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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JULIE LOEGER and
MARGARET H. GEORGIADIS

Appeal 2014-007576[1]
Application 11/610,434[2]
Technology Center 3600

Before ANTON W. FETTING, MATTHEW S. MEYERS, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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1. Our decision references Appellants' Appeal Brief ("Appeal Br.," filed January 24, 2014) and Reply Brief ("Reply Br.," filed June 20, 2014), the Examiner's Answer ("Ans.," mailed April 24, 2014), and Final Office Action ("Final Act.," mailed May 24, 2013).
2. Appellants identify Discover Financial Services, as the real party in interest (Appeal Br. 3).

CLAIMED INVENTION

Appellants' claimed invention relates to a "continuous series of bonus rewards programs offered by a financial institution, that provide bonus rewards on consumer purchases with a credit card (or some other financial alternative offered by the financial institution) on goods and services from select merchant categories within a given time frame" (Spec. ¶ 4).

Claims 1, 9, and 19 are the independent claims on appeal. Claim 1, reproduced below, with minor formatting changes and added bracketed notations, is illustrative of the subject matter on appeal:

> 1. A process for using a financial alternative to currency to participate in a bonus rewards program offered by a financial institution, process comprising:
>
> [a] presenting an enrollment interface for a plurality of disjoint sequential bonus rewards programs;
>
> [b] receiving via the enrollment interface an electronic signal indicating enrollment of a user in a first bonus rewards program from the plurality of disjoint sequential bonus rewards programs, wherein the first bonus rewards program is linked to a first category of merchants, the first category of merchants being based on one or more types of goods or services offered by each merchant in the first category;
>
> [c] electronically receiving user data corresponding to the financial alternative to currency for purchasing goods or services having a value from a merchant, the merchant offering goods or services of a type associated with the first category of merchants; and
>
> [d] assigning to the user a bonus reward based on the value of the purchased goods or services, the assigned reward being of a greater monetary value than would be assigned if the merchant did not offer goods or services of a type associated with the first category.

REJECTIONS

Claim 15 is rejected under 35 U.S.C. § 112(b) as being indefinite.

Claims 1–11 and 13–19 are rejected under 35 U.S.C. § 103(a) as unpatentable over Strock (US 2004/0122736 A1, pub. June 24, 2004), O'Neil (US 2003/0105711 A1, pub. June 5, 2003), and Ciancio (US 2004/0219971 A1, pub. Nov. 4, 2004).

Claims 12 and 20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Strock, O'Neil, Ciancio, and Looney (US 2006/0074769 A1, pub. Apr. 6, 2006)

ANALYSIS

Indefiniteness

In rejecting dependent claim 15 under 35 U.S.C. § 112, second paragraph, the Examiner finds

> [t]he term "about" in claim 15 is a relative term which renders the claim indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

(Final Act. 2). In response, Appellants make arguments with respect to dependent claim 5 (*see* Appeal Br. 13–14) but, as the Examiner points out, the "rejection of claim 5 has been withdrawn; however the 35 U.S.C. § 112 second paragraph rejection of claim 15 has been maintained" (Ans. 4).

In the Reply Brief, Appellants argue that the Examiner improperly "asserts that the recitation 'about three months' is indefinite, since 'about' covers a range" (Reply Br. 5); however, "about three months" does not appear in dependent claim 15. Thus, Appellants do not present any response

to the Examiner's rejection of dependent claim 15, and as such, we summarily sustain the rejection of claim 15 under 35 U.S.C. § 112, second paragraph.

Obviousness

Independent claim 1 and dependent claim 2–8

We are not persuaded by Appellants' argument that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 103(a) because none of Strock, O'Neil and Ciancio discloses or suggests "presenting an enrollment interface for a plurality of disjoint sequential bonus rewards programs and receiving an enrollment in a first bonus rewards program from a user," as required by claim 1 (Appeal Br. 11–13; Reply Br. 4–5). Instead, we agree with the Examiner that the combination of Strock, O'Neil and Ciancio discloses the argued features (*see* Final Act. 3–13, 23–31, 39, 48, 51–52 (citing Strock ¶¶ 30, 31, 57, 61, 86, 94, 123, O'Neil ¶¶ 13, 49, Ciancio ¶¶ 3, 13, 31, 32, 37, Fig. 1) and adopt the Examiner's responses to Appellants' arguments as set forth at pages 2–5 of the Answer. We add the following discussion for emphasis only.

Strock is directed to "a data processing technique for allowing a Bank's existing credit cardmembers to earn promotional rewards for specific triggering behaviors in a specific time frame, wherein the rewards can be targeted to specific cardmembers or groups" (Strock ¶ 2; *see also id.* ¶ 30). Strock discloses that "customer **74** may interface with the Account Data Processor **22**, the Rewards Account Data Processor **24**, and/or the Transaction Data Processor **26**" to customize account information and enroll in different rewards programs (*id.* ¶¶ 85–86, 94). More particularly, Strock discloses that "[d]ifferent rewards programs have different enrollment

systems and methods. For some rewards programs, cardmembers have the opportunity to enroll in the program at any time after the account is established" (*id.* ¶ 94). Strock further disclose that "[t]his ability to enroll can be limited according to the customer, customer group, and program based on configurable rules" (*id.* ¶ 95). Strock discloses

> Modules **40**, **42** may define sets of rules for earning rewards currency and/or rewards under a program's earnings and accumulation requirements. The Modules **40**, **42** may also specify attributes or characteristics that limit or define the events, transactions, and behaviors ("triggering events") for which a customer earns a reward or rewards currency. Those attributes may comprise transaction date, time, location, frequency, amount, and other triggering attributes.

(*Id.* ¶ 60; *see also id.* ¶ 61). Strock further discloses

> Interrogate Reward Account Behaviors and Transactions Modules **48**, **50** may allow customers to qualify to earn currency for transactions, events, behaviors with specific sets of attributes like location, time period, platform, frequency, merchandise category, merchant, threshold or other trigger attribute. For example, customers may earn at different rates depending on whether the purchase is from a particular Partner or non-Partner, or other factors such as time of day or store location. Customers can be rewarded with escalating bonus points or rebates for repeat purchases at specific merchants.

(*Id.* ¶ 123). Strock also discloses that its "Interrogate Reward Account Behaviors and Transactions Modules **48**, **50** may automatically adjust earnings features . . . based on the status of a Partner's business," i.e., "periods of peak activity" (*id.* ¶ 128).

O'Neil is directed to "authorization for, and restriction of, financial transactions" (O'Neil ¶ 9). In this regard, O'Neil discloses

> a merchant provides purchase detail data in addition to the conventional transaction data (collectively and in combination,

> "enhanced transaction data"). The purchase detail data information describes the transaction in greater detail than the conventional transaction data. This purchase detail data may include, for example, the category of the item(s) being purchased (or rented, leased, etc.) by the card holder (e.g., clothes, groceries, dining, entertainment, etc.) or data describing the item(s) themselves (e.g., pants, potato chips, food and drink, movie tickets, etc.).

(*Id.* ¶ 13; *see also id.* ¶ 49).

Ciancio is directed "to a reward system which can provide a reward or rebate based upon customer purchases in selected product categories" (Ciancio ¶ 2). In this regard, Ciancio discloses

> in which a plurality of product categories are created, and the customer, store, or other entity can select the product categories to which the program applies or in which the customer's reward will be generated or accumulated. In this manner, the categories in which the customer's reward is generated or credited can be controlled.

(*Id.* ¶ 4). Ciancio discloses that its rewards "program may run for a predetermined amount of time (i.e., from a few hours or days to several years or more; in the example addressed herein the predetermined period of time is several months, such as three months)" and "[w]hen the predetermined amount of time has expired, the program ends (step 24), the customer's purchases in each selected category may be totaled, and a reward or rebate based upon the purchases in each selected category may be calculated (step 26)" (*id.* ¶ 32). Ciancio further discloses that

> although the program may be arranged to run in various cycles, the program may also be arranged to run continuously, but may have various or periodic "cut-off" points in which accumulated points or rewards are distributed to customers. Furthermore, when the program is run in cycles, customers that have previously joined the program may be automatically enrolled in

> the program for the next cycle without the need to affirmatively join the program each time.

(*Id.* ¶ 37). Ciancio also discloses that "the store or chain can communicate the bonus products or product categories (i.e. pet products) to the customers and encourage the customers to purchase the bonus products or products in the bonus product categories" (*id.* ¶ 31).

Appellants argue "[n]owhere does Ciancio teach or suggest 'a plurality of *disjoint* sequential bonus rewards programs' as required by the independent claims" because "the 'cycles' described by Ciancio have nothing to do with a sequence of different bonus rewards programs" (Appeal Br. 12; Reply Br. 4). However, we agree with the Examiner that the combination of Strock, O'Neil and Ciancio discloses the argued feature (*see* Ans. 2–4). In this regard, Strock discloses that its system allows customers to "qualify to earn currency [(i.e., "bonus points or rebates")] for transactions, events, behaviors with specific sets of attributes like location, time period, platform, frequency, merchandise category, merchant, threshold or other trigger attribute" (Strock ¶ 123) and Ciancio discloses that its rewards program may be "run in various cycles" or "run continuously" (Ciancio ¶ 37). That is, Ciancio discloses that "[w]hen the predetermined amount of time has expired, the program ends (step 24), the customer's purchases in each selected category may be totaled, and a reward or rebate based upon the purchases in each selected category may be calculated (step 26)" (*id.* ¶ 32; *see also id.* Fig. 1) while a particular cycle begins with "Define Product Categories" (step 10) (*see id.* ¶ 14; *see also id.* Fig. 1).

We note this interpretation is commensurate in scope with the language of independent claim 1 and reasonable in light of Appellants' Specification. In making this determination, we note that Appellants have

not directed us to any special definition in the Specification for the phrase "disjoint sequential bonus rewards programs," as presently claimed; and, after reviewing Appellants' Specification, we are unable to find any such clear and explicit definition for the term. Instead, the Specification provides several non-limiting examples (*see, e.g.*, Spec. ¶¶ 5, 7, 15, 17, 19) and describes broadly that

> an example of some of the steps for a financial institution to offer one bonus rewards program in a series of programs to one or more consumers. First, the financial institution selects a category of merchants and/or one or more particular merchants for the bonus rewards program **40**. Preferably, the financial institution selects the category of merchants and goods and services based on consumers [sic] needs for the given time frame of the bonus rewards program. For example, if the bonus rewards program is offered in the fall during the months of August and September, the category of merchants may include those that sell school supplies. This coincides with the start of the new school year and consumers' needs for new school supplies.

(*Id.* ¶ 17). Here, we agree with the Examiner that "Ciancio teaches the concept of category based rewards for set periods of time, wherein each cycle as taught by Ciancio is functionally the same as the individual reward programs as claimed by the Appellant" (Ans. 2–3), and as such, constitutes "a plurality of disjoint sequential bonus rewards programs," as recited by independent claim 1, under a broad, but reasonable, interpretation.

In view of the foregoing, we sustain the Examiner's rejection of independent claim 1 under 35 U.S.C. § 103(a). We also sustain the Examiner's rejection of claims 2–8, which is not separately argued.

Independent claims 9 and 19, and dependent claims 10–18 and 20

Appellants' arguments with respect to independent claims 9 and 19 (*see* Appeal Br. 11–13; *see also* Reply Br. 4–5) are substantially similar to Appellants' arguments with respect to claim 1, and are unpersuasive for the same reasons.

Therefore, we sustain the Examiner's rejection of independent claims 9 and 19 under 35 U.S.C. § 103(a) for the same reasons set forth above with respect to independent claim 1. We also sustain the Examiner's rejections of claims 10–18 and 20, which are not separately argued.

DECISION

The Examiner's rejection of claim 15 under 35 U.S.C. § 112, second paragraph, is summarily affirmed.

The Examiner's rejections of claims 1–20 under 35 U.S.C. § 103(a) are 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)(1)(iv).

<u>AFFIRMED</u>