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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN MORGAN LANCE, ELENI ANNA RUNDLE,
and ANUPHINH PHIMMASORN WANDERSKI

Appeal 2014-007071
Application 12/625,044
Technology Center 2100

Before IRVIN E. BRANCH, JOHN F. HORVATH, and
NABEEL U. KHAN, *Administrative Patent Judges*.

HORVATH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek review, under 35 U.S.C. § 134(a), of the Examiner's rejection of claims 11–30. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

SUMMARY OF THE INVENTION

The invention is directed to creating an aggregate report of a presence of a user on a network. Spec. ¶ 5.

Claim 11, reproduced below, is illustrative of the claimed subject matter:

11. A physical network presence management system comprising:

- a processor;
- a memory communicatively coupled to said processor, said memory comprising executable code stored thereon such that said executable code, when executed by said processor, causes said processor to implement a network browser;

in which said processor is configured to:

- periodically search said network for content published on said network that is related to a user but authored by a source other than said user; said searching being based on a unique set of identifiers associated with said user;

- dynamically update said set of unique identifiers based on contextual trends within content returned as a result of said searching; and

- aggregate content published by said user with said content published on said network by a source other than said user that is returned as a result of said searching to create an aggregate report of a reputation or presence of said user within said content published on said network.

REFERENCES

Willis	US 2004/0111467 A1	June 10, 2004
Gemmell	US 2005/0080769 A1	Apr. 14, 2005
Sifry	US 2006/0004691 A1	Jan. 5, 2006
Shioda	US 2006/0089887 A1	Apr. 27, 2006
Sappington	US 2008/0077517 A1	Mar. 27, 2008
Fish	US 2008/0133747 A1	June 5, 2008

Brock

US 2008/0178302 A1

July 24, 2008

REJECTIONS

Claims 11–20 stand provisionally rejected on non-statutory obviousness-type double patenting grounds as unpatentable over claims 1–10 of U.S. Application No. 13/418,046. Final Act. 4–5.

Claim 20 stands rejected under 35 U.S.C. § 101 as encompassing non-statutory subject matter. Final Act. 2.

Claims 11–15, 19, and 20–23 stand rejected under 35 U.S.C. § 102(b) as anticipated by Fish. Final Act. 11.

Claims 16, 17, 24, and 27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fish and Sifry. Final Act. 19.

Claim 18 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Fish and Willis. Final Act. 24.

Claims 25 and 26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fish and Brock. Final Act. 25.

Claim 28 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Fish and Sappington. Final Act. 28.

Claim 29 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Fish and Gemmell. Final Act. 29.

Claim 30 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Fish and Shioda. Final Act. 30.

ISSUES AND ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments that the Examiner has erred. Except as otherwise provided below,

we disagree with Appellants' contentions, and adopt as our own the findings and reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. We highlight the following for emphasis.

Double Patenting Rejections

The Examiner provisionally rejected claims 11–20 as unpatentable over claims 1–10 of U.S. Application No. 13/418,406 (“the ’406 application”) on the non-statutory grounds of obviousness-type double patenting. Because the rejection is provisional, and the ’406 application is pending, we decline to consider the merits of the double patenting rejection.

Rejection under 35 U.S.C. §101

Claim 20 recites a computer program product comprising “a computer readable storage *memory* having a network browser embodied as computer readable code, said computer readable code comprising” code to perform various recited functions. App. Br. 33 (Claims App’x) (emphasis added).

The Examiner finds the term “‘computer readable storage memory’ to be merely another term designating a ‘computer readable medium,’” and therefore rejects claim 20 for encompassing non-statutory subject matter in the form of transitory signals. Ans. 31–32. Appellants argue the Examiner erred in rejecting claim 20 because “[a] person of skill in the art would know that a ‘computer readable storage memory’ is a physical device and not a transient signal.” Reply Br. 5. We are persuaded by Appellants’ argument.

“[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification.” *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000). The Specification discloses:

a physical computing device employs a form of memory (102).
The memory (102) may include memory storage devices such as

hard disk drives, solid state drives, and optical disc drives. Additionally, the memory (102) may include faster forms of memory typically used for temporary storage such as various forms of Random Access Memory (RAM).

Spec. ¶ 30. Accordingly, we agree with Appellants that the broadest reasonable interpretation of a computer readable storage memory is a computer readable storage device, and that claim 20 is therefore an article of manufacture directed to statutory subject matter. Consequently, we reverse the Examiner's rejection of claim 20 under 35 U.S.C. § 101.

Rejections under 35 U.S.C. §102

Claims 11–14, 19, and 20–23

The Examiner finds claim 11 is anticipated by Fish. Final Act. 12–13 (citing Fish ¶¶ 43, 46, 47, 65, 67–70, 77–98, 111). Appellants argue the Examiner erred because Fish fails to teach (a) searching for content about a user from a source other than the user based on a set of unique identifiers associated with the user, (b) aggregating the content about a user from sources other than the user, and (c) dynamically updating the set of unique identifiers based on contextual trends within content returned as a result of the searching. App. Br. 13–15. We are not persuaded by Appellants' arguments for the reasons stated by the Examiner. *See* Ans. 33–36.

Fish discloses a “radical transparency network” in which “all of a cyberidentity's content postings are indexed such that [a] history of the cyberidentity's postings may be viewed or retrieved by any other user.” Fish ¶ 68. The cyberidentity's history “may then be used to establish the cyberidentity's reputation within the networked community.” *Id.* ¶ 65. The history can be obtained by searching for all content published by the cyberidentity, all comments made by other users on the content published by

the cyberidentity, all of the indexed words and phrases of the content published by the cyberidentity (sorted by frequency of use), and all of the words and phrases used by the cyberidentity to search for the content of other users (sorted by frequency of use). *Id.* ¶¶ 78–81. The history can also include the search results returned in response to the cyberidentity’s searches. *Id.* ¶ 77.

Regarding Appellants’ argument that Fish does not aggregate content about a user from sources other than the user, we agree with the Examiner that Fish discloses doing so by searching for and logging not only the content that is published by a user (e.g., blog posts), but the comments about that content that are made by other users. Ans. 35; Fish ¶¶ 77–79.

Regarding Appellants’ argument that Fish does not disclose searching for content published by another based on a set of unique identifiers associated with the user, or dynamically updating the set of unique identifiers based on contextual trends in the returned content, we agree with the Examiner that Fish teaches or suggests these limitations by disclosing logging a user’s searches and search results. Ans. 33–34; Fish ¶ 77. For example, to create the user’s history, Fish discloses searching for “the words and phrases used to search other user’s [sic] published content, sorted by frequency of use.” Fish. ¶ 81. Because the user’s search terms change over time, logging the user’s search terms as well as the content that is retrieved with those search terms will change over time. Therefore, under a broad, but reasonable construction of the term “set of unique identifiers,”¹ we agree

¹ We construe the term “set of unique identifiers” to have its “broadest reasonable interpretation consistent with the specification,” *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000), and find it includes a set of user search

with the Examiner that by periodically logging user's search terms and search results, Fish teaches or suggests "dynamically updat[ing] said set of unique identifiers based on contextual trends within content," as recited in claim 11.

Accordingly, for the reasons discussed above, we sustain the Examiner's rejection of claim 11. Appellants do not separately argue for the patentability of claims 12–14, 19, and 20–23. App. Br. 15. Accordingly, we sustain the Examiner's rejection of these claims for the same reasons.

Claim 15

Claim 15 depends from claim 11, and further requires notifying the user that the aggregate report provides at least one of: a positive, a negative, or a neutral portrayal of the user. App. Br. 32 (Claims App'x).

The Examiner finds Fish discloses a user receiving a notification of a pending cyber complaint against the user, and that this disclosure teaches or suggests the aggregate report includes a negative portrayal of the user. Final Act. 14–15 (citing Fish ¶¶ 65, 150). Appellants argue Fish's behavioral history and "a complaint filed by a user [are] not equivalent to an aggregate report that is based on the content of the user and source other than the user." App. Br. 16–17.

terms. The Specification discloses the term "unique identifier" is to be broadly construed to mean "a term, title, or object associated with a piece of content . . . related to a particular individual." Spec. ¶ 28. Moreover, contrary to its name, a "unique identifier" need not uniquely identify any individual because it can include such generic terms such as the individual's profession, hobbies, or visited websites. *Id.* ¶ 40.

We are not persuaded by Appellants' arguments. In particular, we are not persuaded that by compiling all of a user's content and content about the user, including a complaint filed against the user, Fish fails to teach or suggest creating an aggregate report. Nor are we persuaded that by notifying the user about the status of the complaint, which again is part of the aggregate report, Fish fails to teach or suggest notifying the user that the aggregate report provides at least one negative portrayal of the user as required by claim 15.

Accordingly, we sustain the Examiner's rejection of claim 15.

Rejections under 35 U.S.C. § 103

Claims 25, 26, 28, and 29

Appellants argue these claims, which depend from claim 21, are patentable for the same reasons as claim 21. App. Br. 28–29. Accordingly, because we sustain the Examiner's rejection of claim 21 for the reasons explained *supra* regarding claim 1, we sustain the Examiner's rejections of claims 25, 26, 28, and 29 for the same reasons.

Claim 16

Claim 16 depends from claim 15, and further requires notifying the user of the degree of positivity or negativity of the portrayal of the user in the aggregate report. App. Br. 32 (Claims App'x).

The Examiner finds claim 16 to be obvious over the combination of Fish and Sifry. Final Act. 19–20. The Examiner finds Sifry teaches identifying a user as an authority on a particular subject based on the user's posted content, and possibly identifying the user as a top 10 most influential author on the subject. *Id.* at 20 (citing Sifry ¶¶ 56, 59, 61–63). The

Examiner considers this identification to be a notification of a degree of positivity of portrayal. Ans. 38.

Appellants argue the Examiner erred in rejecting claim 16 because Sifry teaches identifying a user as an authority or influential author based on the number of links to the user's content, and that this "is not equivalent to indicating a degree to which a user's reputation is negatively or positively portrayed." App. Br. 22. Appellants further argue the teachings of Sifry and Fish cannot be combined because they would change Fish's principle of operation. *Id.* In particular, Appellants argue that Sifry determines user influence based on links to the user's content, whereas Fish determines user trust based on the user's behavior. *Id.* We are not persuaded by Appellants' arguments.

Sifry teaches tracking the "subject matter specific individuals are *either linking to or writing about* over time." Sifry ¶ 56 (emphasis added). A user's writings are used to create a profile that is "a representation of that [user's] preferences and interests." *Id.* Users are identified as authorities or influential authors with respect to specific subject matter by "indexing individuals according to these [subject matter] categories." *Id.* That is, in addition to teaching determining a user's authority based on the number of links to the user's content, Sifry teaches determining the user's authority based on the content itself, i.e., based on what subjects the user is writing about over time. Similarly, Fish teaches determining a user's reputation based on the user's published content. Fish ¶ 65. Accordingly, we are not persuaded that the Fish/Sifry combination would change Fish's principle of operation. Moreover, we agree with the Examiner that by identifying a user as a top 10 influential authority based on the user's content, Sifry teaches or

suggests indicating to the user the degree to which the user's aggregated content positively portrays the user.

Accordingly, we sustain the Examiner's rejection of claim 16.

Claim 17

Claim 17 depends from claim 11, and further requires allowing the user to edit the aggregate report. App. Br. 32 (Claims App'x).

The Examiner finds claim 17 to be obvious over the combination of Fish and Sifry. Final Act. 19, 21–22. The Examiner finds that Sifry discloses that a user can remove his or her résumé from a résumé posting service, and that this disclosure teaches or suggests allowing the user to edit an aggregate report, such as Fish's aggregate report. *Id.* at 21 (citing Sifry ¶¶ 68). In particular, the Examiner finds:

[r]esume data from a group of subscribers published to the internet by a third party must be considered an aggregate report similar to the reports published by [Fish's] community. It is obvious that if a user may edit his/her resume which is merely a portion of [Sifry's] aggregate report, a user could use the same methodology to edit [Fish's] community aggregate report.

Ans. 40.

Appellants argue the Examiner erred in rejecting claim 17 because “a resume is not equivalent to an aggregated report,” and “posting or deleting content on a website is not equivalent to editing a report based on the user's content and content from sources other than the user.” App. Br. 23–24; *see also* Reply Br. 15. We are not persuaded by Appellants' argument.

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all of the

references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

In re Keller, 642 F.2d 413, 425 (CCPA 1981). “A person of ordinary skill [in the art] is also a person of ordinary creativity, not an automaton.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007).

Here, we agree with the Examiner that Sifry’s teaching of removing a résumé from a collection of résumés would teach or suggest to one of ordinary skill in the art removing content from Fish’s collection of content, and therefore teaches or suggests allowing a user to edit an aggregate report as recited in claim 17.

Accordingly, we sustain the Examiner’s rejection of claim 17.

Claim 18

Claim 18 depends from claim 11, and further requires prohibiting the user from modifying the aggregate report. App. Br. 32 (Claims App’x).

The Examiner finds claim 18 to be obvious over the combination of Fish and Willis. Final Act. 24–25. The Examiner finds Willis teaches preventing a forum member whose reputation has fallen below a threshold from posting content to the forum. Final Act. 25 (citing Willis ¶ 321). The Examiner finds that “[p]osting content is the same as publishing content,” and therefore “prohibiting a cyberidentity from posting is preventing the user from making modifications to the aggregate report.” Ans. 43–44.

Appellants contend the Examiner erred in rejecting claim 18 because “prohibiting a user from . . . posting to a discussion forum, is not equivalent to . . . preventing a user from making modifications to an aggregate report

about the user based on content.” App. Br. 28. We are not persuaded by Appellants’ argument.

Appellants admit that “posting [content] to a discussion forum would qualify as content that can be used to contribute to an aggregate report.” App. Br. 28; Reply Br. 18. Accordingly, prohibiting a user from posting such content, as taught by Willis, would prohibit the user from modifying (e.g., by adding to it) an aggregate report of the user’s posted content as taught by Fish. We, therefore, sustain the rejection of claim 18.

Claim 24

Claim 24 depends from claim 21, and further requires the identifiers associated with the user include any of the user’s name, profession, hobbies, and websites visited by the user. App. Br. 35 (Claims App’x).

The Examiner finds claim 24 to be obvious over the combination of Fish and Sifry. Final Act. 19, 22–23. The Examiner finds Sifry teaches that a user’s profile, generated from the users’ published content, includes the user’s interests and hobbies. Final Act. 22 (citing Sifry ¶ 56).

Appellants argue the Examiner erred in rejecting claim 24 because “the hobbies and interests included in a user profile are not equivalent to identifiers that are used to search for content about an entity from sources other than the entity.” App. Br. 25. We are not persuaded by Appellants’ argument.

Sifry teaches generating a user profile based on the subjects individuals write about, which subjects represent the user’s interests and hobbies. Sifry ¶ 56. Sifry further teaches indexing individuals according to these subjects, and using the indexed subjects to query a database to identify the most influential authors writing about the subjects. *Id.* ¶¶ 56, 59.

Appellants Specification instructs us to broadly construe the term “unique identifier” to mean “a term, title, or object associated with a piece of content . . . related to a particular individual.” Spec. ¶ 28. Accordingly, we are not persuaded that the subject matter categories obtained from a user’s writings, which represent the user’s interests and hobbies and are used to search for the writings of other authors writing about the same subject matter, as taught by Sifry, fails to teach or suggest the limitations recited in claim 24. We, therefore, sustain the rejection of claim 24.

Claim 27

Claim 27 depends from claim 22, which depends from claim 21, and further requires dynamically updating the set of identifiers associated with the user based on contextual trends by adding an identifier to the set that appears in search results above a given frequency. App. Br. 35 (Claims App’x).

The Examiner finds claim 27 to be obvious over the combination of Fish and Sifry. Final Act. 19, 23–24. The Examiner finds Sifry’s teaching of monitoring what a user says about a news service’s content, and creating a user profile indicating what the user writes about over time, teaches or suggests this limitation. *Id.* at 23.

Appellants argue that “determining what a community is talking about through links and associated comments is not equivalent to adding terms to a set of identifiers for performing searches based on the results of searches about a user as recited in claim 27.” App. Br. 26. We are not persuaded by Appellants’ argument.

Sifry teaches generating a profile based on the subjects a user writes about, including comments the user makes on a news provider’s website.

Sifry ¶¶ 56, 62. Sifry further teaches creating an index that associates the user with the subjects the user writes about over time. *Id.* ¶ 56. Because news content is dynamic, the subjects the user comments upon over time is dynamic, as is the user profile based upon those subjects. Accordingly, we are not persuaded that Sifry’s index of user subject matter categories, which is obtained in part from the user’s comments on dynamically published news content, and used to search for the content of other authors writing about the same subject matter, fails to teach or suggest the limitations recited in claim 27. We, therefore, sustain the rejection of claim 27.

Claim 30

Claim 30 depends from claim 21, and further requires making the aggregate report available to other users and prohibiting the user from altering the aggregate report. App. Br. 36 (Claims App’x).

The Examiner finds claim 30 to be obvious over the combination of Fish and Shioda. Final Act. 30–31. The Examiner finds Fish teaches making the aggregate report (collection of user content and content about the user) available to other users, and Shioda teaches prohibiting the other users from altering the aggregate report. Final Act. 30–31 (citing Fish ¶¶ 68, 77–98, Fig. 5; Shioda ¶ 57).

Appellants argue that Shioda teaches how to respond (i.e., by preventing access) when an unauthorized user attempts to access a system, and that “responding to the unauthorized use of an ID is not equivalent to prohibiting a user from modifying an aggregate report.” App. Br. 30. The Examiner finds Shioda teaches prohibiting another user from altering a user’s aggregate report because “[t]he claim language does not specify under what conditions the [other] user is prohibited from altering the report,” and

because another user that is “not allowed access to data certainly cannot modify the data.” Ans. 45.

We agree with the Examiner and are unpersuaded by Appellants’ arguments, which are directed to the individual teachings of Fish and Shioda, rather than to their combined teaching. Accordingly, we sustain the Examiner’s rejection of claim 30.

DECISION

The rejection of claim 20 under 35 U.S.C. § 101 is reversed.

The rejection of claims 11–15, 19, and 20–23 stand rejected under 35 U.S.C. § 102(b) as anticipated by Fish is affirmed.

The rejection of claims 16, 17, 24, and 27 under 35 U.S.C. § 103(a) as unpatentable over Fish and Sifry is affirmed.

The rejection of claim 18 under 35 U.S.C. § 103(a) as unpatentable over Fish and Willis is affirmed.

The rejection of claims 25 and 26 under 35 U.S.C. § 103(a) as unpatentable over Fish and Brock is affirmed.

The rejection of claim 28 under 35 U.S.C. § 103(a) as unpatentable over Fish and Sappington is affirmed.

The rejection of claim 29 under 35 U.S.C. § 103(a) as unpatentable over Fish and Gemmell is affirmed.

The rejection of claim 30 under 35 U.S.C. § 103(a) as unpatentable over Fish and Shioda is affirmed.

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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