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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID SETH SHAMLIAN

Appeal 2014-009443[1]
Application 12/985,844
Technology Center 3600

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

KIM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

This is an appeal from the final rejection of claims 1–20. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6.

The invention relates generally to optimizing facility capacity usage. Spec. para. 1.

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[1] The Appellant identifies the inventor, David Seth Shamlian, as the real party in interest. Br. 3.

Claim 1 is illustrative:

1. A system comprising:

a communications interface adapted to interface with a network;

a processor coupled to the communications interface and adapted to:

receive facility information from a plurality of facilities wherein said facility information includes recreation zones;

receive a facility search request from a user;

search at least one database to determine if there is an approximate match with the facility search and send the response to the user;

conduct an auction for the recreation zones by receiving bids from users and informing users of the results; and

receive a request to reserve at least one of the recreation zones within the plurality of facilities.

Claims 1 and 6 are rejected under 35 U.S.C. § 103(a) as unpatentable over Craw (US 2008/0021789 A1, pub. Jan. 24, 2008) and Capek (US 2003/0204474 A1, pub. Oct. 30, 2003).

Claims 2–4 and 11 are rejected under 35 U.S.C. § 103(a) as unpatentable over Craw, Capek, and Mashiach (US 2011/0191222 A1, pub. Aug. 4, 2011).

Claim 5 is rejected under 35 U.S.C. § 103(a) as unpatentable over Craw, Capek, and Chi (US 2009/0112727 A1, pub. Apr. 30, 2009).

Claims 7 and 18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Craw, Capek, and Burke (US 2005/0045710 A1, pub. Mar. 3, 2005).

Claims 8 and 17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Craw, Capek, and Soroca (US 2010/0063877 A1, pub. Mar. 11, 2010).

Claim 9 is rejected under 35 U.S.C. § 103(a) as unpatentable over Craw, Capek, and Aronchick (US 2007/0184910 A1, pub. Aug. 9, 2007).

Claim 10 is rejected under 35 U.S.C. § 103(a) as unpatentable over Craw, Capek, and Event Insurance (last retrieved on Sept. 29, 2012 at http://web.archive.org/web/20090527113903/http://www.eventinsurances.com).

Claim 12 is rejected under 35 U.S.C. § 103(a) as unpatentable over Craw, Capek, and Official Notice.

Claim 13 is rejected under 35 U.S.C. § 103(a) as unpatentable over Craw and Phillips (US 2002/0120492A1, pub. Aug. 29, 2002).

Claim 14 is rejected under 35 U.S.C. § 103(a) as unpatentable over Craw, Phillips, and Chestnut (US 2010/0185529 A1, pub. July 22, 2010).

Claim 15 is rejected under 35 U.S.C. § 103(a) as unpatentable over Craw, Phillips, and Levy (US 2002/0038280 A1, pub. Mar. 28, 2002).

Claim 16 is rejected under 35 U.S.C. § 103(a) as unpatentable over Craw, Phillips, and Rudy (US 2003/0125990 A1, pub. July 3, 2003).

Claim 19 is rejected under 35 U.S.C. § 103(a) as unpatentable over Craw, Phillips, and Del Favero (US 8,255,248 B1, iss. Aug. 28, 2012).

Claim 20 is rejected under 35 U.S.C. § 103(a) as unpatentable over Craw and Keller (US 2010/076811 A1, pub. Mar. 25, 2010).

We AFFIRM.

ANALYSIS

Claims 1, 2, and 4–12

We are not persuaded by Appellant's argument that Craw fails to disclose facility information including recreation zones. Br. 18–19. The term "recreation zone" is not defined by Appellant, though examples of a tennis court and baseball field are described. Spec. 22, ll. 5–9. We construe

the term as a location where recreation takes place. Craw discloses a reservation system for tee times at a plurality of golf courses. Craw, para. 12. We find that each of those plurality of golf courses corresponds properly to the recited "recreation zone."

We are also unpersuaded by Appellant's argument that the Examiner has not provided a rational underpinning to support the motivation-to-combine rationale advanced by the Examiner. Br. 19. To the extent Appellants seek an explicit suggestion or motivation in the reference itself, this is no longer the law in view of the Supreme Court's recent holding in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007).

Moreover, claim 1 recites[2] a system adapted to "conduct an auction for the recreation zones by receiving bids from users and informing users of the results." The Examiner finds an auction is not disclosed in Craw, but is disclosed in Capek, and articulates a rationale for the introducing the auction to Capek's system for "when there are multiple requestors." Final Act. 3. We are, thus, persuaded that the Examiner has articulated an adequate reason for the modification, with sufficient rational underpinning, as the proffered modifications provides a way to address resolving excess demand for a constrained resource, i.e., using an auction. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness"); s*ee also KSR* at 417–418. In addition, we find that the combination of functions would perform the same functions after

[2] The auction results are not linked to any other limitation or use, such as the next-recited reservation. The auction thus stands alone in claim 1.

combination as before, with predictable results. *Id.* ("if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.")

Appellant also argues that combining an auction with Craw would render Craw unsatisfactory for its intended purpose, because some of the asserted benefits of speed would be lost with an auction. Br. 20. We are not persuaded by Appellant's argument. Craw discloses its system will "provide an online golf reservation system (OGRS) that may allow a user to search (and subsequently book, if desired) available tee-times for a plurality of golf courses in an efficient, timely manner." Craw, para. 12. "Combining the *teachings* of references does not involve an ability to combine their specific structures." *In re Nievelt*, 482 F.2d 965, 968 (CCPA 1973). Though not every potential benefit may be realized with the combination, we are unpersuaded that the proffered modification would have prevented Craw's reservation system from working, and, thus, are unpersuaded that the proffered modification would have rendered Craw as unsatisfactory for its intended purpose. In addition, because the auction in claim 1 is not linked to any other step, it would not need to take place before the reservation is made in the final-recited limitation.

For these reasons, we sustain the rejection of claims 1 and 20. We also sustain the rejection of dependent claims 2 and 4–12 that were not argued separately. Br. 18.

Claims 13–15 and 17–19

We are not persuaded by Appellant's argument that the Examiner has not provided a rational underpinning to support the rationale to modify the optimal pricing of Phillips with the reservation system of Craw, and that the combination relies on impermissible hindsight. Br. 23–24.

The Examiner finds that Craw does not disclose "providing price recommendations for the recreation zones to the facility providers," as claimed, but Phillips does, in that Phillips discloses its "transaction update API may update information in an e-pricing database **104E**, which is used by a pricing engine **104D** to forecast demand and/or recommend optimal pricing." Philips, para. 34. The Examiner reasons it would make sense to make pricing recommendations by combining Phillips use of a pricing engine with Craw's reservation system to "find the optimal pricing." Final Act. 8. We are persuaded the Examiner has articulated adequate reasoning for the combination, with sufficient factual underpinnings, and has met the Examiner's burden of explaining why the ordinary artisan would modify Craw with Phillips.

For this reason, as well as the reasons considered above at claim 1 that also were directed to claim 13, we sustain the rejection of claim 13, as well as of dependent claims 14, 15, and 17–19 that were not argued separately. Br. 18–20.

Claim 20

Claim 20 is argued together with claim 1, but is rejected over a different combination of references. Br. 18–20. The arguments directed to

Craw the same as those directed to claim 1, and, thus, are unpersuasive for the same reasons we set forth above at claim 1.

Claims 3 and 16

Dependent claim 3 recites that the system "is configured to determine if the user is prequalified by determining if the user has insurance coverage." Claim 3 is rejected over Craw, Capek, and Mashiach. Dependent claim 16 recites "sending a request to a user inquiring if they are covered by insurance." Claim 16 is rejected over Craw, Phillips, and Rudy.

We are not persuaded by Appellant's argument that the reasons for the combinations articulated by the Examiner "do not have a rational underpinning." Br. 21. We are persuaded that the combination of functions (determining if the user has insurance, and inquiring if the user has insurance, as claimed) would perform the same functions after combination as before, with predictable results. *See KSR* at 417. In addition, we determine that the ordinary artisan would have recognized the broader application of Craw's reservation system beyond golf courses. *See KSR* at 418. (In making the obviousness determination one "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.") In particular, Mashiach discloses, expressly, that venues for some events were known to require insurance. Mashiach, para. 14.

For this reason, we sustain the rejection of claims 3 and 16.

Claim 12

Dependent claim 12 recites "wherein the controller is configured to send a message to a facility provider when the facility has not been rented in

a predetermined time period to indicate that the facility provider should alter the rental price."

The Examiner rejects claim 12 over the combination of Craw, Capek, and Official Notice that "sending a message to an owner to lower the price of a unit that is not selling or renting within a particular time period is old and well known in the art of real estate transactions." Final Act. 7.

We are not persuaded by Appellant's argument that because the Examiner refers to real estate, the Official Notice is non-analogous art to the claimed invention. Br. 22. Instead, we agree with the Examiner and find that the ordinary artisan would recognize that lowering prices to increase sales is a well-known practice not limited to real estate alone, but is a pervasive commercial practice in all lines of business, including reserving facilities for rent, as claimed. "[A] person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR* at 421. The use of discounting to promote sales, thus, is in the same field of general commerce as the claimed reservation system, and is, thus, in the same field of endeavor.

We sustain the rejection of claim 12.

DECISION

We AFFIRM the rejections of claims 1–20 under 35 U.S.C. § 103(a).

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