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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DAVID DE ANDRADE  
and RANJIT SAHOTA

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Appeal 2015-006755  
Application 09/841,644  
Technology Center 2400

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Before JEFFREY S. SMITH, AARON W. MOORE, and  
MICHAEL J. ENGLE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–6, 10, 11, 13, 20, 41, and 43–54, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

## THE INVENTION

The application is directed to “[a] method and system . . . for automatic insertion of interactive television (TV) triggers into a broadcast data stream.” (Abstract.) Claim 1, reproduced below, is illustrative:

1. A method comprising:

receiving, at a computing device located at a distribution point within a distribution network, a first transmission comprising a video data stream, the first transmission being received through the distribution network at the distribution point during delivery of the video data stream from a source located remotely from the computing device to a plurality of terminals;

recognizing, using the computing device in response to the receiving, a pattern in the video data stream received in the first transmission;

preparing, automatically in response to the recognizing, a modified video data stream for at least one of the plurality of terminals by inserting an interactive trigger associated with the pattern into the video data stream; and

transmitting, in response to the preparing, from the computing device via the distribution network for the at least one of the plurality of terminals, a second transmission comprising the modified video data stream.

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<sup>1</sup> Appellants identify “TVWorks, LLC . . . a subsidiary of Comcast Corporation” as the real party in interest. (App. Br. 3.)

### THE REFERENCES AND THE REJECTION

Claims 1–6, 10, 11, 13, 20, 41, and 43–54 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sharir et al. (US 6,297,853 B1; issued Oct. 2, 2001) and Moore et al. (US 2001/0047298 A1; published Nov. 29, 2001). (*See* Final Act. 2–5.)

### ANALYSIS

*Claims 1, 3–6, 10, 11, 13, 20, 41, 43, 44, and 46–54*

In the Final Office Action, the Examiner found that Sharir taught each of the limitations of claim 1, except that “Sharir fails to disclose inserting the advertisement . . . comprises inserting an interactive trigger.” (Final Act. 2–3.) However, the Examiner further found that “Moore discloses inserting interactive (user selectable, paragraph 0037) triggers into modified data streams (metadata that triggers the retrieval of an advertisement is embedded into the media itself, paragraphs 0021 and 0039)” and that it would have been obvious “to include inserting interactive triggers, as taught by Moore, for the benefit of ensuring system providers can provide the most recent and relevant advertising content regardless of when the user views the modified data stream.” (*Id.* at 4.)

Appellants argued after final that Moore was not usable as prior art because the priority provisional application, Serial No. 60/193,948, “fails to disclose the features in Moore relied on by the Office Action in rejecting the claims.” (July 14, 2014 “Request for Reconsideration” at 7.) The Examiner responded that the ’948 application “incorporates by reference 60/170,386, which discloses the insertion of selectable URLs on page 11 lines 8-22 and page 12 lines 9-28.” (July 30, 2104 Advisory Action at 2.)

Appellants now argue that “[n]othing in [the] cited portions [of the ’386 provisional] disclose the alleged Moore selectable object in a media stream that causes the set top box to retrieve an advertisement (e.g. from a URL) in response to being selected.” (App. Br. 8.)

The Examiner responds that “[t]he only feature thus missing [from Sharir] is the act of associating an interactive trigger with an advertisement” and that “[t]he cited provisional application (60/170,386) provides a teaching in the prior art that it was known at the time to associate interactive triggers with advertisements (60/170,386 pages 11-12, where the KOTV On-Line advertisement is displayed and is a selectable object that retrieves the KOTV On-Line content upon selection by a user).” (Ans. 2–3.)

We agree with the Examiner. Appellants acknowledge that Sharir “discloses a TV center 30 that: (1) receives video . . . of a live sporting event in a stadium . . . ; (2) identifies images of physical locations (e.g., a billboard) in the stadium in the video frames of the video . . . ; (3) substitutes the images of the physical locations with substitute images of virtual advertisements in the video frames . . . ; and (4) broadcasts the video with the substituted virtual images to subscribers.” (App. Br. 5.) The difference between Sharir and Appellants’ claim 1 is “inserting an interactive trigger associated with the pattern into the video data stream.” Moore, however, teaches the use of interactive advertisements, where the user may select an advertisement to obtain additional content. (*See* ’386 Provisional at 11–12 (“The guide may also provide users with an opportunity to select an advertisement 16 from any guide screen that includes selectable advertisements, and to obtain information for the advertised program,

product, or service.”).<sup>2</sup>) We agree with the Examiner that the combination thus teaches or suggests inserting advertisements into video (as in Sharir) and associating the advertisements with “interactive triggers” (as in Moore). Appellants’ argument that Moore does not disclose selectable objects “in a video” is not persuasive because Sharir teaches the video,<sup>3</sup> and because Appellants have not offered evidence or persuasive technical reasoning why one of skill in the art could not have applied Moore’s teachings regarding selectable static advertisements to Sharir’s video advertisements. We further agree with the Examiner that one rational motivation for the combination would be to “provide the most recent and relevant advertising content regardless of when the user views the modified data stream.” (Final Act. 4.)

For these reasons, we sustain the rejections of claims 1, 3–6, 10, 11, 13, 20, 41, 43, 44, and 46–54.

*Claims 2 and 45*

Claim 2 adds to claim 1 recognizing, at one of the terminals, a second pattern and inserting a second trigger. Claim 45 requires inserting a trigger prior to transmitting the content to the terminal and inserting another trigger after reception of the content by the terminal. Appellants argue that “Moore does not disclose performing its process before and after transmission of the

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<sup>2</sup> Because Moore expressly incorporates the ’948 provisional (*see* Moore ¶ 1) and the ’948 provisional expressly incorporates the ’386 provisional (*see* ’948 Provisional at 1), all of the subject matter of the ’386 provisional is part of Moore.

<sup>3</sup> *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”).

media stream to the terminal.” (App. Br. 10.) The Examiner responds with reference to “the example provided in [the ’386 Provisional] . . . of displaying an interactive advertisement for KOTV On-Line alongside primary content.” (Ans. 3.) We agree with Appellants that the cited material fails to teach or suggest inserting triggers both before and after receipt of the media at the terminal and, therefore, do not sustain the rejections of claims 2 and 45.

#### DECISION

The rejection of claims 1, 3–6, 10, 11, 13, 20, 41, 43, 44, and 46–54 is affirmed.

The rejection of claims 2 and 45 is reversed.

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-IN-PART