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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KENT MATTHEW SCHOEN,
GREGORY LUC DINGLE, and TIMOTHY KENDALL

Appeal 2016-003436
Application 13/023,197[1]
Technology Center 3600

Before CAROLYN D. THOMAS, JASON V. MORGAN, and AMBER L. HAGY, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Introduction

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Non-Final Rejection of claims 1, 3–9, 17, 21–27, and 30–33. Claims 2, 10–16, 18–20, 28, and 29 are canceled. Non-Final Act. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] Appellants identify Facebook, Inc., as the real party in interest. App. Br. 3.

Invention

Appellants disclose a method "for tracking information about the activities of users of a social networking system while on another domain." Abstract.

Exemplary Claim (*key limitations emphasized*)

1. A method comprising, by one or more processors associated with one or more computing devices of a social networking system:

maintaining, by one or more of the processors, a profile for each of one or more users of the social networking system, wherein the profile for each user comprises information about the user and information identifying connections to one or more other users of the social networking system;

tracking, by one or more of the processors, actions taken by one or more of the users of the social networking system on third-party websites by:

receiving one or more tracking pixel messages generated by a browser client associated with one or more of the users of the social networking system, respectively, the browser client having accessed a tracking pixel associated with a third-party website having a different domain than the social networking system, each tracking pixel message comprising information about an action taken by one or more of the users of the social networking system on the third-party website;

validating each tracking pixel message by validating a tracking identifier of the tracking pixel message using a hash value;

identifying a user of the social networking system associated with the tracking pixel message by accessing a user identifier associated with the tracking pixel message, the user identifier corresponding to the user; and

recording, for each validated tracking pixel message, the action taken by the user on the third-party website in a pixel-user association table;

correlating, by one or more of the processors, each of the actions on the third-party website recorded in the pixel-user association table with one or more social advertisements presented to one or more of the users of the social networking system, wherein each social advertisement presented to a particular user of the social networking system comprises information identifying an action taken by one or more other users of the social networking system on the third-party website, wherein each of the one or more other users are connected within the social networking system as friends to the particular user to whom the social advertisement is presented; and

generating a tracking report for display to an advertiser associated with the one or more social advertisements, the tracking report comprising statistical data that associates one or more user profile attributes to one or more of the social advertisements and actions on the third-party website that correlate to respective ones of the social advertisements.

Rejections

The Examiner rejects claims 1, 3–9, 17, 21–27, and 30–33 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Non-Final Act. 3–4.

The Examiner rejects claims 1, 3–9, 17, 21–27, and 30–33 under 35 U.S.C. § 103(a) as being unpatentable over Monfried et al. (US 2008/0228537 A1; published Sept. 18, 2008) ("Monfried"), Liu et al. (US 6,839,680 B1; issued Jan. 4, 2005) ("Liu"), Kendall et al. (US 2009/0119167 A1; published May 7, 2009) ("Kendall"), and Levine et al. (US 2009/0144146 A1; published June 4, 2009) ("Levine"). Non-Final Act. 5–36.

ANALYSIS

35 U.S.C. § 101

In rejecting claim 1 under 35 U.S.C. § 101, the Examiner concludes the claim is either "directed to the [abstract] concept of the effectiveness of

advertising by location" (Non-Final Act. 3) or to "'comparing new and stored information and using rules to identify options'" (Ans. 4). The Examiner further concludes the claimed invention is "performed by [a] generically recited computer/processor." Non-Final Act. 4; *see also* Ans. 4–5. Therefore, the Examiner concludes claim 1 is directed to non-statutory subject matter.

Appellants contend the Examiner erred because claim 1 "is 'necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.'" App. Br. 9 (citation to *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) omitted in original). Appellants argue "that the use of tracking pixels to track user actions on third-party websites and then correlating the actions with social advertisements presented to those users on the online social network is not a mental process, let alone a 'routine mental[ ]information-comparison and rule-application process[].'" Reply Br. 4 (citation to *SmartGene, Inc. v. Advanced Biological Labs. SA*, 555 F. App'x 950, 955 (Fed. Cir. 2014) (non-precedential) omitted in original; second set of brackets in original).

We agree with Appellants the Examiner erred in concluding claim 1 is directed to an abstract idea representing non-statutory subject matter. Claim 1 includes recitations directed to *tracking actions taken by users* by steps that include *a browser client having accessed a tracking pixel* of a *third-party website having a different domain than the social networking system.* Together, the recitations are directed to "tracking information about the activities of users of a social networking system while [the users are] on another domain." Abstract. This tracking goes well beyond merely

"[m]aximizing the effectiveness of advertising" by location. Non-Final Act. 3–4; *see also* Ans. 4. However, the Examiner does not show how such tracking relates to any idea that "was in widespread use well before the dawn" of social networking systems. *See DDR Holdings*, 773 F.3d at 1264 (Mayer, J., dissenting). Moreover, the Examiner does not persuasively show that the claim is directed to a "business solution" (Ans. 5) rather than to solving "a problem specifically arising in the realm of computer networks" (*DDR Holdings*, 773 F.3d at 1257). The Examiner also does not persuasively show claim 1 merely compares new and stored information and uses rules to identify options. Ans. 4. Therefore, we do not agree with the Examiner that claim 1 is directed to an abstract idea representing non-statutory subject matter.

Accordingly, we do not sustain the Examiner's 35 U.S.C. § 101 rejection of claim 1, or claims 3–9, 17, 21–27, and 30–33, which are rejected together and which similarly directed to statutory subject matter.

35 U.S.C. § 103(a)

With respect to the Examiner's 35 U.S.C. § 103(a) rejection, we agree with and adopt as our own the Examiner's findings of facts and conclusions as set forth in the Answer and in the Action from which this appeal was taken. We have considered Appellants' arguments, but do not find them persuasive of error. We provide the following explanation for emphasis.

In rejecting claim 1 under 35 U.S.C. § 103(a), the Examiner finds Monfried's use of "tags on social websites **320** [to] cause behavior tracking process **330** in server computer **40** to collect data regarding the behaviors displayed by user **300** on social websites **320**" (Monfried ¶ 136) teaches or suggests most of the recitation directed to *receiving one or more tracking*

pixel messages generated by a browser client associated with one or more users of a social networking system. Non-Final Act. 8–9 (citing Monfried Fig. 6, ¶ 136); *see also* Monfried ¶ 87 ("[o]ne tracking technique starts with identifying all possible behaviors that can occur on a social website and converting each behavior into a tag or pixel"). The Examiner relies on Liu's identification of web users across domains to render obvious modifying Monfried by having the *tracking pixel* be *associated with a third-party website having a different domain than the social networking*. Non-Final Act. 17 (citing Liu Abstract); *see also* Ans. 7 (although "Monfried implies tracking activities across the internet as a whole . . . the Examiner use[s] Liu to explicitly teach what was inferred/implied by Monfried").

Appellants contend the Examiner erred because "*Monfried* does not, in fact, teach tracking activity and receiving information from 3rd party domains or websites." App. Br. 16. However, the Examiner additionally relies on Liu, rather than Monfried alone, to render obvious implementing tracking across domains. Moreover, Appellants do not provide persuasive arguments or evidence showing that "*Monfried*'s tracking is clearly limited to a single domain or website (e.g., a 'social website')" in a manner that precludes or at least teaches away from hosting tracking pixels on a different domain. *Id.*

In rejecting claim 1 under 35 U.S.C. § 103(a), the Examiner further finds Monfried's tracking of user behavior that involves storing "in profile storage **360** data regarding [tracked] behaviors in a profile database record about user **300**" (Monfried ¶ 136) teaches or suggests *identifying a user of the social networking system associated with the tracking pixel message by accessing a user identifier associated with the tracking pixel message, the*

user identifier corresponding to the user. Non-Final Act. 9 (citing Monfried ¶¶ 87, 136).

Appellants contend the Examiner erred because Monfried "does not disclose identifying any of [the tracked] users personally for any purpose. In fact, *Monfried* expressly requires that its tracking processes 'do not contain any data that could be used to personally identify a user' and that the 'tracking techniques anonymously collect click-stream data.'" App. Br. 18 (citing Monfried ¶ 89). However, we agree with the Examiner that claim 1 does not require the identification of a user includes identifying personally identifiable information. Ans. 9. Appellants submit the Specification provides support for the disputed recitation by disclosing an entry in action log 160 for "an identifier (user ID) for the user who performed the action" (Spec. ¶ 45) and accessing "a user identifier of the user associated with the tracking pixel message" (Spec. ¶ 108). *See* App. Br. 4. However, neither cited disclosure requires identification of a user in a manner that could personally identify the user.

Appellants also do not persuasively distinguish the claimed "user identifier corresponding to the user" from data collected such as "a user's IP address, the date and time a website was visited, [and] browser information." Monfried ¶ 89. Moreover, Monfried "can track the behaviors of the user's friends or other users who are connected to the user in some fashion" (*id.*), which further suggests that, even if personally identifiable information is not stored, Monfried identifies each user to enable tracking of the user's friends or connections.

Appellants also argue the "Examiner's rejection ultimately rests on the impermissible conclusion that Claim 1 must be obvious simply because

each element of those claims are allegedly found in the prior art." App. Br. 20; *see also* Reply Br. 5–7. However, the Examiner has articulated with sufficient and persuasive specificity why it would have been obvious to modify Monfried using the teachings and suggestions of Liu, Kendall, and Levine in the manner recited in claim 1. Non-Final Act. 17–22; Ans. 13.

For these reasons, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of claim 1, and claims 3–9, 17, 21–27, and 30–33, which Appellants argue together with claim 1. App. Br. 14.

DECISION

We reverse the Examiner's decision rejecting claims 1, 3–9, 17, 21–27, and 30–33 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 1, 3–9, 17, 21–27, and 30–33 under 35 U.S.C. § 103(a).

Because we affirm at least one rejection for each claim, we affirm the Examiner's decision rejecting claims 1, 3–9, 17, 21–27, and 30–33.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED