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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HARSH ARORA

Appeal 2016-001953
Application 13/604,378
Technology Center 3600

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN,
and ROBERT J. SILVERMAN, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ seeks our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1–30. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellant identifies NOW DISCOUNT LLC as the real party in interest. App. Br. 3.

Claim 1 is illustrative:

1. A platform for recapture of retail sales in showrooming situations comprising:
 - a. a mobile processor configured to provide a mobile application comprising:
 - i. a software module for allowing a consumer to identify at least one retail item, the at least one retail item within a physical retailer outlet, wherein identification of the at least one retail item indicates the consumer's intent to showroom the at least one retail item to the retailer;
 - ii. a software module for identifying the location of the physical retailer outlet;
 - iii. a software module for transmitting retail item and location information to a server application;
 - b. a server processor configured to provide a server application comprising:
 - i. a software module for querying the retailer to offer or decline to offer a discounted price to the consumer, the discounted price dynamically generated based on inputs comprising the at least one retail item and the consumer, the retailer queried being the retailer where the at least one retail item and the consumer are present and that the consumer indicated they intend to showroom, the query consisting essentially of information sent from the server application to the retailer or an entity or individual associated with the retailer without presentation of the query to the consumer;
 - ii. a software module for presenting the discounted price offered by the retailer to the consumer, the discounted price presented at the mobile application, thereby creating an opportunity for the retailer to counter showrooming by recapturing a retail sale to the showrooming consumer.

Appellant appeals the following rejection(s):

1. Claim 16 is rejected under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention.
2. Claims 1–5, 8–13, 16–20, and 22 are rejected under pre-AIA 35 § U.S.C. 103(a) as being unpatentable over Paradise et al. (US 2012/0158482 A1; pub. June 21, 2012) (hereinafter “Paradise”) in view of Boss et al. (US 7,653,576 B2; issued Jan. 26, 2010) (hereinafter “Boss”), and further in view of George Anderson, *Retailers Fear Becoming Amazon’s ‘Showroom,’* Forbes (2011), <http://onforb.es/qpKYr4> (hereinafter “Anderson”).
3. Claims 6–7, 14–15, and 23–24 are rejected under pre-AIA 35 § U.S.C. 103(a) as being unpatentable over Paradise in view of Boss, further in view of Anderson, and further in view of Moss et al., US 2005/0160004 A1; published July 21, 2005 (hereinafter “Moss”).
4. Claim 21 is rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Paradise in view of Boss, further in view of Anderson, and further in view of O’Shea et al., US 2008/0052169 A1; published Feb. 28, 2008 (hereinafter “O’Shea”).
5. Claims 25–26 and 28–29 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Paradise in view of Anderson, and further in view of O’Shea.
6. Claim 27 is rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Paradise in view of Anderson, further in view of O’Shea,

and further in view of Boss.

7. Claim 30 is rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Paradise in view of Anderson, further in view of O'Shea, and further in view of Moss.

ANALYSIS

Rejection under 35 U.S.C. § 112, second paragraph

We will summarily sustain this rejection because the Appellant does not contest or address this rejection in the Brief or in the Reply Brief.

Rejections under 35 U.S.C. § 103(a)

The Appellant argues that the relied on references do not disclose a software module for allowing a consumer to identify at least one retail item wherein identification of the at least one retail item indicates the consumer's intent to showroom the at least one retail item to the retailer. We agree.

The Examiner relies on Anderson page 1, paragraph 1 for teaching this subject matter. This portion of Anderson discloses that a growing number of consumers have taken to going to Best Buy to test consumer electronics and then going online to get them at a cheaper price and that Best Buy is in danger of turning into Amazon's showroom.

We agree with the Appellant that here is no disclosure of a software module capable of identifying at least one retail item wherein identification of the at least one retail item indicates the consumer's intent to showroom the at least one retail item to the retailer. Rather, all that Anderson discloses at page 1, paragraph 1 is that some consumers use Best Buy as Amazon's showroom.

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In view of the foregoing, we will not sustain the Examiner's rejection of claim 1 and claims 2 to 5 dependent therefrom. We will also not sustain the rejection as it directed to the remaining claims subject to this rejection because each of these claims also requires similar subject matter.

We will also not sustain the remaining rejections for the same reason.

DECISION

The decision of the Examiner is reversed.

ORDER

REVERSED