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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SRIHARI KUMAR, SHREESHA RAMDAS, and
GURURAJ RAO¹

Appeal 2017-011793
Application 12/618,126
Technology Center 3600

Before MICHAEL J. STRAUSS, KARA L. SZPONDOWSKI, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ According to Appellants, the real party in interest is Callidus Software Inc.
See App. Br. 3.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 23–42. Claims 1–22 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.²

THE INVENTION

The claims are directed to analyzing website visitor behavior and deducing the meaning of anchor text of links selected by the visitor. Spec., Abstract. Claims 23 and 31, reproduced below, are illustrative of the claimed subject matter:

23. A method comprising:

automatically tracking a visitor behavior interacting with a client website accessed via Internet, using an input mechanism to interact with a graphical user interface rendered on a display device and a sequence associated therewith, wherein the visitor behavior includes interactions with a first anchor text of the client website wherein the first anchor text remains unselected, and wherein the visitor behavior includes interactions with a second anchor text of the client website wherein the second anchor text is associated with a hyperlink that is selected, wherein a tag associated with selection of the second anchor text is generated and wherein the tag is associated with the client website and user interaction thereof;

storing data associated with the visitor behavior;

filtering out anchor texts that are not interacted with on the graphical user interface;

automatically determining, by an electronic device, an intent of the visitor based on the visitor behavior and further

² We refer to the Specification, filed November 13, 2009 (“Spec.”); the Final Office Action, mailed November 29, 2016 (“Final Act.”); the Appeal Brief, filed February 14, 2017 as revised on March 23, 2017 (“App. Br.”); the Examiner’s Answer, mailed July 27, 2017 (“Ans.”) and the Reply Brief, filed September 27, 2017 (“Reply Br.”).

based on the filtering out by comparing a hierarchical structure of anchor texts to hierarchical structure of the client website; and outputting the intent of the visitor, a level of intent of the visitor, supporting data associated with the intent of the visitor, and a sales lead based on the intent of the visitor.

31. A method comprising:

accessing a behavior of a visitor interacting with a website accessed via Internet and a sequence thereof, using an input mechanism to interact with a graphical user interface rendered on a display device, wherein the behavior includes interactions with a first anchor text of the website wherein the first anchor text remains unselected, and wherein the behavior includes interactions with a second anchor text of the website wherein the second anchor text is associated with a hyperlink that is selected, wherein a tag associated with selection of the second anchor text is generated and wherein the tag is associated with the website and user interaction thereof;

automatically determining an intent of the visitor based on the behavior, wherein the determining is further based on a combination of semantic, syntactic, and statistics associated with the visitor interacting with the first anchor text and the second anchor text, and wherein the determining is by comparing a hierarchical structure of anchor texts to hierarchical structure of the website; and

outputting the intent of the visitor, a level of intent of the visitor, supporting data associated with the intent of the visitor, and a sales lead base/d on the intent of the visitor.

REFERENCES

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

Dutta	US 2002/0109729 A1	Aug. 15, 2002
Miller et al.	US 2006/0229942 A1	Oct. 12, 2006
Cramer	US 2007/0260597 A1	Nov. 8, 2007
Karidi	US 2008/0301541 A1	Dec. 4, 2008
Li et al.	US 2009/0083244 A1	Mar. 26, 2009

Farmer	US 2009/0109037 A1	Apr. 30, 2009
Brave et al.	US 7,698,270 B2	Apr. 13, 2010
Oztekin et al.	US 8,078,607 B2	Dec. 13, 2011

REJECTIONS

The Examiner made the following rejections³:

Claims 23–42 are rejected under pre-AIA 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Final Act. 4–6.

Claims 23, 26–31, and 34–38 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Brave, Oztekin, Miller, Karidi, and Li. Final Act. 7–20.

Claims 39 and 42 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Brave, Oztekin, Miller, Karidi, Li, and Farmer. Final Act. 20–31.

Claims 24 and 32 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Brave, Oztekin, Miller, Karidi, Li⁴, and Cramer. Final Act. 31–32, Ans. 12.

Claim 40 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Brave, Oztekin, Miller, Karidi, Li, and Farmer⁵. *Id.*

³ The rejection of claims 23–42 under 35 U.S.C. § 112, first paragraph, has been withdrawn. Ans. 3.

⁴ The Examiner and Appellants acknowledge the rejection relies on Li in addition to those references listed at page 31 of the Final Action. Ans. 12, Reply Br. 12.

⁵ The Examiner and Appellants acknowledge the rejection relies on Li and Farmer in addition to those references listed at page 31 of the Final Action. Ans. 12, Reply Br. 12.

Claims 25 and 33 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Brave, Oztekin, Miller, Karidi, Li⁶, and Dutta. Final Act. 32–33, Ans. 12.

Claim 41 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Brave, Oztekin, Miller, Karidi, Li, Farmer⁷, and Dutta. *Id.*

ANALYSIS

Appellants waive unmade arguments. 37 CFR § 41.37(c)(1)(iv) (“The arguments shall explain why the examiner erred as to each ground of rejection contested by appellant. . . . [A]ny arguments or authorities not included in the appeal brief will be refused consideration by the Board for purposes of the present appeal.”); *Cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an appellant”).

We have reviewed the Examiner’s rejections in light of Appellants’ contentions of reversible error. With regard to the rejection of claims 23–30 under 35 U.S.C. § 103(a), we disagree with Appellants’ conclusions. In connection with those rejections we adopt the findings and reasoning of the Examiner as set forth in the Final Rejection and in the Answer. However, in connection with the rejection of claims 23–42 under 35 U.S.C. § 101 and the

⁶ The Examiner and Appellants acknowledge the rejection relies on Li in addition to those references listed at page 32 of the Final Action. Ans. 12, Reply Br. 12.

⁷ The Examiner and Appellants acknowledge the rejection relies on Li and Farmer in addition to those references listed at page 32 of the Final Action. Ans. 12, Reply Br. 12.

rejections of claims 31–42 under 35 U.S.C. § 103(a), for the reasons discussed below, we agree with Appellants that the Examiner erred.

A. The 35 U.S.C. § 101 Rejection

1. Principles of Law

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)). Concepts determined to be patent eligible include physical and chemical processes,

such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 192 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 184 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The USPTO recently published revised guidance on the application of § 101. USPTO’s January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance* (“Memorandum”). Under that guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human interactions such as a fundamental economic practice, or mental processes); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that are not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Memorandum.

2. *The Examiner’s Determinations*

The Examiner finds all pending claims recite a method for tracking visitor behavior including “*tracking, storing, filtering, comparing, and determining data in order to output information.*” Final Act. 4. According to the Examiner, the recited steps “can be performed mentally or in a computer and [are] similar to the kind of ‘organizing human activit[ies]’ and [overall] is an idea of itself.” *Id.* According to the Examiner, the claims are directed to concepts “similar to [those] that have been identified as abstract by the courts, such as using categories to organize, store and transmit information in *Cyberfone*^[8], or comparing new and stored information and using rules to identify options in *SmartGene*^[9].” *Id.* Furthermore, according to the Examiner, “[t]he additions of limitations that narrow the idea . . . further describe the abstract idea, but do not make it less abstract.” *Id.* at 4–5. The Examiner further determines the claims do not recite additional

⁸ *Cyberfone Systems, LLC v. CNN Interactive Group, Inc.*, 558 F. App’x 988 (Fed. Cir. 2014).

⁹ *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App’x 950 (Fed. Cir. 2014).

limitations that, when considered individually and as an ordered combination, amount to significantly more than the judicial exception, because the additional limitations require only generic computer technology that performs well-understood, routine, and conventional activities previously known in the industry and do not provide any improvement to the functioning of the computer or computer network itself. *Id.* at 5–6.

Step One of Alice

Prong 1: Whether Claims Are Directed to an Abstract Idea

Appellants disclose “[t]he present invention is in the field of e[-]commerce and pertains particularly to methods and apparatus for inferring intent of Web visitors and generating leads based on the inferred intent other information about visitors and Website visits.” Spec. p 1, ll. 16–18. The Specification describes the desirability of collecting information about visitors to e-commerce website pages by monitoring a visitor’s webpage navigation behavior in order to determine interests of the visitor. Spec., p. 1, l. 21 – p. 2, l. 3. To address this problem, Appellants identify the need for

a system for monitoring and recording visitor behavior and for inferring intent of visitors to a Web interactive or Website in a manner that correlates the inference data with other data gathered using more traditional techniques that would result in better granularity of visitor intent at the site and in general would provide more robust information for group categorization and generation of better qualified leads.

Spec. p. 2, ll. 20–25. That is, Appellants disclose a need to obtain information about potential customers rather than solve a technical problem of obtaining customer behavior information that is peculiar or specific to a

website platform or the Internet. At most, Appellants identify prior art methods of collecting user behavioral information, such as by using tracking cookies, but do not describe any technical problems associated with the prior art methods that are to be overcome. Instead, the claims recite monitoring how a user interacts with a website, its hyperlinks, anchor text and information associated with the hyperlinks to determine the user's intent.

Thus, rather than being directed to a technical problem and its solution, the claims are directed to tracking the behavior of a visitor to a website to determine an intent of the visitor and, in response, providing a sales lead, i.e. generate marketing information. Collecting potential customer information is a marketing function involving data gathering, analysis, and generation, which are considered to be methods of organizing human activities. *See* MPEP § 2106.04(a)(2)(II)(B) and (D). Accordingly, the claims are akin to those our reviewing court has deemed abstract in *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369-70 (Fed. Cir. 2015) (customizing and tailoring web page content based on navigation history and known user information), *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015) (information collection and analysis, including when limited to particular content, is within the realm of abstract ideas), and *Affinity Labs of Texas, LLC v. Amazon.com Inc*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (customizing a user interface to have targeted advertising based on user information).

We are not persuaded by Appellants' argument that certain features, such as the recited tag associated with selection of the second anchor text, do not correspond to organizing a human activity. App. Br. 18–19. Additional elements may integrate the exception into a practical application or result in

an inventive concept by providing significantly more than the recited judicial exception, factors discussed below. However, the addition of elements does not transform an abstract idea into a non-abstract idea.

The claims further recite determining an intent of a visitor based on the tracked behavior using a combination of semantic, syntactic, and statistics associated with the visitor interacting with the first anchor text and the second anchor text (independent claims 31 and 39), and wherein the determining is by comparing a hierarchical structure of anchor texts to hierarchical structure of the website (independent claims 23 and 31). These determinations of visitor intent can be performed manually using, at most, a pen and paper, without need of any computer or other machine. *See CyberSource*, 654 F.3d at 1372–73 (“[A] method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”); *see also In re Comiskey*, 554 F.3d 967, 979 (Fed. Cir. 2009) (“[M]ental processes--or processes of human thinking--standing alone are not patentable even if they have practical application.”); *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) (“Phenomena of nature . . ., *mental processes*, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work” (emphasis added)). Additionally, mental processes remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper. *CyberSource*, 654 F.3d at 1375 (“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*.”).

Prong 2: Whether Additional Elements Integrate the Exception
into a Practical Application

Under Prong 2 we determine whether an additional element (or combination of elements) integrate the exception into a practical application. Memorandum, 84 Fed. Reg. at 54–55. Although, as part of the guidance provided by the recently issued Memorandum, this prong was not explicitly discussed as a separate consideration during the prior prosecution of Appellants’ application, the relevant facts and considerations are addressed in connection with Step 2 of the *Alice/Mayo* framework. See Final Act. 5–6. In particular, the Examiner finds “the additional limitations of an electronic device, a display device, an input mechanism, and a graphic user interface [are] generic computer components [that] perform their basic functions of tracking a visitor behavior.” *Id.* at 5. Addressing the recitation of a client website access via the Internet, the Examiner finds these elements do not provide any improvement to the function of the computer or computer network itself. *Id.*

Appellants argue the claims are tied to and rooted in computer technology to overcome a problem arising in e-commerce. App. Br. 15. In support of their contention, Appellants direct attention to the requirement for interaction with anchor text and for “automatically determin[ing] an intent of the visitor based on the visitor behavior and further based on the filtering out by comparing a hierarchical structure of anchor texts to hierarchical structure of the client website.” *Id.* at 16–17.

Under Prong 2 we are guided by exemplary considerations indicative of factors identifying additional elements that may integrate the exception into a practical application, including an additional element that:

1. reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field;
2. applies or uses a judicial exception to effect a particular treatment or prophylaxis for a disease or medical condition;
3. implements a judicial exception with, or uses a judicial exception in conjunction with, a particular machine or manufacture that is integral to the claim;
4. effects a transformation or reduction of a particular article to a different state or thing; and
5. applies or uses the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception.

See Memorandum, 84 Fed. Reg. at 55.

Appellants' arguments are directed to the first factor, i.e., computer functionalities (App. Br. 15–19) while the remaining factors are neither argued to be present nor do we ascertain the remaining factors as applicable to the claims. In particular, Appellants argue “the recited features are not generic because the recited features in a very specific manner improve E-Commerce, e.g., sales lead, and therefore confine the claim to a particular useful application and are thus patent eligible.” *Id.* at 19. According to Appellants, the additional elements “improve sales lead in E-Commerce through the specific steps of tracking, storing, filtering, automatically determining, and outputting in the claimed fashion.” *Id.* at 20; *see also* App. Br. 17.

Appellants' argument is not persuasive because, as acknowledged by Appellants, the improvement is to providing sales leads in E-commerce, not to the operation or functioning of the underlying technology, e.g. computer system or communication network. *See* App. Br. 17. Likewise, Appellants'

argument that “[c]laim 23 is patent eligible because it is inextricably tied to the computer technology and are necessarily rooted in computer technology to overcome a problem specifically arising in E-Commerce” is unpersuasive. The Specification discloses “data monitor and gatherer 111 is provided on server 109 and is adapted to monitor visitor activity at a Website and gather any relevant data about the visitor and visit to the Website.” Spec. p. 10, ll. 6–8. No specific details are provided about server 109, e.g., it is not described as a new type of server. Rather, the server is described as performing a generic computer function of executing computer code (i.e., data monitor and gatherer 111). *Id.* Similarly, the recited display is not described in detail and, instead, is considered to be a generic computer component. *See, e.g.* Spec. p. 6, ll. 18–19 (“Internet 101 is navigable by visitors operating an Internet-capable appliance such as . . . a personal computer.”) Merely implementing an abstract idea using a generic computer is insufficient to render a claim patent-eligible. *See, e.g., DDR Holdings*, 773 F.3d at 1256 (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible. The bare fact that a computer exists in the physical rather than purely conceptual realm is beside the point” (internal citation and internal quotation marks omitted)). Unlike the claims in *DDR*, the claimed invention does not improve computers as tools, but rather improves independently abstract ideas that use computers as tools. *See App. Br.* 14–15 (“the recited features . . . improve E-Commerce, e.g., sales lead[s].”).

For the reasons discussed above, we are unpersuaded the Examiner erred in determining the claims are directed to an abstract idea and we find insufficient evidence or argument that additional elements, singly or in

combination, integrate the abstract idea judicial exception into a practical application.

Step Two of Alice

In the second step of the *Alice* inquiry, Appellants argue the additional elements are not generic, Appellants particularly directing attention to functionality including

automatically tracking a visitor behavior . . . [that] includes interactions with a first anchor text . . . wherein the first anchor text remains unselected, and wherein . . . a second anchor text . . . associated with a hyperlink is selected, wherein a tag . . . is generated . . . filtering out anchor texts that are not interacted with . . . automatically determining . . . an intent of the visitor based on . . . the filtering out by comparing a hierarchical structure of anchor texts to hierarchical structure of the client website

App. Br. 20. In connection with the identified functionalities, the Examiner finds “[t]heir collective functions merely provide [a] conventional computer implementation.” Final Act. 6. The Examiner further finds “[t]he claimed invention recites generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry.” Final Act. 34. In particular, the Examiner finds “displaying information” and “a client website accessed via Internet” are well-known or well-understood, routine and/or conventional activities. Final Act. 35.

Under examination procedure published by the USPTO on April 19, 2018, entitled “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” (“*Berkheimer Memorandum*”), the Examiner is required to provide specific types of evidence to support a finding that claim elements

(or combinations of elements) are well-understood, routine, and conventional. Here, the Examiner's determination that the claims are directed to an abstract idea and do not amount to significantly more than the abstract idea is predicated, at least in part, on an unsupported finding that Appellants' claims are directed to routine, conventional, computer operations. *See, e.g.*, Ans. 4-5. Appellants have challenged this finding. App. Br. 19–20 (“the recited claimed features amount to significantly more . . . because the recited claimed features . . . [add] specific limitation other than what is well-understood, routine, conventional activity in the field or unconventional steps that confine the claim to a particular useful application”). In light of this challenge, the burden shifts to the Examiner to provide evidence in support of the finding. *See Berkheimer*, 881 F.3d at 1369. Insufficient evidence has been provided. Other than the requirements to display information and access a website via the Internet, the Examiner does not provide evidence addressing the additional elements recited by the claims. For example, the Examiner has not provided evidence that “filtering out by comparing a hierarchical structured of anchor texts to hierarchical structure of the client website” (independent claims 23 and 31) or “wherein the determining is further based on a combination of semantic, syntactic, and statistics associated with the visitor interacting with the first anchor text” (claims 31 and 39) are well-understood, routine, conventional activity in the field.

In the absence of sufficient evidence required by (1) *Berkheimer* (881 F.3d at 1369), and (2) the *Berkheimer Memorandum*, which requires the examination procedures be fully compliant with *Berkheimer*, we do not sustain the rejection of Appellants' claims under 35 U.S.C. § 101.

B. The § 103(a) Rejections

1. Claims 23–30

The Examiner finds Li’s web page filtering based on an extracted set of navigation paths to obtain desired web pages teaches or suggests the disputed filtering step of filtering out anchor texts that are not interacted with on the graphical user interface as recited by claim 23. Final Act. 15 (citing Li ¶ 51). Appellants contend Li collects the entire directory structure without regard to user interaction with the graphical user interface thereby failing to teach the disputed filtering step. App. Br. 21–22. The Examiner responds, finding the combination of Brave’s parsing of links used by people and Brave’s identification of an unused link as a “dead link” in combination with Li’s web page filtering teaches or suggests the disputed filtering step. Ans. 8–9. Appellants reply, arguing “all that Brave teaches is parsing links **that are used by people** which differs from the recited features of filtering out anchor texts that are not interacted with on the graphical user interface.” Reply Br. 10.

Appellants’ contention is unpersuasive because it fails to address the Examiner’s findings and is an improper attack on the references individually where the rejection is based on the combination of references. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). The Examiner finds, and we agree, the combination of Brave’s parsing of links that are used (i.e., interacted with) and identification of unused “dead” links in combination with Li’s filtering of URLs teaches or suggests the disputed step. Thus, Appellants’ attack on Brave fails to take into consideration the teachings of Li in combination with those of Brave. Accordingly, we sustain the rejection of independent claim

23 together with the rejections of dependent claims 26–30 which are not argued separately with particularity.

Appellants additionally argue the rejections of claims 24 and 25 are improper for failure of the Examiner to include the Li reference upon which the Examiner relied in rejecting base claim 23. App. Br. 24–26. The Examiner responds, agreeing all of the references used in rejecting base claim 23, including the omitted Li reference, should have been cited in addition to the cited Cramer (claim 24) and Dutta (claim 25) references. Ans. 12–13. Appellants reply, “thank[ing] the Examiner for correcting the typographical errors in rejection[s] of Claims 24 [and 25].” Reply 12. Thus, for purposes of this appeal, we treat the rejections of claims 24 and 25 as having been corrected to include the omitted Li reference. As Appellants have not provided any additional contentions of error separately arguing dependent claims 24 and 25, we sustain the rejection of those claims for the reasons discussed above in connection with base independent claim 23.

2. Claims 31–42

The Examiner finds Li’s filtering of links directing web pages in the same semantic block using heuristic rules for navigation link selection teaches or suggests the limitation of basing an intent of a visitor on a combination of semantic, syntactic, and statistics associated with the visitor interacting with anchor text as recited by independent claims 39 and 42. Final Act. 28 (citing Li ¶¶ 40, 51). Appellants contend Li’s determination of visitor intent does not include the links that direct all web pages to the same semantic block. App. Br. 23, Reply Br. 11. Appellants further argue Li discloses filtering only using heuristic rules, which “may be based on

something other than ‘**semantic and syntactic.**’” Reply Br. 11. The Examiner replies, finding Li’s heuristic rules teach the disputed semantic and syntactic methods. Ans. 9–10. The Examiner further finds Li’s description of link extraction teaches or suggests using statistical methods. *Id.* at 10. Furthermore, according to the Examiner, Brave’s descriptions of observing user behaviors, query monitoring, and a library or behavioral journal teach or suggest the disputed limitation. *Id.* at 10–11.

Appellants’ contention is persuasive of Examiner error. The Examiner fails to provide sufficient evidence or explanation of why one skilled in the art would have understood Li’s heuristic rules to include the recited combination of semantic, syntactic, and statistics factors. A definition of heuristic includes “[a]n approach or algorithm that leads to a correct solution of a programming task by non-rigorous or self-learning means.”¹⁰ We find no mention of semantics, syntax, or statistics either in the definition of heuristics or in the cited portions of the Li or Brave references. Accordingly, we do not sustain the rejection of independent claims 31 and 39 under 35 U.S.C. § 103(a) or the rejections of dependent claims 32–38 and 40–42 which depend from and stand with their respective base claims.

DECISION

We reverse the Examiner’s decision to reject claims 23–42 under 35 U.S.C. § 101.

We affirm the Examiner’s decision to reject claims 23–30 under 35 U.S.C. § 103(a).

¹⁰ MICROSOFT COMPUTER DICTIONARY 251 (5th ed. 2002)).

Appeal 2017-011793
Application 12/618,126

We reverse the Examiner's decision to reject claims 31–42 under 35 U.S.C. § 103(a).

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED-IN-PART