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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AMY BETH HOKE

Appeal 2014-009416
Application 13/442,193
Technology Center 3600

Before, MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
MICHAEL W. KIM, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE¹

Appellant seeks our review under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–14, which constitute all the claims pending in this application. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ The Appellant identifies Bottomline Technologies (DE) Inc. as the real party in interest. (Appeal Br. 2).

THE CLAIMED INVENTION

Appellant claims a an electronic payment and remittance system which assesses a variable transaction fee to each vendor and provides each vendor with a different level of service based on aggregate transaction fees paid. (Spec. 1, ll. 4–7). Claim 1 is illustrative of the claimed subject matter:

1. A system for making payments from each payer of a community of payers to each vendor of a community of vendors, assessing a variable transaction fee to each vendor, and providing to each vendor one of multiple levels of services based on aggregate transaction fees, the system comprising:

a payment application comprising instructions stored in a computer readable memory and executed by a processor, the instructions comprising:

for each payment initiated by a payer to a transaction vendor, the transaction vendor being one of the vendors within the payer vendor group associated with the payer:

determining a transaction fee:

looking up, in a database, a transaction fee percentage associated with the transaction vendor;

determining the product of an amount of the payment multiplied by the transaction fee percentage, such product being the transaction fee; and

for each vendor, assigning the vendor to one of at least three service tiers by:

calculating a vendor aggregate transaction fee, the vendor aggregate transaction fee being the sum of each transaction fee applied to each payment initiated by any payer to the vendor during a predetermined period of time;

assigning the vendor to a first of the at least three service tiers if the aggregate transaction fee is lower than a first threshold amount;

assigning the vendor to a second of the at least three service tiers if the aggregate transaction fee is greater then the first threshold amount and less than a second threshold amount; and

assigning the vendor to a third of the at least three service tiers if the aggregate transaction fee is greater than the second threshold amount;

providing to each vendor a menu object for rendering on a vendor system, the menu object rendering controls for multiple functions available for selection:

the quantity of functions available for selection in the menu object provided to each vendor in the first service tier being fewer than the quantity of functions available for selection in the menu object provided to each vendor in the second service tier and the third service tier; and

the quantity of functions available for selection in the menu object provided to each vendor in the second service tier being fewer than the quantity of functions available for selection in the menu object provided to each vendor in the third service tier.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Yamaguchi et al. (“Yamaguchi”)	US 2003/0046225 A1	Mar. 6, 2003
Smith et al. (“Smith”)	US 2006/0059087 A1	Mar. 16, 2006
Sims et al. (“Sims”)	US 2010/0274714 A1	Oct. 28, 2010

REJECTIONS

The following rejections are before us for review.

The Examiner rejected claims 1, 6, and 11 under 35 U.S.C. § 103(a) as unpatentable over Yamaguchi and Smith.

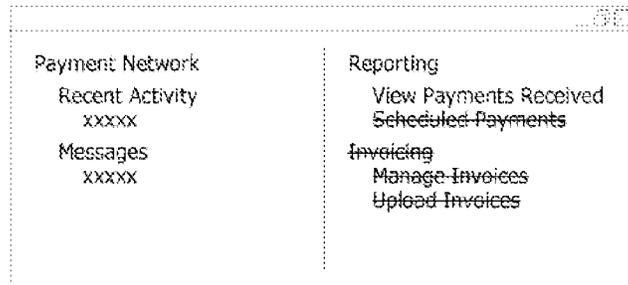
The Examiner rejected claims 2–5, 7–10, and 12–14 under 35 U.S.C. § 103(a) as unpatentable over Yamaguchi, Smith, and Sims.

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence.

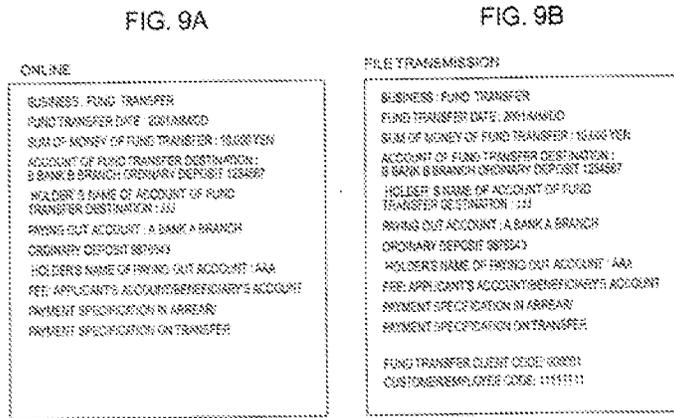
1. Yamaguchi discloses a user inputs a “sum of money of the fund transfer” along with other data for the transfer. (Yamaguchi para. 52).
2. Yamaguchi discloses a fee for a funds transfer is determined based on input variables provided by a user and the use of a fee database established by a bank. (*Id.* para. 53).
3. Smith discloses that tiers and scaling factors based on accumulated data about transactions “allows a payment processor to decrease the risk of processing payments by charging payment processing rates that reflect the actual risk of processing payments for a merchant.” (Smith para. 66).
4. Smith discloses determining net revenue to the card processor “for determining whether or not to accept a merchant based upon merchant account data.” (*Id.* at para. 35).
5. The Specification describes by example vendor systems in Figure 3 at elements 61A, 61B, and 61C. (Spec. 43, ll. 27–29).
6. The Specification describes that vendor systems include: i) a web browser 61 a on a workstation or other computer which accesses system 10 via a web connection; ii) a tablet computer 61 b such as an iPad which accesses the system 10 utilizing a custom client application on the tablet; and iii) other mobile devices 61c such as smart phones which access the system 10 utilizing a custom client application on the mobile device, in each case over permutations of the internet, wired or wireless internet service provider networks, and a local area network.
(Spec. 17, ll. 9–16).

7. The Specification describes “a template for vendors in Tier 1 is represented as it would be graphically rendered on a vendor system 61 (Figure 3). The template shows functions that are available to Tier 2 and Tier 3 vendors as unavailable to Tier 1 vendors, such functions being, strictly for exemplary purposes, reporting of 15 scheduled payments and all invoicing functions.” (Spec. 44, ll. 11–15).
8. Appellant’s Figure 18A shows an example template of functions available, or unavailable, to a merchant, as shown below:



Appellant’s Figure 18A showing a menu object that provides functions rendered on a vendor system, including functions not available based on tier.

9. Yamaguchi discloses menu objects at browser interfaces in Figure 9A and 9B, shown below:



Figures 9A and 9B of Yamaguchi showing menu objects.

ANALYSIS

Independent claim 1 recites computer instructions for “calculating a vendor aggregate transaction fee, the vendor aggregate transaction fee being the sum of each transaction fee applied to each payment initiated by any payer to the vendor during a predetermined period of time,” and assigning the vendor to a tier based on the amount of the vendor aggregate transaction fee. Likewise, independent claim 11 recites computer instructions for “determining, for each vendor, an aggregate transaction fee, the aggregate transaction fee for the vendor being the sum of the total transaction fees for each payer making payments to the vendor,” and providing a vendor a quantity of menu functions based on the amount of the aggregate transaction fee.

Appellant argues “Yamaguchi does not calculate a vendor aggregate transaction fee.” (Appeal Br. 13–14; *see also* Reply Br. 3–5). We are persuaded by Appellant’s argument.

The Examiner finds the claim language disclosed in Yamaguchi, Figures 10–12, 15, and 16, and in paragraphs 51–76. (Final Act. 3). The

Examiner further articulates Yamaguchi's "sum of money" is used to determine a fee to charge, and speculates that the ordinary artisan would recognize the fee to be based on an aggregated fee amount. Answer 4–5. However, the "sum of money" in Yamaguchi is not a result of adding up different amounts of money, but instead is just a specified amount of money for a transaction that is used to set a fee for that transaction. (FF 1). Yamaguchi discloses that the fee amount is based on information provided by a user, such as the sum of money, and a chart of fees established by a bank. (FF 2). Yamaguchi does not disclose the basis for the fees in the fee databases. Therefore the ordinary artisan would have no reason from Yamaguchi to conclude the fee database is based on an aggregate fee amount instead of some other basis.

The Examiner further finds it would be obvious to replace Yamaguchi's "sum of money" with Smith's "transaction data that is accumulated over time." (Answer 5). The Examiner, thus, equates Smith's accumulation of data with an accumulation of fee amounts. However, Smith discloses it uses this accumulated data to set a fee based on risk, not on any fee volumes. (FF 3). Smith discloses the determination of what may be interpreted as accumulated fees, in the form of net revenue to the processor. (FF 4). But, this is to determine whether to accept a new customer, not for any other purpose, such as to assign a vendor to a tier. (*Id.*).

As a result, we find that the combination fails to disclose the claimed "sum of each transaction fee applied to each payment initiated by any payer to the vendor during a predetermined period of time," and assigning a vendor to a tier based on an aggregated fee amount, as claimed. This is because Yamaguchi does not determine an aggregated fee amount, and

neither reference assigns vendors to a tier based on an aggregated fee amount.

In addition, Appellant argues Yamaguchi and Smith do not provide to a vendor a menu object having a quantity of functions available depending on the vendor's service tier. Instead, according to Appellant, Smith "charges the merchant a different fee or determines the fee in a different way depending on the pricing tier the merchant is assigned to" (Appeal Br. 17–20), and does not restrict access to data or pricing algorithms based on tiers as asserted by the Examiner. (Reply Br. 9–24).

We are persuaded by Appellant's arguments.

The Specification does not define a "menu object," but describes that a menu object is rendered on a vendor computer system such as a browser (FF 5, 6) and "renders controls for multiple functions available for selection by the vendor" (FF 7, 8). A menu object is, thus, a user interface that provides access to computer functions.

Thus, Yamaguchi discloses a menu object at Figure 9A and 9B (FF 9), and tiers of customers who receive different treatment. But, the different treatment customers receive is a different fee, and not different levels of control in a user interface, as generally claimed.

Yamaguchi and Smith do not, individually or in combination, disclose different "quantity of functions available for selection in the menu object" based on tiers that are themselves based on an aggregated fee amount, as claimed in claims 1 and 11.

For these reasons we reverse the rejection of claims 1 and 11. We also reverse the rejection of dependent claim 6 that was rejected along with claims 1 and 11.

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Claims 2–5, 7–10, and 12–14

Since claims 2–5, 7–10, and 12–14 depend from one of claims 1 and 11, and since we cannot sustain the rejection of claims 1 and 11, the rejection of claims 2–5, 7–10, and 12–14 likewise cannot be sustained. Also, the Examiner does not establish that Sims remedies the shortcomings in the combination of Yamaguchi and Smith, as set forth above.

CONCLUSIONS OF LAW

The Examiner erred in rejecting claims 1–14 under 35 U.S.C. § 103(a).

DECISION

For the above reasons, the Examiner's rejections of claims 1–14 are reversed.

REVERSED