> [(c)] correlating the first behavioral information and the second behavioral information to determine that the first behavioral information and the second behavioral information are that of the single user, by executing third program instructions in the computer system;
>
> [(d)] associating the first user identifier with the second user identifier, by executing fourth program instructions in the computer system; and
>
> [(e)] associating the first behavioral information with the second behavioral information, by executing fifth program instructions in the computer system.

Appeal Br. 13, Claims App.

REJECTIONS

Claims 1–4, 7–10, and 13–16 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Zhu (US 2010/0211464 A1, pub. Aug. 19. 2010).

Claims 5, 11, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhu and Bigby (US 2011/0106616 A1, pub. May 5, 2011.

Claims 6, 12, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhu and Shkedi (US 2008/0259906 A1, pub. Oct. 23, 2008).

FINDINGS OF FACT

The findings of fact in the Analysis section below are supported at least by a preponderance of the evidence.[3]

ANALYSIS

Each of independent claims 1, 7, and 13 recites the limitations of obtaining behavioral information, assigning identifiers, correlating the information, associating the identifiers, and associating the information, as recited in limitations (a) through (e) of claim 1.

The Appellants contend the rejection of the claims is in error because, in relevant part, Zhu does not disclose determining whether the first and second behavioral information belong to the same user and associating user identifiers assigned by two different websites. *See* Appeal Br. 8–9 and Reply Br. 4. We agree.

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[3] *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

Zhu discloses a method of providing targeted online advertising by storing user information, organizing the users into user layers, identifying the stored user information of a visiting user based on a user identifier, identifying a target user layer associated with the visiting user, determining a target advertisement type for the visiting user based on the target user layer and user information of the visiting user, and selecting a targeted advertisement to present to the visiting user, either randomly or based on stored and recently collected user information. Zhu ¶¶ 7, 8. The information collected can include mined information and recorded information such as time of the visit and content of the web pages visited, whether the user clicks on an advertisement, the length of time the user stays on the advertisement, gender, age, educational background, and salary. *Id.* ¶¶ 17, 18, 41. When a user visits a website, the system determines whether user information for the visiting user exists in the stored user database. *Id.* ¶ 37. If an explicit logon was used, the website identifies the user through that information; if the user is just browsing, the website determines whether there is a user identifier in an information file sent with the access request, i.e., a cookie file. *Id.* ¶ 38. If no identifying information is found, the system assigns a unique user identifier to the visiting user. *Id.* ¶ 39. If there is an identifier, the system searches for stored user information matching the user identifier and if user information with the identifier is found, the system reads the stored information; otherwise, the system records user information such as browsing behavior and habits of the user. *Id.* ¶¶ 40, 41, 48, 49, 60. The recorded information is used to update the stored user information and to determine the targeted advertisement type of the next visit of the visiting user. *Id.* ¶ 53.

The Examiner finds that Zhu discloses obtaining first behavioral information, as recited in limitation (a), by recording related information of the visiting user's present visit, the information including such behavioral information as the user's activities of selecting and viewing of webpages and advertisements and the contents of the web pages browsed by the user, i.e., the user information stored in the user database. *See* Final Act. 2–3; Ans. 2–3. The Examiner further finds Zhu discloses obtaining second behavioral information, as recited in limitation (b), by "record[ing] related information of the present visit of the visiting user wherein related information are the time of the present visit and the contents of the web pages visited by the visiting user," the information including behavioral information "such as contents of web pages browsed by a user," i.e., the new information used to update the stored user information. *See id.* The Examiner then finds that Zhu discloses correlating the information to determine if the user is the same user, as recited in limitation (c), by determining whether stored user information exists by using the identifier from the logon information or previously stored cookies and identifying a target user layer associated with the user. *See* Final Act. 2–3; Ans. 2–5. The Examiner further finds that Zhu discloses associating the first and second identifiers and associating the first and second behavioral information by updating the recorded user information with the new user information. *Id.*

We find persuasive the Appellants' arguments regarding Zhu's deficiencies in determining whether the first and second behavioral information belong to a single user (Appeal Br. 8–9, Reply Br. 4) and assigning and associating two user identifiers (Appeal Br. 9). The Examiner does not adequately show that Zhu discloses assigning two identifiers, i.e.,

that each time the user visits the website, a different identifier is assigned, and associating the two identifiers. As discussed above, Zhu discloses assigning a user identifier if no existing identifier is found, but not associating two different identifiers. Zhu ¶ 39. The Examiner further does not adequately explain how Zhu's determining if user information exists by using the identifier from the login information or stored cookies meets the limitation of correlating the stored information (first information) and the information used to update the stored information (second information) to determine if the stored and update information are that of a single user.

In view of the foregoing, we are persuaded of error on the part on the Examiner in the rejection of independent claims 1, 7, and 13. Thus, we do not sustain the Examiner's rejection of the independent claims 1, 7, and 13, and of claims 2–4, 8–10, 15, and 16, dependent therefrom.

Each of claims 5, 6, 11, 12, 17, and 18 ultimately depends from independent claims 1, 7, or 14. The deficiencies in the rejection of the independent claims are not cured by the Bigby or Shkedi. Thus, for the same reasons we do not sustain the rejection of claims 1, 7, and 14, we also do not sustain the rejections of dependent claims 5, 6, 11, 12, 17, and 18.

NEW GROUND OF REJECTION

Pursuant to our authority under 37 C.F.R. § 41.50(b), we reject claims 1–18 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. We find the claims are ineligible for patent protection because they are directed to an abstract idea.

The Supreme Court in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014) identified a two-step framework for determining whether

claimed subject matter is judicially-excepted from patent eligibility under
§ 101. We analyze the claims using the two part analysis: 1) determine
whether the claims are directed to an abstract idea; and 2) if an abstract idea
is present in the claims, determine whether any element, or combination of
elements, in the claims is sufficient to ensure the claims amount to
significantly more than the abstract idea itself to transform the claims into a
patent-eligible invention. *See id.* at 2355.

Taking claim 1 as representative of the claims on appeal, the claimed
subject matter is directed to the concept of gathering individuals' behavioral
data. Further, according to the Specification, the invention relates to
gathering and analyzing data on individuals and awarding promotional
credits based on the data. Spec. 1, ll. 10–14. In that context, gathering and
analyzing data to award promotional credits is a fundamental economic and
conventional business practice. The Supreme Court has held certain
fundamental economic and conventional business practices, like
intermediated settlement (*see Alice*, 134 S. Ct. at 2356–57), and collecting
and analyzing information, including when limited to particular content, or
without more (*see Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d
1350, 1353–54, ("a process of gathering and analyzing information of a
specified content, then displaying the results, and not any particular
assertedly inventive technology for performing those functions")), and using
advertisement as currency (*see Ultramercial, Inc. v. Hulu*, LLC, 772 F.3d
709, 713 (Fed.Cir.2014)), as being abstract ideas. The gathering and

analyzing of data to use in awarding promotional credits of claim 1 is similar to these abstract ideas, and, thus claim 1 is directed to an abstract idea.

Under the second step of the analysis, we find neither independent claims 1, 7, and 13, nor dependent claims 2–6, 8–12, and 14–18 have any additional elements that amount to significantly more to transform the abstract idea of gathering and analyzing data to award credit. Independent claim 1 and dependent claims 2–6 recite a method of obtaining behavioral information, assigning identifiers, correlating the first and second information to determine that the information are that of a single user, associating the identifiers, and associating the information. Any general purpose computer available at the time the application was filed would have been able to perform these function. The Specification supports that view. *See* Spec. 4, ll. 1–12, 5, ll. 13–16, 6, ll. 10–17, Fig. 1. Independent apparatus claims 7 and 13 and dependent claims 8–12 and 14–18 recite a system comprising a memory and processor, i.e., a general computer, or a computer program to perform the functions of the claims. *See id.* The introduction of a computer to implement an abstract idea is not a patentable application of the abstract idea. *Alice*, 134 S. Ct. at 2357–58. The computer implementation here is purely conventional and performs basic functions. *See id.* at 2359–60. The claims do not purport to improve the functioning of the computer itself, nor do they effect an improvement in any other technology or technical field. *See id.* at 2359.

Thus, under the two-part analysis, we find that claim 1 covers claimed subject matter that is judicially-excepted from patent eligibility under § 101. The other independent claims — system claim 7 and program product claim 13 parallel claim 1 — similarly cover claimed subject matter that is

judicially-excepted from patent eligibility under § 101. *See id.* at 2360. The dependent claims describe various versions of obtaining and analyzing data that do little to patentably transform the abstract idea.

Therefore, we enter a new ground of rejection of claims 1–18 under 35 U.S.C. § 101.

DECISION

The rejections of claims 1–18 under 35 U.S.C. § 103(a) are REVERSED.

A NEW GROUND OF REJECTION has been entered for claims 1–18 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review." 37 C.F.R. § 41.50(b) also provides that the Appellant(s), WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner . . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record . . . .

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).

<u>REVERSED; 37 C.F.R. § 41.50(b)</u>