UNITED STATES PATENT AND TRADEMARK OFFICE

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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 BRETT M. ERROR

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Appeal 2016-008756
Application 11/374,816[1]
Technology Center 3600

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Before DEBRA K. STEPHENS, DANIEL J. GALLIGAN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of
claims 1–16 and 18–23, which are all of the claims pending in the
application. We have jurisdiction under 35 U.S.C. § 6(b). Claim 17 has
been cancelled.

We AFFIRM.

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[1] According to Appellant, the real party in interest is Adobe Systems
Incorporated. App. Br. 3.

CLAIMED SUBJECT MATTER

According to Appellant, the claims are directed to a web analytics tool that generates visual reports, e.g., charts and graphs, which include indications of events and target goals (Spec. ¶ 7, Abstract). Claim 1, reproduced below, is representative of the claimed subject matter:

> 1. A computer-implemented method for presenting web site usage data, the method comprising:
>
> receiving, at a computing device, input to display augment information in association with a subset of web analytics data;
>
> retrieving, by the computing device, the web analytics data calculated by a web analytics tool, the web analytics data comprising information measuring interactions with a website by one or more visitors, wherein the subset of the web analytics data is associated with an occurrence of an event relating to a metric of interaction with the website;
>
> retrieving the augment information from a calendar module separate from the web analytics tool, the augment information comprising one or more attributes of the event and target information comprising a target value for the metric, the attributes comprising a time period, wherein the augment information is distinct from the web analytics data;
>
> creating, by the web analytics tool, a web site usage report by combining the augment information and the subset of the web analytics data, the combining based at least in part on the time period such that the target information is correlated with the occurrence of the event; and
>
> displaying, using a display device, the web site usage report including the subset of the web analytics data, the target information, and an indication of the occurrence of the event such that the report is usable to compare the target information to the web analytics data.

REFERENCES

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

Omoigui	US 2003/0126136 A1	July 3, 2003
Pokorny	US 2003/0154144 A1	Aug. 14, 2003
Cereghini	US 2004/0174397 A1	Sept. 9, 2004
Fawcett	US 2005/0108262 A1	May 19, 2005
Pathak	US 7,349,890 B1	Mar. 25, 2008

REJECTIONS

Claims 1–16 and 18–23 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter (Final Act. 6–8).

Claims 1–16 and 18–23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cereghini, Pokorny, Fawcett, Omoigui, and Pathak (*id.* at 8–29).

Our review in this appeal is limited only to the above rejections and the issues raised by Appellant. Arguments not made are waived. *See* MPEP § 1205.02; 37 C.F.R. §§ 41.37(c)(1)(iv) and 41.39(a)(1).

ISSUES

35 U.S.C. § 101: Claims 1–16 and 18–23

Appellant argues the invention as recited in claims 1–16 and 18–23, is directed to patent-eligible subject matter (App. Br. 8–19). The issue presented by the arguments is

Issue 1: Has the Examiner erred in concluding the claims are directed to patent-ineligible subject matter?

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ANALYSIS

In *Alice*, the Supreme Court sets forth an analytical "framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts" (*Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012))). The first step in the analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts" (*id.*). If so, the second step is to consider the elements of the claims "individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application" (*id.* (quoting *Mayo*, 132 S. Ct. at 1297–98)). In other words, the second step is to "search for an 'inventive concept' — i.e., an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself'" (*id.* (brackets in original) (quoting *Mayo*, 132 S. Ct. at 1294)).

First Step

Appellant contends the Examiner erred in concluding the invention, as recited in claims 1–16 and 18–23, is directed to an abstract idea (App. Br. 8–17). Specifically, Appellant argues the Examiner provides an "oversimplification of the claims and ignores most of the recitations of independent claims" and "simply asserts that the claims are an abstract idea" (*id.* at 11–12). Appellant further argues the claimed features "cannot be dismissed as merely a fundamental economic practice" (*id.* at 13) and the

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Examiner "has failed to adequately categorize the claims as a fundamental economic practice" (*id.* at 16).

We are not persuaded. Initially, independent claims 1 and 9 are method claims, reciting steps for "presenting web site usage data." The remaining independent claim, claim 18, recites a "non-transitory computer readable storage medium having instructions" that "cause the processor to produce a user interface for displaying web site usage." As such, claims 1, 9, and 18 are each directed to a statutory class of invention within 35 U.S.C. § 101.

Next, we analyze the claims to determine whether they are directed to any judicial exception. We agree with the Examiner that the claims are directed to the abstract idea of "gathering data, combining the data into a report[,] and displaying the data" (Final Act. 2–3). In particular, as determined by the Examiner, the claims recite a "series of data gathering or retrieving and receiving steps in combination with . . . report creation steps that combine[] the gathered data based on a time period in order to correlate the information with the occurrence of an event, [and] then output[] the results"; therefore, the clams are directed to the abstract idea of "compar[ing] new and stored information and utiliz[ing] rules to correlate information for a designated time period and identif[ying] the correlated information" (Ans. 5).

We disagree with Appellant that the Examiner oversimplifies the claims without providing a rationale in concluding the claims are directed to an abstract idea (App. Br. 11–12). Rather, the Examiner determines that the claims recite steps for data gathering ("receiving . . . input," "retrieving . . . the web analytics data," "retrieving the augment information . . . target

information . . . attributes comprising a time period"), data analysis ("creating . . . a web site usage report by combining the augment information and the subset of the web analytics data . . . such that the target information is correlated with the occurrence of the event"), and displaying the results of the analysis ("displaying . . . the web site usage report") (Final Act. 3; Ans. 5). Here, like in *Elec. Power Grp., LLC v. Alstom S.A.,* 830 F.3d 1350, 1353–54 (Fed. Cir. 2016), the "focus of the asserted claims . . . is on collecting information, analyzing it, and displaying certain results of the collection and analysis," and is accordingly, directed to an abstract idea (*see also Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n,* 776 F.3d 1343, 1347 (Fed. Cir. 2014)).

Furthermore, Appellant's arguments that "[i]t is unclear how at least the [claimed] features could possibly be construed as a 'fundamental economic practice'" (App. Br. 14) and that the Examiner "has failed to adequately categorize the claims as a fundamental economic practice" (*id.* at 16) are not persuasive because abstract ideas are not limited to fundamental economic practices. Therefore, regardless of whether the claims are directed to a fundamental economic practice, the "combination of . . . abstract-idea processes," e.g., the "process of gathering and analyzing information of a specified content, then displaying the results," is "directed to an abstract idea" (*see Elec. Power Grp.,* 830 F.3d at 1354).

Second Step

Appellant contends the Examiner erred in concluding the invention as recited in claims in claims 1–16 and 18–23 does not recite significantly more than an abstract idea itself (App. Br. 17–19; Reply Br. 4–8). Specifically,

Appellant argues the claims recite significantly more than the abstract idea
itself because the claims recite "a software tool that manipulates Internet
data by collecting and displaying it" and provide "solutions to problems that
involve the effectiveness of an Internet-related tool and that are caused by
factors external to the Internet-related tool" (Reply Br. 7; App. Br. 18).
Appellant further argues "the claimed invention provides a technical solution
to a technical problem that did not exist before the invention of computing
devices and computer networks," namely, "'a specific way' of creating a
composite webpage" (App. Br. 18–19; Reply Br. 6).

We are not persuaded. We agree with the Examiner that, even as an
ordered combination, the claimed invention does not transform the abstract
idea into significantly more because the abstract idea is performed by a
"general purpose computing device [that] merely performs generic computer
functions for retrieving data and outputting a generated report that
aggregates data," i.e., "routine and conventional activities that could be
performed by any computer implementation" (Final Act. 3; Ans. 3–4).
Indeed, the claims merely recite the abstract idea is performed with "a
computing device," "a display device" (claims 1, 9), or "a processor" (claim
18). Even further, the Specification teaches that the invention can be
implemented with "a general-purpose computer selectively activated or
reconfigured by a computer program stored in the computer" (Spec. ¶ 22)
and that the "algorithms and displays presented herein are not inherently
related to any particular computer or other apparatus" (Spec. ¶ 23). As a
result, the claims do not transform the abstract idea into patent-eligible
subject matter because "[n]othing in the claims, understood in light of the
specification, requires anything other than off-the-shelf, conventional

computer, network, and display technology for gathering, sending, and presenting the desired information" (*Elec. Power Grp.*, 830 F.3d at 1355).

Furthermore, we are not persuaded by Appellant's argument that the invention is significantly more than the abstract idea itself because the claimed invention "provides a technical solution to a technical problem" (App. Br. 18) and because the claims recite "a software tool that manipulates Internet data by collecting and displaying it" (Reply Br. 7). The Federal Circuit has "caution[ed] . . . that not all claims purporting to address Internet-centric challenges are eligible for patent" (*DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1258 (Fed. Cir. 2014)). As discussed *supra*, the claims are directed to gathering data, analyzing data, and displaying data. Simply because that data is *Internet* data does not transform that abstract idea into significantly more because the claimed invention does not improve the operation of the Internet itself or improve the computing systems performing the claimed invention. Rather than improving the Internet or computer functionality, the invention gathers Internet data to create a report on that Internet data. Labeling the data as Internet data instead of data does not change what is done with the data. As such, limiting the abstract idea to a particular technological data, i.e., Internet data, does not transform the claims into significantly more than the abstract idea itself (*Alice,* 134 S. Ct. at 2358 (stating that "the prohibition against patenting abstract ideas cannot be circumvented by attempting to limit the use of [the idea] to a particular technological environment" (internal quotations and citations omitted; alteration in original))).

Appellant has not proffered sufficient evidence or argument to persuade us that any of the limitations in the dependent claims provide a

meaningful limitation that transforms the claims into a patent-eligible application. Accordingly, Appellant has not persuaded us claims 1–16 and 18–23 are directed to patent-eligible subject matter. Therefore, we sustain the rejection of claims 1–16 and 18–23 under 35 U.S.C. § 101 as not being directed to patent-eligible subject matter.

35 U.S.C. § 103(a): Claims 1–13 and 18–23

Appellant contends the invention as recited in claims 1–13 and 18–23, is patentable over Cereghini, Pokorny, Fawcett, Omoigui, and Pathak (App. Br. 20–30). The issues presented by the arguments are:

Issue 2a: Has the Examiner shown Fawcett teaches "retrieving the augment information from a calendar module separate from the web analytics tool . . . wherein the augment information is distinct from the web analytics data," as recited in claim 1 and similarly recited in claim 9?

Issue 2b: Has the Examiner shown Cereghini teaches "creating . . . a web site usage report by combining the target information and the subset of the web analytics data," as recited in claim 1 and similarly recited in claim 9?

Issue 2c: Has the Examiner shown the combination of Cereghini, Omoigui, and Pathak teaches "combining based at least in part on the time period such that the target information is correlated with the occurrence of the event," as recited in claim 1 and similarly recited in claims 9 and 18.

Issue 2d: Has the Examiner shown the combination of Cereghini and Pokorny teaches "displaying an annotation providing the information about the subset of the web site usage data proximate to a display location of the subset of the web site usage data," as recited in claim 18?

Issue 2e: Has the Examiner improperly combined Cereghini, Pokorny, Fawcett, Omoigui, and Pathak?

ANALYSIS

Issue 2a

Appellant contends the Examiner erred in finding Cereghini teaches "retrieving the augment information from a calendar module separate from the web analytics tool . . . wherein the augment information is distinct from the web analytics data," as recited in claim 1 and similarly recited in claim 9 (App. Br. 22–23). Specifically, Appellant argues "Cereghini discloses that the data for these displays is retrieved from the **same** source, namely database 200" (*id.* at 22).

We are not persuaded. The Examiner finds, and we agree, Fawcett teaches "calendar information is distinct from the web services information, i.e., separate from the web analytics tool and data" (Final Act. 13–14 (citing Fawcett ¶¶ 60, 72, 93, Figs. 4, 15a)). In particular, Fawcett teaches "additional application modules," i.e., separate modules, including "a calendar module 420 for listing dated events" and a "client web services module 425 to facilitate the synchronous request/response of data on the server" (Fawcett ¶ 60, Fig. 4). Appellant's argument that Cereghini does not teach the disputed limitations (App. Br. 22) does not address the Examiner's finding that Fawcett teaches the disputed limitations. Accordingly, we are not persuaded the Examiner erred in finding Fawcett teaches "retrieving the augment information from a calendar module separate from the web analytics tool . . . wherein the augment information is distinct from the web analytics data," as recited in claim 1 and similarly recited in claim 9.

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Issue 2b

Appellant contends the Examiner erred in finding Cereghini teaches "creating . . . a web site usage report by combining the augment information and the subset of the web analytics data," as recited in claim 1 and similarly recited in claim 9 (App. Br. 23–24). Specifically, Appellant argues "the cited displays of Cereghini and [the] information within the displays are presented in **distinct, separate regions**," rather than in "a single, combined web site usage report" (*id.* at 23).

We are not persuaded. We agree with the Examiner's finding (Final Act. 9–10) that Cereghini teaches "web analytics data" associated with "an event relating to a metric of interaction with the website," as claimed, because Cereghini discloses that "[w]eb traffic generated by a customer visit to an e-store is captured and stored" (Cereghini ¶ 47). The Examiner further relies on (Final Act. 11) Cereghini's disclosure that the captured web traffic can be categorized by the "Type of shoppers," e.g., "Customers Only" (Cereghini Figs. 6–9; *see* Cereghini ¶ 111)) to teach "a subset of web analytics data." Further, the Examiner finds, and we agree, Cereghini disclosure of the date range for tracked web traffic events teaches "augment information" (Final Act. 9 (citing Cereghini Figs. 6–9)). Additionally, the Examiner finds Cereghini teaches "creating . . . a web site usage report by combining the augment information and the subset of the web analytics data" by creating a visual report which includes date ranges, i.e., "augment information," and shopper type, i.e., "subsets of web analytics data" (*id.* at 11 (citing Cereghini Figs. 6–9)).

Appellant's argument that Cereghini's report displays information in "**distinct, separate regions**" (App. Br. 23) is not commensurate with the

scope of the claims. The claims recite that the report "combin[es]" augment information and a subset of the web analytics data, but the claims do not limit how the report combines those elements, much less preclude the report from providing those elements in different regions. As shown in Figure 6 of Cereghini, the "Overview" report taught by Cereghini combines "07-01-2000 to 09-30-2000" date range information (i.e., "augment information") and "Customers Only" type of shopper data (i.e., "subsets of web analytics data"). Moreover, even under Appellant's unduly narrow interpretation of the claims, Figure 6 of Cereghini shows the date range information and shopper type data in the same "Filters" region (*see* Cereghini ¶ 165).

Accordingly, we are not persuaded the Examiner erred in finding Cereghini teaches "creating . . . a web site usage report by combining the augment information and the subset of the web analytics data," as recited in claim 1 and similarly recited in claim 9.

Issue 2c

Appellant contends the Examiner erred in finding the combination of Omoigui and Pathak teaches "combining based at least in part on the time period such that the target information is correlated with the occurrence of the event," as recited in claim 1 and similarly recited in claims 9 and 18 (App. Br. 25–28; Reply Br. 2–3). Specifically, Appellant argues "Omoigui's events are calendar events" rather than "events relate[d] 'to a metric of interaction with the web site'" (App. Br. 26). Appellant further argues Omoigui "teach[es] that event data can be *retrieved*, not that the event data is *correlated with any other data*" (Reply Br. 3). Additionally, Appellant argues Pathak's teaching of "providing certain content if a condition is

satisfied does not teach or suggest ***combining*** different data sets ***based on a time period*** such that ***target information is correlated with an event***" (Reply Br. 3; *see* App. Br. 27). Still further, Appellant argues "even in combination, the Omoigui and Pathak combination merely teaches a system that can retrieve event data (as disclosed in Omoigui) and select certain rules based on different goals being met (as disclosed in Pathak)," but that "lacks the claimed relationship between event data and target information (i.e., that two data sets are combined based on a time period such that the target information is correlated with an event)" (Reply Br. 4).

We are not persuaded. As discussed *supra*, we agree with the Examiner's finding that Cereghini teaches a report is created based on a date range, i.e., a "time period," and on recorded interactions with a web site, i.e., "event[s] relating to a metric of interaction with the website" (Final Act. 10 (citing Cereghini ¶ 47, Figs. 6–9)). We further agree with the Examiner's finding (Final Act. 17) that Pathak's disclosure relating to "particular business goal[s]" (Pathak 3:1–5 (a "metric for measuring whether or not a particular business goal has been achieved" and "a comparison between the goal and the metric")) teaches "target information." For example, Pathak teaches a goal with rules including "how many times a user has visited a web site," i.e., target information correlated with the occurrence of the web site visit event (Pathak 6:45–49; *see also* (Pathak 10:4–5, 12–32 (goals also include "the number of units sold"), 4:13–20).

Appellant's arguments directed to Omoigui do not address the Examiner's findings regarding Cereghini and Pathak. Specifically, Appellant's argument that Omoigui's events are not related to a metric of interaction with a web site (App. Br. 26) does not address the Examiner's

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finding that both Cereghini and Pathak teach events that are web site interactions, e.g., web site visits and purchases (Final Act. 10 (citing Cereghini ¶ 47), 17 (citing Pathak 3:1–5, 6:45–49); *see also* Pathak 10:12–32). Further, Appellant's argument that Omoigui's event data is not correlated to other data (Reply Br. 3) does not address the Examiner's finding that Pathak teaches event data correlated to target information (Final Act. 17 (citing Pathak 3:1–5)), such as actual web site visits correlated to a goal number of web site visits and actual sales correlated to a goal number of sales (Pathak 6:45–49, 10:12–32).

Additionally, Appellant's argument that Pathak does not combine data sets based on a time period (Reply Br. 3; *see* App. Br. 27) is not persuasive because the Examiner finds Cereghini's date range filtered reports display web site visit events over a specified period of time (Final Act. 10 (citing Cereghini Figs. 6–9)), i.e., a report "combining the augment information and the subset of the web analytics data . . . based at least in part on the time period."

Still further, Appellant's argument that the combination of Omoigui and Pathak "lacks the claimed relationship between event data and target information (i.e., that two data sets are combined based on a time period such that the target information is correlated with an event)" (Reply Br. 4) does not address the Examiner's combination of Cereghini, Omoigui, and Pathak. In particular, the Examiner combines Cereghini, teaching web site metric reports in which web site interaction events are filtered, i.e., combined, with a specified date range (Cereghini Figs. 6–9), with Pathak, teaching web site target goals based on the number of web site interaction events (Pathak 6:45–49), to teach "combining based at least in part on the

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time period such that the target information is correlated with the occurrence of the event" (*see* Final Act. 18).

Accordingly, we are not persuaded the Examiner erred in finding the combination of Cereghini, Omoigui, and Pathak teaches "combining based at least in part on the time period such that the target information is correlated with the occurrence of the event," as recited in claim 1 and similarly recited in claims 9 and 18.

Issue 2d

Appellant contends the Examiner erred in finding Pokorny teaches "displaying an annotation providing the information about the subset of the web site usage data proximate to a display location of the subset of the web site usage data . . . usable to compare the target information to the subset of the web site usage data," as recited in claim 18 (App. Br. 25). Specifically, Appellant argues "Pokorny's reports do not display target information with any subset of web analytics data" (*id.* (citing Pokorny ¶¶ 44, 259–261, Figs. 13–18)).

We are not persuaded. The Examiner relies on (Final Act. 11–12) Cereghini's disclosure that "web traffic data is sent to a ShopViz engine 215" which "graphically lays out the acquired web traffic information for viewing" (Cereghini ¶ 47, Figs. 6–9). As discussed *supra*, we agree with the Examiner that Pathak's web site goals teach "target information" (Final Act. 17 (citing Pathak 6:45–49, 10:12–32)). The Examiner further relies on (Final Act. 13, 19) Pokorny's disclosure that "results may be displayed . . . with embedded or hyperlinked report details" (Pokorny ¶ 259).

Appellant's argument (App. Br. 25) inappropriately attacks Pokorny individually when the rejection is based on the combination references (*In re Keller*, 642 F.2d 413, 426 (CCPA 1981) (citation omitted)). In particular, Appellant does not address the Examiner's finding that Cereghini, which visually reports web site analytics, and Pathak, which provides web site target goals, and Pokorny, which annotates reports with embedded details, teach, in combination, "displaying an annotation providing information about web site data usage . . . usable to compare the target information to the subset of the web site usage data" (Final Act. 19–20). Accordingly, we are not persuaded the Examiner erred in finding the combination of Cereghini, Pathak, and Pokorny teaches "displaying an annotation providing the information about the subset of the web site usage data proximate to a display location of the subset of the web site usage data . . . usable to compare the target information to the subset of the web site usage data," as recited in claim 18.

Issue 2e

Appellant contends the Examiner improperly combined Cereghini, Pokorny, Fawcett, Omoigui, and Pathak (App. Br. 28–30). Specifically, Appellant argues "[n]othing in the cited portions of the references supports the" Examiner's stated motivation for the combination (*id.* at 28–29). Appellant further argues the Examiner "does not indicate why it would have been obvious at the time the invention was made" to combine the references (*id.* at 29–30).

We are not persuaded. Appellant's argument that the references themselves do not support the Examiner's stated motivation (*id.* at 28)

incorrectly requires the reason to combine to be found in the references themselves, when the reason to combine need not be found in the references themselves. *See KSR Int'l Co. v. Teleflex Inc.,* 550 U.S. 398, 418 (2007) ("Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue"). Furthermore, contrary to Appellant's argument that the Examiner does not "indicate why it would have been obvious" (App. Br. 29), the Examiner has provided articulated reasoning with rational underpinning to support the Examiner's conclusion of obviousness. Specifically, the Examiner states that the combination "enables a performance assessment" (Final Act. 18), "improve[s] user satisfaction based on increased customization" (*id.* at 16), "enabl[es] more specific customized evaluative processes" (*id.* at 14), and "enable[s] the identification of adverse effects on the quality and productivity of a process" (*id.* at 13). Appellant does not provide any argument or evidence addressing the motivations provided by the Examiner. Accordingly, we are not persuaded the Examiner improperly combined Cereghini, Pokorny, Fawcett, Omoigui, and Pathak.

Therefore, we sustain the rejection of claims 1, 9, and 18 under 35 U.S.C. § 103(a) as being unpatentable over Cereghini, Pokorny, Fawcett, Omoigui, and Pathak. We likewise sustain the Examiner's rejection of claims 2–8, 10–13, and 19–23 under 35 U.S.C. § 103(a) as being unpatentable over Cereghini, Pokorny, Fawcett, Omoigui, and Pathak, for

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which Appellant offers no additional persuasive arguments for patentability (*see* App. Br. 30).

35 U.S.C. § 103(a): Claims 14–16

Appellant contends the invention as recited in claims 14–16 is patentable over Cereghini, Pokorny, Fawcett, Omoigui, and Pathak (App. Br. 30–32). The issue presented by the arguments is:

Issue 3: Has the Examiner shown the combination of Pathak and Pokorny teaches "determining whether a measured interaction with the website in the web analytics data exceeds the target value; and providing an alert if the measured interaction with the website in the web analytics data exceeds the target value," as recited in claim 14?

ANALYSIS

Appellant contends the Examiner erred in finding Pokorny teaches "determining whether a measured interaction with the website in the web analytics data exceeds the target value; and providing an alert if the measured interaction with the website in the web analytics data exceeds the target value," as recited in claim 14 (App. Br. 30–32). Specifically, Appellant argues "instead of providing an alert in response to a determining that a measured interaction with a web site exceed[s] a target value, Pokorny's alerts are" based on an analysis of data from "manufacturing events such as shutdowns, waste events, or delay events" (*id.* at 31 (citing Pokorny ¶¶ 44, 72, 259–261, Figs. 13–18)).

We are not persuaded. As discussed *supra*, the Examiner relies on (Final Act. 17, 27) Pathak's disclosure of a "metric for measuring whether or

not a particular business goal has been achieved" and "a comparison between the goal and the metric" for web site interactions (Pathak 3:1–5, 9:30–48, 10:12–32). The Examiner further relies on (Final Act. 26) Pokorny's disclosure that "[a]lerts comprising electronic reports may also be issued . . . in response to other information extracted by analysis of event data" such as an "increased rate of occurrence of one type of event" (Pokorny ¶ 72).

Appellant's arguments (App. Br. 31) inappropriately attack Pokorny individually when the rejection is based on the combination of Pathak and Pokorny. *See Keller*, 642 F.2d at 426 (citation omitted). In particular, Appellant does not address the Examiner's combination of Pathak, teaching target goals for web site interaction events (Pathak 6:45–49, 10:12–32), with Pokorny, teaching alerts based on an alert when a threshold is exceeded (Pokorny ¶ 72), to teach "determining whether a measurement exceeds the target value; . . . and providing an alert if the base data exceeds the target value" (Final Act. 27–28).

Accordingly, we are not persuaded the Examiner erred in finding the combination of Pathak and Pokorny teaches "determining whether a measured interaction with the website in the web analytics data exceeds the target value; and providing an alert if the measured interaction with the website in the web analytics data exceeds the target value," as recited in claim 14.

Therefore, we sustain the rejection of claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Cereghini, Pokorny, Fawcett, Omoigui, and Pathak. We likewise sustain the Examiner's rejection of claims 15 and 16, depending from claim 14, under 35 U.S.C. § 103(a) as being

unpatentable over Cereghini, Pokorny, Fawcett, Omoigui, and Pathak, for which Appellant offers no additional persuasive arguments for patentability (*see* App. Br. 32).

DECISION

The Examiner's rejection of claims 1–16 and 18–23 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter is affirmed.

The Examiner's rejection of claims 1–16 and 18–23 under 35 U.S.C. § 103(a) as being unpatentable over Cereghini, Pokorny, Fawcett, Omoigui, and Pathak is affirmed.

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).

<u>AFFIRMED</u>