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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID M. ENYEART,
KEVIN P. MCAULIFFE, BILLY R. ROWE JR.,
and ERIC D. WAYNE

Appeal 2017-006269
Application 11/624,785¹
Technology Center 3600

Before HUBERT C. LORIN, ANTON W. FETTING, and
SCOTT C. MOORE, Administrative Patent Judges.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

David M. Enyeart, et al. (Appellants) seek our review under 35 U.S.C. § 134(a) of the Examiner's Final rejection of claims 1–22 and 34–44. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ The Appellants identify IBM Corporation as the real party in interest. App. Br. 2.

THE INVENTION

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method of bookmarking a dashboard view in a dashboard system comprising:
 - displaying, by a computer, the dashboard view comprising graphical metaphors for real-time data related to monitoring of an operational environment of an enterprise;
 - creating, by the computer, a performance bookmark of the dashboard view, comprising:
 - assigning, by the computer, a name to said performance bookmark;
 - providing, by the computer, a timestamp to said performance bookmark;
 - storing, by the computer, said name and said timestamp in a bookmark data store;
 - storing, by the computer, visual properties of said dashboard view at the time said performance bookmark is created; and
 - storing, by the computer, relationships of information displayed by said dashboard view at the time said performance bookmark is created;
 - receiving, by the computer, from a dashboard user interface of the dashboard system, instructions to recall the created performance bookmark;
 - in response to the instructions, recalling, by the computer, the created performance bookmark, and
 - based on the recalled performance bookmark, configuring, by the computer, the dashboard system to display a recalled dashboard corresponding with said visual properties and relationships of information of the dashboard view stored at the time said performance bookmark was created.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Gagnon et al. ("Gagnon")	US 2002/0194090 A1	Dec. 19, 2002
Ducheneaut et al. ("Ducheneaut")	US 2007/0240119 A1	Oct. 11, 2007

The following rejections are before us for review:

Claims 1–22 and 34–44 are rejected under 35 U.S.C. § 101 as being directed to judicially excepted subject matter.

Claims 1–22 and 34–44 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Gagnon and Ducheneaut.

ISSUES

Did the Examiner err in rejecting claims 1–22 and 34–44 under 35 U.S.C. §101 as being directed to judicially excepted subject matter?

Did the Examiner err in rejecting claims 1–22 and 34–44 under 35 U.S.C. § 103(a) as being unpatentable over Gagnon and Ducheneaut?

ANALYSIS

The rejection of claims 1–22 and 34–44 under 35 U.S.C. §101 as being directed to judicially excepted subject matter.

Alice Corp. Proprietary Ltd. v. CLS Bank International, 134 S.Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially excepted from patent eligibility under 35 U.S.C. § 101.

According to *Alice* step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S.Ct. at 2355.

In that regard, for independent claim 1, the Examiner determined that

[c]laim 1 is directed to an abstract idea, specifically: "assigning . . . a name to said performance bookmark" (*See Cyberfone, July 2015 Guidance, pg. 5*- using categories to organize, store and transmit information); "recalling . . . the previously created performance bookmarks." This is similar to the identified abstract idea of [u]sing categories to organize, store and transmit information (*See Cyberfone, July 2015 Guidance, pg. 5* - using categories to organize, store and transmit information). This is an "idea of itself" and accordingly, is viewed as an abstract idea.

Final Act. 5–6. The Examiner takes the same position with respect to independent claims 12 (Final Act. 11) and 34. Final Act. 14–15. The dependent claims were treated but also determined to be directed to an abstract idea.

Step two is “a 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.’” *Alice*, 134 S.Ct. at 2355 (*quoting Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 US 66, 73 (2012)).

In that regard, for claim 1, the Examiner determined that

[t]he claim does not include additional elements that are sufficient to amount to "significantly more" than the judicial exception (i.e. the abstract idea) because the additional element(s) or combination of elements in the claim(s) other than the abstract idea per se amount(s) to no more than: 1) generic computer functions that are well-

understood, routine, and conventional activities previously known to the industry; and 2) insignificant extra-solution (mere data gathering).

All the claim limitations were addressed. *See* Final Act. 6–9. The Examiner also determined that

[c]laim 1 is directed to being performed by a "computer", but these limitations add nothing of substance to the underlying abstract idea. The claim can be interpreted as person choosing to "bookmark" a view, naming a view (but storing the name in a data store of the computer), the computer providing a timestamp for the bookmark, and allowing a person to recall previously "bookmarked" views based on the stored information associated with the bookmark. Accordingly, the claim does not recite significantly more than the abstract idea as the claim recites a series of conventional computer functions of storing and displaying information.

Final Act. 8. The Examiner takes the same position with respect to independent claims 12 (Final Act. 12–13) and 34 (Final Act. 15–16). The dependent claims were treated but also determined not to include additional elements sufficient to amount to "significantly more" than the abstract idea.

Accordingly, the Examiner concluded that the claimed subject matter was patent-ineligible.

The Appellants challenge the rejection for various reasons. The thread running through them is a view of the claims as being directed to a “technological solution.” App. Br. 15.

The difficulty with the Appellants’ view is that the claims have been drafted so that as a whole they provide a result-oriented solution but without any of the computer-centric details for accomplishing it. The Appellants suggest the existence of such details in arguing that the invention “improves how a user of a software application *interacts with that vast amount of data*

available to be monitored and improves the *timeliness* of providing information to the user by dashboard view of real-time data that presents numerical data with graphical metaphors.” See App. Br. 17 (emphasis added). But the claim does not now reflect those details. Cf. *Intellectual Ventures I LLC v. Capital One Financial Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) (Explaining that “[o]ur law demands more” than claim language that “provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it.”) and *Electric*, 830 F.3d at 1354 (Explaining that claims are directed to an abstract idea where they do not recite “any particular assertedly inventive technology for performing [conventional] functions.”)

The Appellants argue that claim 1, for example, “clearly did not seek to tie up any judicial exception so that others cannot practice it.” App. Br. 13.

This argument confuses the pre-emption concern (*Alice*, 134 S.Ct. at 235) with the level of abstraction describing the abstract idea. With respect to the pre-emption concern, “[w]hat matters is whether a claim threatens to subsume the full scope of a fundamental concept, and when those concerns arise, we must look for meaningful limitations that prevent the claim as a whole from covering the concept’s every practical application.” *CLS Bank Intern. v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1281 (Fed. Cir. 2013) (Lourie, J., concurring). Here, the Appellants point to various claim 1 limitations, such as

- a) displays the dashboard view with graphical metaphors for real-time data,
- b) creates a performance bookmark of the dashboard view that includes both the visual properties of the dashboard view and relationships of information displayed by the dashboard view, and
- c)

recalls the performance bookmark so as to configure the dashboard system to display the recalled dashboard view,
App. Br. 14, that do indeed limit the scope of the claim. But they simply narrow the abstract idea of, e.g., displaying, to certain information, so that the abstract idea is described at a lower level of abstraction.

When “the focus of the asserted claims” is “on collecting information, analyzing it, and displaying certain results of the collection and analysis,” the claims are directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1343 (Fed. Cir. 2016). Information collection, analysis, and display including when limited to particular content is within the realm of abstract ideas. *See, e.g., Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); and *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011). *See SAP America, Inc. v. Investpic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (“Contrary to InvestPic's suggestion, it does not matter to this conclusion whether the information here is information about real investments. As many cases make clear, even if a process of collecting and analyzing information is “limited to particular content” or a particular “source,” that limitation does not make the collection and analysis other than abstract.”) (*quoting Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016)) (citing cases). Displaying in particular a “dashboard view,” “creat[ing] a performance bookmark,” and “recall[ing] the performance bookmark so as to configure the dashboard system to display the recalled dashboard view” further limit the information collection/display but only as to content. They do not, however, render the abstract idea any less an abstract.

Furthermore, pre-emption is not a separate test.

To be clear, the proper focus is not preemption per se, for some measure of preemption is intrinsic in the statutory right granted with every patent to exclude competitors, for a limited time, from practicing the claimed invention. See 35 U.S.C. § 154. Rather, the animating concern is that claims should not be coextensive with a natural law, natural phenomenon, or abstract idea; a patent-eligible claim must include one or more substantive limitations that, in the words of the Supreme Court, add “significantly more” to the basic principle, with the result that the claim covers significantly less. See *Mayo* 132 S. Ct. at 1294. Thus, broad claims do not necessarily raise § 101 preemption concerns, and seemingly narrower claims are not necessarily exempt.

Id.; see also *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.”). Because we find the claims are directed to patent-ineligible subject matter, the pre-emption concern is necessarily addressed. “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, [] preemption concerns are fully addressed and made moot.” *Ariosa*, 788 F.3d at 1379.

In challenging the *Alice* step one determination, the Appellants next argue that

[C]laim 1, when read in light of the specification and when read at the proper level of abstraction is directed to a computer-implemented method that displays a dashboard view for real-time data related to monitoring an operational environment of an enterprise, creating a performance bookmark of the dashboard view and recalling the performance bookmark when instructed by a user. Claim 1 is directed to a computer-implemented method that provides a technological solution to that problem. When considered at a permissible level of

abstraction, the claim features recited in claim 1 are unlike any abstract idea previously identified as patent ineligible and, thus, Appellants urge that claim 1 is directed to patent eligible subject matter.

App. Br. 15.

We do not disagree that claim 1 recites “a computer-implemented method that displays a dashboard view for real-time data related to monitoring an operational environment of an enterprise, creating a performance bookmark of the dashboard view and recalling the performance bookmark when instructed by a user” as the Appellants argue. But the question is whether, in reciting such subject matter, the claim is directed to an abstract idea.

The Appellants argue that said limitations show “[c]laim 1 is directed to a computer-implemented method that provides a technological solution to that problem” and not to an abstract idea. App. Br. 15. We do not see it that way. The Specification is quite clear that generic computers can be employed to practice the invention. *See* Spec., paras. 15–19. “The ‘abstract idea’ step of the inquiry calls upon us to look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas v. DirectTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (*quoting Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)); *see also Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). The Specification is devoted to “providing performance bookmarks that capture the state of business performance for advanced monitoring and analysis of business metrics.” Spec., para. 1. Claim 1 reflects that. The claim’s “character as a whole” does not pertain to any assertively inventive technology, but instead

relates to a scheme for bookmarking a dashboard view in a dashboard system. *Cf. Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (“The advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.”)

The Appellants argue that “the claim recites a method to improve the way a computer system works a) to manipulate information in a more timely manner and b) to interact with users of a computer system in a more responsive manner.” App. Br. 16. But we do not see and the Appellants do not adequately explain how the claimed process improves a generic computer. To the extent the Appellants are arguing that a computer makes the bookmarking process “more timely,” the inclusion of a generic computer per se for its routine function cannot alone turn what is an abstract idea into one that is not. *See, e.g., OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (“[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.”).

In challenging the *Alice* step two determination, the Appellants argue that “the features recited in claim 1 add significantly more to that abstract idea.” App. Br. 16.

In particular, claim 1 is directed to an adaptive process that a) displays the dashboard view with graphical metaphors for real-time data, b) creates a performance bookmark of the dashboard view that includes both the visual properties of the dashboard view and relationships of information displayed by the dashboard view, and c) recalls the

performance bookmark so as to configure the dashboard system to display the recalled dashboard view.

App. Br. 17. The argument is unpersuasive. We have already addressed these argued-over limitations, having determined that “they simply narrow the abstract idea of, e.g., displaying certain information, so that the abstract idea is described at a lower level of abstraction.” Accordingly, they do not add significantly more to the abstract idea.

The Appellants argue that

[i]mproving the manner in which users interact with a computer system and improving the manner in which time sensitive information is processed has been identified specifically as examples of when a claim, considered as a whole, amounts to significantly more than the judicial exception and, accordingly, is drawn to patent eligible subject matter.

App. Br. 17.

We have no disagreement that a claim to [i]mproving the manner in which users interact with a computer system and improving the manner in which time sensitive information is processed” is the type of technical improvement that could warrant a patent-eligible determination. But that is not what is claimed. We do not see now any claim limitation that reflects such a technical improvement. A series of “displaying,” “creating” by “assigning,” “providing” and “storing,” “receiving” and “recalling” steps for different types of information requiring nothing more than to be “by a computer” is insufficient to ensure that the claimed subject matter in practice amounts to significantly more than an abstract idea itself. “Generally, a claim that merely describes an ‘effect or result dissociated from any method by which [it] is accomplished’ is not directed to patent-eligible subject matter.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1244 (Fed. Cir. 2016)

(quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1348 (Fed. Cir. 2015)).

We have considered the Appellants remarks with respect to claims 2–22 and 34–44. App. Br. 17–22. These claims point to what is claimed. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. 37 C.F.R. 41.37(c)(1)(vii).

We have considered all of the Appellant’s remaining arguments (including those made in the Reply Brief) and find them unpersuasive. Accordingly, because we are not persuaded as to error in the determinations that representative claim 1, and claims 2–22 and 34–44 which stand or fall with claim 1, are directed to an abstract idea and do not present an “inventive concept,” we sustain the Examiner’s conclusion that they are directed to patent-ineligible subject matter that is judicially excepted from 35 U.S.C. § 101. *Cf. LendingTree, LLC v. Zillow, Inc.*, 656 Fed.Appx. 991, 997 (Fed. Cir. 2016) (“We have considered all of LendingTree’s remaining arguments and have found them unpersuasive. Accordingly, because the asserted claims of the patents in suit are directed to an abstract idea and do not present an ‘inventive concept,’ we hold that they are directed to ineligible subject matter under 35 U.S.C. § 101.”); *see also, e.g., OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1364 (Fed. Cir. 2015) and *FairWarning IP, LLC v. Iatric Systems, Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016).

The rejection of claims 1–22 and 34–44 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Gagnon and Ducheneaut.

Claims 1, 6–11

The Appellants argue that

Gagnon discloses creating dashboards and populating dashboards in a bifurcated manner. In particular, a user can create a dashboard template and store it but that dashboard template is not populated with information that includes graphical metaphors for real-time data related to monitoring of an operational environment of an enterprise. (See paragraph [0056] of Gagnon). That user can then separately select a stored dashboard template so that it is populated with previously collected data in order to "generate" a dashboard. Other users that have the appropriate permissions can select and view a previously generated dashboard for viewing data that is not real-time monitored data but is data from some past period. Applicants urge that the system of Gagnon does not teach or suggest displaying a dashboard view that comprises graphical metaphors that reflect real-time data that is being monitored. In other words, the dashboard generated by Gagnon populates a graphical element with a stored data value and stops. In contrast, a dashboard view, as recited in amended claim 1, has a dynamic element in that it is displayed so as to comprise graphical metaphors that reflect changing real-time data being monitored.

App. Br. 23.

As we understand it, the argument is that the claimed dashboard is distinguished from that of Gagnon in that it “includes graphical metaphors for real-time data related to monitoring of an operational environment of an enterprise” (claim 1).

However, there is insufficient evidence showing that the claim 1 step of “displaying, by a computer, the dashboard view” is functionally affected by the view “includ[ing] graphical metaphors for real-time data related to monitoring of an operational environment of an enterprise” (claim 1), rather

than some other graphical element as the Appellants concede Gagnon already discloses.

The Specification does not provide an express definition for the claim terms “dashboard” or “graphical metaphor.” “Dashboard” ordinarily and customarily means in the style of controls and gauges that a car panel displays. *See Webster's New World Dictionary* 351, 3rd ed. 1988, (entry for "dashboard"). Likewise, “graphical metaphor” ordinarily and customarily means a representation (i.e., a metaphor) via a graphic (i.e., graphical). The Specification disclosure is consistent with these ordinary and customary meaning, to wit;

[0033] The information from the KPI data store 38 is retrieved by the portal 28 and is coupled to the dashboard user interface 30 in an appropriate manner, such as may be dictated by the selected visual metaphor utilized to visualize the underlying data. The portal 28 may be implemented by any suitable means for conveying information from the dashboard data stores 26 to the dashboard user interface 30. For example, the portal 28 may comprise a service, agent, a network based applications server, web server etc.

[0034] The dashboard user interface 30 is a customizable visualization tool that associates at least one KPI with visual indicia. The visualization may comprise graphs, charts, lists, tables, alarms, and other visual aids to analyze and interpret the displayed KPis. As the KPI values change over time, the view in the dashboard user interface 30 is updated to reflect the appropriate changes. The available KPis can be filtered, sorted and displayed in any appropriate manner. Accordingly, the dashboard data stores 26 may further comprise a dashboard configuration data store 40 that stores various configurations, views and other information that defines the visual presentation of the KPI information.

Based on this, we do not see the difference between a “dashboard” with “graphical metaphors” and Gagnon’s dashboard with graphical elements, except that the claimed “graphical metaphors” are “*for* real-time data related to monitoring of an operational environment of an enterprise” (claim 1). However, there is insufficient evidence that being “*for* real-time data related to monitoring of an operational environment of an enterprise” (claim 1) functionally affects the dashboard or the displaying of it.

Given said lack of sufficient evidence, it is thus reasonable to characterize said claimed “graphical metaphors” as nonfunctional descriptive material; that is, akin to printed matter. Just as printed matter is not given patentable weight, similarly the “graphical metaphors for real-time data related to monitoring of an operational environment of an enterprise” (claim 1) claim limitations, as a distinction over Gagnon’s dashboard with graphical elements, are not patentably consequential. “[N]on-functional descriptive material, being useful and intelligible only to the human mind, is given no patentable weight.” *Ex parte Graf*, Appeal 2012-003941, 2013 WL 3873066, at *4 (PTAB July 23, 2013) (non-precedential), *aff’d*, *In re Graf*, 585 F. App’x. 1012 (Fed. Cir. 2014) (non-precedential); *cf. In re DiStefano*, 808 F.3d 845 (Fed. Cir. 2015); as explained in *In re Xiao*, 462 F.App’x. 947, 950–52 (Fed. Cir. 2011) (non-precedential):

[T]he Board did not create a new “mental distinctions” rule in denying patentable weight. . . . On the contrary, the Board simply expressed the above-described functional relationship standard in an alternative formulation—consistent with our precedents—when it concluded that any given position label’s function . . . is a distinction “discernable only to the human mind.” Board Decision at 6; *see In re Lowry*, 32 F.3d 1579, 1583 (Fed. Cir. 1994) (Describing printed matter as “useful and intelligible only to the human mind.”) (*quoting In re Bernhart*, 417 F.2d 1395, 1399 (CCPA 1969)).

“The rationale behind this line of cases is preventing the indefinite patenting of known products by the simple inclusion of novel, yet functionally unrelated limitations.” *King Pharms., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1279 (Fed. Cir. 2010).

Accordingly the argument that the claimed dashboard distinguishes from that of Gagnon in that it “includes graphical metaphors for real-time data related to monitoring of an operational environment of an enterprise” (claim 1) is unpersuasive as to error in the rejection.

There being no other argument, the rejection of claims 1 and 6–11 is sustained.

Claims 2–5

The Appellants argue that claim 2 (and claims 3–5 that depend from claim 2) calls for a “triggering event and in response to detecting the triggering event creating the performance bookmark.” App. Br. 24. The Examiner cites, variously, Gagnon and Ducheneaut. But nowhere in them can we find disclosure of a triggering event, a detecting of the triggering event, and in response to said detecting creating a bookmark. The Examiner cites in particular Ducheneaut:

Ducheneaut also discloses the claim - See par. 0088, FIG. 9 - wait for data update event 905, then generate time-stamped metric. A 'post instrument update event procedure 913 then posts an instrument update event to cause any instrument using the static metric to update its presentation; See FIGS. 16-18- showing playback over time of past data for a metric; meaning that new data is recorded for each change over time, which would be an event).

Final Act. 35. But, as the Appellants points out, “Ducheneaut discloses updating an instrument in a dashboard view but does not create a performance bookmark of the dashboard view.” App. Br. 24. We see nothing there about creating a bookmark in response to detecting a triggering event.

The rejection of claims 2–5 is not sustained.

Claims 12 and 17–22

The Appellants challenge the rejection of these claims for the same reason used to challenge the rejection of claim 1. App. Br. 26. That reason not being persuasive as to error in rejecting claim 1, similarly is unpersuasive as to error in the rejection of these claims.

Claims 13–16

These claims include the same limitations to a triggering event, a detecting of the triggering event, and in response to said detecting creating a bookmark discussed above with respect to claim 2. The Examiner’s position that these features are disclosed in the prior art is the same. Final Act. 35. The rejection is not sustained for the same reasons discussed above regarding the rejection of claim 2.

Claims 34 and 39–44

The Appellants challenge the rejection of these claims for the same reason used to challenge the rejection of claim 1. App. Br. 27. That reason not being persuasive as to error in rejecting claim 1, similarly is unpersuasive as to error in the rejection of these claims.

Claims 35, 37, and 38

These claims include the same limitations to a triggering event, a detecting of the triggering event, and in response to said detecting creating a bookmark discussed above with respect to claim 2. The Examiner's position that these features are disclosed in the prior art is the same. Final Act. 35. The rejection is not sustained for the same reasons discussed above regarding the rejection of claim 2.

Claim 36

Unlike claims 37 and 38, claim 36 does not appear to depend from claim 35, and thus does not include the argued-over limitations to a triggering event, a detecting of the triggering event, and in response to said detecting creating a bookmark. Accordingly, the discussion above with respect to claim 2 regarding the cited prior art not disclosing said limitations does not apply to claim 36. There being no other argument challenging the rejection of claim 36 but that which applies to claim 2 (App. Br. 27), the rejection is not overcome and is therefore sustained.

CONCLUSIONS

The rejection of claims 1–22 and 34–44 under 35 U.S.C. §101 as being directed to non-statutory subject matter is affirmed.

The rejection of claims 1, 6–12, 17–22, 34, 36 and 39–44 under 35 U.S.C. § 103(a) as being unpatentable over Gagnon and Ducheneaut is affirmed.

The rejection of claims 2–5, 13–16, 35, 37, and 38 under 35 U.S.C. § 103(a) as being unpatentable over Gagnon and Ducheneaut is reversed.

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DECISION

The decision of the Examiner to reject claims 1–22 and 34–44 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)(1)(iv).

AFFIRMED