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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* PATRICK JOHN ENNIS,  
ALEXANDER KNIGHT, VLAD GRIGORE DABIJA,  
TIMOTHY MARTIN LONDERGAN, DAVID WALTER ASH,  
DOMINIC DAN SUCIU, and RAGHURAM MADABUSHI

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Appeal 2017-001365  
Application 13/699,574<sup>1</sup>  
Technology Center 3600

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Before CARL W. WHITEHEAD, JR., JASON V. MORGAN, and  
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

*Introduction*

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 3, 7, 8, 10, 12, 15–17, 21, 22, 24, 25, 27, 48, and 49.

We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Appellants identify EMPIRE TECHNOLOGY DEVELOPMENT LLC as the real party in interest. App. Br. 3.

*Invention*

Appellants disclose that a processor that may: 1) receive event information that relates to a status of an event; 2) receive crowd information that relates to demographics or interests of the participants at the event; and 3) select an advertisement based on the event information and the crowd information. Abstract.

*Representative Claim (key limitations emphasized)*

1. A method to select an advertisement to be displayed during an event, the method comprising, by a processor:

receiving event information, wherein the event information includes a status of a current activity of a team participating in the event;

receiving crowd information, wherein the crowd information is different from the event information and includes social network information, and the social network information includes at least one of demographics and interests of participants of a crowd attending the event;

*processing the event information to create processed event information;*

*processing the crowd information to create processed crowd information;*

*selecting the advertisement from a database of advertisements based on the processed event information and the processed crowd information; and*

causing the advertisement to be displayed for viewing by at least one of the participants of the crowd during the event.

*Rejections*

The Examiner rejects claims 1, 3, 7, 8, 10, 12, 15–17, 21, 22, 24, 25, 27, 48, and 49 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Final Act. 3–6.

The Examiner rejects claims 1, 3, 7, 8, 10, 12, 15–17, 21, 22, 24, 25, 27, 48, and 49 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellants regard as the invention. Final Act. 6–8.

The Examiner rejects claims 1, 3, 7, 8, 10, 12, 15–17, 21, 22, 24, 25, 27, 48, and 49 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 13–16.

The Examiner rejects claims 1, 3, 7, 8, 10, 12, 15–17, 21, 22, 25, 27, and 49<sup>2</sup> under 35 U.S.C. § 102(e) as being anticipated by Teller et al. (US 8,812,419 B1; issued Aug. 19, 2014). Final Act. 17–20.

The Examiner rejects claims 24 and 48 under 35 U.S.C. § 103(a) as being unpatentable over Teller and Badros et al. (US 2008/0294524 A1; published Nov. 27, 2008). Final Act. 20–21.

#### ANALYSIS

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.

#### *35 U.S.C. § 112, first paragraph*

In rejecting claim 1 under 35 U.S.C. § 112, first paragraph, the Examiner notes the Specification fails to provide “useful technical

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<sup>22</sup> The statement of the rejection contains a minor typographical error. Specifically, claims 24 and 48 are listed with the claims rejected for anticipation (Final Act. 17) even though these claims are instead rejected for obviousness (*id.* at 20).

information as to how specifically the [event and crowd] information is processed and used in the selection process” and that “the disclosure fails to evidence possession” of the claimed invention. Final Act. 3. The Examiner notes that, rather than “provide any specific information about how specifically [the claimed] steps are performed,” the Specification merely “presents a computer-implemented invention disclosed . . . in terms of its functionality.” *Id.* at 4; *see also* Ans. 7 (“the disclosure is entirely silent as to how specifically the advertisement is selected based on the specific information”).

Appellants contend the Examiner erred because the disclosure of “‘technical’ components [is] not part of the written description requirement.” App. Br. 13. Appellant contend the Specification merely requires “some text or figures [that] support the claimed subject matter.” *Id.* at 14. In particular, Appellants submit “the present specification indeed includes text *that is almost exactly the same* as [the] words found in the claim.” *Id.* (emphasis added).

Appellants’ arguments are unpersuasive because, whether in the form of “technical components” or not, the Specification must reasonably convey to an artisan of ordinary skill that Appellants had *possession* of the claimed invention at the time the application was filed. *See Vasudevan Software, Inc. v. MicroStrategy, Inc.*, 782 F.3d 671, 682 (Fed. Cir. 2015) (citing *Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc)). Generic claim language in the Specification—such as functional language merely describing an intended result—that fails to support the scope of the claimed invention is insufficient to show possession, even when the claim recitations are found word-for-word in the Specification. *See*

*Vasudevan*, 782 F.3d at 682 (“[t]he written description requirement is not met if the specification merely describes a ‘desired result’”) (citing *Ariad*, 598 F.3d at 1349); *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 323 F.3d 956, 968 (Fed. Cir. 2002) (“[t]he appearance of mere indistinct words in a specification or a claim, even an original claim, does not necessarily satisfy” the written description requirement). The Specification must explain, for example, *how* Appellants intended to achieve the claimed function to satisfy the written description requirement. *Vasudevan*, 782 F.3d at 683. While “[t]here is no rigid requirement that the disclosure contain ‘either examples or an actual reduction to practice,’” the written description requirement requires the Specification set forth “an adequate description that ‘in a definite way identifies the claimed invention’ in sufficient detail such that a person of ordinary skill would understand that the inventor had made the invention at the time of filing.” *Allergan, Inc. v. Sandoz Inc.*, 796 F.3d 1293, 1308 (Fed. Cir. 2015) (citing *Ariad*, 598 F.3d at 1352).

Here, an artisan or ordinary skill would be unable to discern how Appellants intended to achieve at least the function embodied in the recited step of *selecting the advertisement from a database of advertisements based on the processed event information and the processed crowd information*, or otherwise be provided with sufficient detail to understand Appellants had possession of the claimed invention at the time of filing. Although two inputs (i.e., processed event information and processed crowd information), one output (i.e., an advertisement), and a resource (i.e., a database of advertisements) are recited, it is unclear how Appellants intended to perform the claimed *selecting*. Claim 1 does not include any recitations directed to a particular process for performing the claimed selecting (nor, for that matter,

do any of the other claims, independent or dependent). Furthermore, Appellants do not direct our attention to any disclosures in the Specification that explain how Appellants intended to achieve the claimed selecting.

Appellants argue the Specification discloses that “gathered event information and crowd information is . . . processed by a processor executing instructions in a memory in order to weigh both the event and crowd information to determine an advertisement to display.” App. Br. 17; *see also* Reply Br. 3 (“utilizing memories and processors provides speed [in] determining and displaying an advertisement based on processing the gathered information”). However, it is not enough that an artisan could write a program to achieve the disclosed and claimed function. *See Manual of Patent Examining Procedure* (9th ed., rev. 08.2017) § 2161.01.I (Jan. 2018) (citing *Vasudevan Software, Inc.*, 782 F.3d at 681–83).

The Specification discloses that “[a]dvertisement processor 122 may select one or more advertisements 134, 136 from an advertisement database 124 based on event information 132, crowd information 130, and instructions 128 in a memory 126.” Spec. ¶ 12; *see also id.* Fig. 1. The Specification also discloses that “[u]sing event information and crowd information [such as the mood of participants, or crowd demographics or interests], an advertisement processor may select and display advertisements.” *Id.* ¶ 28; *see also id.* Figs. 5–6. Although Appellants contend these disclosures provide support for the *selecting* step (App. Br. 6), we are unable to discern from these disclosures, or any other disclosures identified by Appellants, any explanation of *how* Appellants intended to achieve the claimed function. *Vasudevan Software, Inc.*, 782 F.3d at 683. Therefore, we agree with the Examiner that the Specification fails to

reasonably convey to an artisan of ordinary skill that Appellants had possession of the claimed invention at the time of the filing, at least with respect to the claim 1 recitation of “selecting the advertisement from a database of advertisements based on the processed event information and the processed crowd information.”

Accordingly, we sustain the Examiner’s 35 U.S.C. § 112, first paragraph, rejection of claim 1, and claims 3, 7, 8, 10, 12, 15–17, 21, 22, 24, 25, 27, 48, and 49, which contain similar recitations and which Appellants argue together with claim 1. App. Br. 12.

*35 U.S.C. § 112, second paragraph*

35 U.S.C. § 112, second paragraph, provides that “[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” The Federal Circuit has stated that “[i]t makes good sense, for definiteness and clarity . . . for the USPTO initially to reject claims based on a well-founded prima facie case of lack of clarity (in its several forms) based on the perspective of one of ordinary skill in the art in view of the entire written description and developing prosecution history.” *In re Packard*, 751 F.3d 1307, 1312 (Fed. Cir. 2014). A rejection is well-grounded if it merely “identifies ways in which language in a claim is ambiguous, vague, incoherent, opaque, or otherwise unclear in describing and defining the claimed invention.” *Id.* at 1311.

In rejecting claim 1 under 35 U.S.C. § 112, second paragraph, the Examiner concludes that, in light of the lack of technical details related to the steps of *processing event information to create processed event information* and *processing the crowd information to create processed*

*crowd information*, “the metes and bounds of the claim cannot be reasonably ascertained,” thus rendering the claim indefinite. Final Act. 7; *see also id.* at 11–12; Ans. 10–11.

Appellants contend the Examiner erred because 35 U.S.C. § 112 does not require “technical details” and, “in any event, the application does include technical components.” App. Br. 17–18; *see also id.* at 15–16. However, an artisan of ordinary skill, “after considering the information provided by the applicant including the written description, and after putting the disputed term in the context of the proposed patent, [would] find[] the claim to contain words or phrases whose meaning is unclear.” *Packard*, 751 F.3d at 1323 (Plager, J., concurring).

Neither the claim recitations nor the disclosures cited by Appellants provide sufficient details to provide an artisan of ordinary skill with the requisite clarity with respect to the disputed claim recitations. Appellants submit the Specification discloses that “[i]n processing crowd information 130, advertisement processor 122 may prioritize and/or more heavily weigh turnstile information 146, seat information 150 and/or ticket processing information 154 higher than other information” and that “ticket processing information 154 and social network information 138 may be weighed heavier” or “mobile device messages 142 and seat device information 150 may be weighed heavier” depending on whether event 200 has started. App. Br. 15–16 (citing Spec. ¶¶ 19–20); *see also* App. Br. 5. Appellants further submit the Specification discloses that:

[a]dvertisement processor 122 may . . . process event information 132. . . . Depending on a status of an event, advertisement processor 122 may select a different, or no advertisement. . . . Instructions 128 may indicate that slower moments may be more

conducive to displaying advertisements or that different advertisements should be displayed depending on the interest level of the event

App. Br. 16 (citing Spec. 23–25); *see also* App. Br. 4–5.

Appellants argue the Specification discloses that “gathered event information and crowd information is then processed . . . in order to weigh both the event and crowd information to determine an advertisement.” *Id.* at 17. That is, Appellants argue that *processed event information* is *event information* that has been weighed, while *processed crowd information* is *crowd information* that has been weighed. However, the cited disclosures do not discuss *weighing* event information at all, either alone or in combination with weighed (or processed) crowd information. Moreover, the Specification broadly discloses that crowd information may include “ticket processing information or turnstile information,” “seat device information,” or “social network information” such as “demographics and interests of participants of a crowd,” “an indication that at least one participant is currently at the event,” “a check-in at a location of the event,” “geography coordinates,” or “a mobile device message.” App. Br. 5 (citing Spec. ¶¶ 14–17). Yet, the cited disclosures fail to disclose what it means to weigh such disparate information. Because neither the claim nor the Specification makes clear what it means to weigh (or otherwise process) either event information or crowd information, we agree with the Examiner that the claim 1 recitations directed to “processing the event information to create processed event information” and “processing the crowd information to create processed crowd information” are indefinite.

Accordingly, we sustain the Examiner’s 35 U.S.C. § 112, second paragraph, rejection of claim 1, and claims 3, 7, 8, 10, 12, 15–17, 21, 22, 24,

25, 27, 48, and 49, which contain similar recitations and which Appellants argue together with claim 1. App. Br. 12.

*35 U.S.C. § 101*

In rejecting claim 1 under 35 U.S.C. § 101, the Examiner concludes the claimed invention is merely “directed to gathering, processing and comparing and formatting information . . . to make a selection for transmission,” and thus is directed to an abstract “organization and comparison of data which can be performed mentally.” Final Act. 14; *see also* Ans. 15. The Examiner further concludes that the limitations in claim 1 (and in the other claims similar rejected) directed to processors, memories, and instructions are merely directed to “generic computing components performing generic computing activities of executing programming, extracting, receiving, processing, calculating or transmitting of data or information” and thus “do not amount to significantly more than the [underlying] abstract idea.” Final Act. 15 (citing Spec. ¶¶ 37, 38, and 41–46); *see also* Ans. 16.

Appellants contend the Examiner erred because the claimed invention “is directed to improved data gathering and analysis and selecting an advertisement to display based on the gathered data and analysis.” App. Br. 20. Appellants argue that similarly rejected claim 49’s “operations performed by the advertising processor . . . could not be achieved as a mental process.” *Id.* at 22. However, the operations or steps in the claims—directed to using crowd and event information to select an advertisement—are quintessential mental process steps directed to using audience information, combined with a sensitivity for the context presented by events, to select an advertisement that the audience is likely to be receptive to and

that is pertinent to their situational context. Thus, the claims are directed to “essentially mental processes within the abstract-idea category.” *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also Cybersource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson.*”).

Appellants further argue that claim 1 is directed to statutory subject matter because the claim recites “selecting an advertisement from a ‘database of advertisements’ and causing ‘the advertisement to be displayed for viewing by at least one of the participants of the crowd during the event.’” App. Br. 22; *see also* Reply Br. 5–6. However, we agree with the Examiner (*see* Ans. 17) that the recitation of a generic database, even in combination with other generic computer elements, does not introduce anything significantly more so as to “transform [the] patent-ineligible abstract idea into a patent-eligible invention.” *Alice Corp. Pty. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2358 (2014). Moreover, displaying the advertisement adds nothing more in terms of transformation of the abstract idea because “merely presenting the results of abstract processes of collecting and analyzing information, without more . . . is abstract as an ancillary part of such collection and analysis.” *Electric Power Group*, 830 F.3d at 1354.

For these reasons, we agree with the Examiner that claim 1 is directed to non-statutory subject matter. Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claim 1, and claims 3, 7, 8, 10, 12, 15–17, 21, 22, 24, 25, 27, 48, and 49, which contain similar recitations and which Appellants argue together with claim 1. App. Br. 12.

35 U.S.C. §§ 102(e), 103(a)

In rejecting claim 1 under 35 U.S.C. § 102(e), the Examiner finds Teller’s disclosed targeted advertising to a group of people, using context data such as proximate events, social network information, etc., discloses the recitations of claim 1, including the claimed *event information*, *crowd information*, and the step of *selecting an advertisement from a database of advertisements based on processed event information and processed crowd information*. Final Act. 18 (citing, e.g., Teller col. 1, ll. 21–32, col. 3, ll. 50–53, col. 5, ll. 49–60, col. 6, ll. 44–45, and col. 6, ll. 56–58); *see also* Ans. 19.

Appellants contend the Examiner erred because Teller shows “the system determining an advertisement based on *historical* data (people who have a similar purchase history who also passed through a location on a day with similar weather) and the current location and weather.” App. Br. 24 (emphasis added). Appellants further argue Teller “construe[s] sports events, players, and field positions as related objects proximate to a location. Teller does not . . . show context data related to activities of a team participating in an event.” Reply Br. 6.

Appellants’ arguments are unpersuasive because, as the Examiner correctly notes, Appellants’ arguments do not distinguish the claimed *crowd information* and *event information* from Teller’s teachings directed to information about “persons watching a sports game” (i.e., crowd information) and information about “sports events, players, field positions, etc.” (i.e., event information). Ans. 19 (citing Teller col. 1, ll. 21–32, col. 6, ll. 44–45). The claimed invention does not preclude the use of “historical” information in making the claimed advertisement selection. Nor does the claimed “status of a current activity of a team participating in [an] event”

preclude information such as players and field positions. Therefore, we agree with the Examiner that Teller discloses all of the disputed recitations of claim 1.

Accordingly, we sustain the Examiner's 35 U.S.C. § 102(e) rejection of claim 1, and claims 3, 7, 8, 10, 12, 15–17, 21, 22, 25, 27, and 49, which are similarly rejected and which Appellants argue together with claim 1.

App. Br. 12. For similar reasons, we also sustain the Examiner's 35 U.S.C. § 103(a) rejection of claims 24 and 48, also argued together with claim 1. *Id.*

#### DECISION

We affirm the Examiner's decision rejecting claims 1, 3, 7, 8, 10, 12, 15–17, 21, 22, 24, 25, 27, 48, and 49.

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