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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BENJAMIN BIXBY and GREGORY O'KEEFFE

Appeal 2018-000024
Application 12/607,959
Technology Center 3600

Before ERIC B. CHEN, JOSEPH P. LENTIVECH, and
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

LENTIVECH, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellants¹ appeal from the Examiner's decision to reject claims 1–18 and 21–33. Claims 19 and 20 have been canceled. *See* App. Br. 21 (Claims App.). We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is Google Inc. App. Br. 2.

STATEMENT OF THE CASE

Appellants' Invention

Appellants' invention generally relates to “methods, graphical user interfaces, systems and computer readable media for receiving actual resource consumption information associated with a consumer, analyzing that information, and determining an environmental impact of the consumer's resource consumption.” Spec. ¶ 2. Claim 1, which is illustrative, reads as follows:

1. A method comprising:

providing, by a third party computer system, a web-based interface that comprises a menu that permits a consumer to select a first utility resource consumption validator from a plurality of utility resource consumption validators;

receiving, by the third party computer system, customer registration information from the consumer wherein verification of the customer registration information by an online account management system associated with the first utility resource consumption validator selected via the menu of the web-based interface enables the consumer to access a utility resource consumption account specific to the consumer;

transmitting, by the third party computer system, the customer registration information to the online account management system, wherein verification of the customer registration information by the online account management system enables the third party computer system to access and retrieve information from the utility resource consumption account;

accessing, by the third party computer system, the utility resource consumption account;

retrieving, by the third party computer system, hypertext markup language (HTML) code from a website generated by the online account management system;

parsing, by the third party computer system, the HTML code to obtain actual utility resource consumption information from the utility resource consumption account;

analyzing, by the third party computer system, the retrieved actual utility resource consumption information by the third party computer system to determine an aspect of the consumer's resource consumption;

storing, by the third party computer system, the actual utility resource consumption information and the aspect of the consumer's resource consumption in a data storage device;

accessing, by the third party computer system, the stored analysis aspect of the consumer's resource consumption;

determining, by the third party computer system, an environmental impact of the consumer's resource consumption based on the analysis aspect of the consumer's resource consumption;

producing, by the third party computer system, comparison results that comprise the determined environmental impact and a potential environmental impact associated with a second utility resource consumption validator;

providing, by the third party computer system, as part of a second website, the comparison results to the consumer; and

in association with the comparison results being provided to the consumer, providing, by the third party computer system, on the second website for the consumer to activate utility service with the second utility resource consumption validator and terminate utility service with the first utility resource consumption validator.

References²

The Examiner relies on the following prior art in rejecting the claims:

Sheth et al.	US 2002/0194502 A1	Dec. 19, 2002
English	US 2003/0055723 A1	Mar. 20, 2003
Salle et al.	US 2003/0078800 A1	Apr. 24, 2003
Miyamoto et al.	US 2004/0044476 A1	Mar. 4, 2004
Budike, Jr.	US 6,904,385 B1	June 7, 2005
Zicherman	US 2006/0129463 A1	June 15, 2006
D'Angelo et al.	US 2009/0070412 A1	Mar. 12, 2009
Dikeman	US 2009/0192894 A1	July 30, 2009

Rejections

Claims 1–11, 14–17, and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Sheth, Budike, Dikeman, Salle, Miyamoto, Zicherman, and English. Final Act. 3–31.

Claims 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Sheth, Budike, Dikeman, Salle, Miyamoto, Zicherman, English, and D'Angelo. Final Act. 31–34.

Claims 18, 21–31, and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Sheth, Dikeman, Salle, Miyamoto, Zicherman, and English. Final Act. 34–79.

² All citations herein to these references are by reference to the first named inventor only.

ANALYSIS

Claim 1

Appellants contend the combination of Sheth, Budike, Dikeman, Salle, Miyamoto, Zicherman, and English fails to teach or suggest “producing, by the third party computer system, comparison results that comprise the determined environmental impact and a potential environmental impact associated with a second utility resource consumption validator,” as recited in claim 1. App. Br. 9–11; Reply Br. 2.

In rejecting claim 1, the Examiner finds Salle teaches or suggests the disputed limitation. Final Act. 12 (citing Salle ¶ 50). In particular, the Examiner finds “Salle teaches the concept of analyzing usage information and comparing the current provider with potential providers in a plurality of metrics including environmental and cost, and providing a consumer with an opportunity to switch to the potential provider.” *Id.* Based on these findings, the Examiner determines:

[I]t would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the teachings of Salle with the combination of Sheth, Budike, and Dikeman. As shown, Salle teaches the concept of assisting the user to [sic] in the purchasing the resources. Salle teaches this to include utilizing collected usage data to determine a cost at a current provider and a predicted cost at another provider. Salle teaches providing this service such that the user can accurately determine which provider would best meet the needs of the user. Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the teachings of Salle such that the user is provided with the most amount of information to determine a provider which suites the needs of the user, thereby increasing user convenience and satisfaction.

Final Act. 12–13.

Appellants acknowledge Miyamoto teaches a comparison of CO₂ emissions of a reference system with a target system, but argue Miyamoto fails to teach “that the comparison is based on the determined environmental impact based on an analysis of the *consumer’s actual utility resource consumption information as retrieved from a utility resource consumption account* and the comparison compares a consumer’s actual resource consumption with a first resource consumption validator with a second resource consumption validator to which the consumer can switch his service,” as required by claim 1. App. Br. 9–10.

Appellants argue although Salle teaches basing a deal on a minimal environmental impact, Salle does not teach or suggest “any form of *comparison* involving environmental impact.” App. Br. 10 (citing Salle ¶ 50). Appellants argue “[w]hen this concept of Salle is combined with Miyamoto, the combination still does not disclose an environmental impact comparison being provided to a consumer that is based on *the consumer’s actual resource consumption*,” as required by claim 1. App. Br. 10.

In response, the Examiner finds “Dikeman teaches the concept of determining the environmental impact based on user usage/consumption information” and “Salle further teaches the concept of performing comparisons of a current and potential providers of the resource including comparisons based on environmental impact.” Ans. 3. Based on these findings, the Examiner concludes the combination of Dikeman and Salle teaches or suggests the disputed limitation. Ans. 3–4.

In Reply, Appellants argue the combination of Miyamoto and Salle fail to teach the disputed limitations because “a combination cannot fairly be envisioned in which an environmental impact comparison is provided to

a consumer that is based on *the consumer's actual resource consumption*” and “[n]one of the comparisons of Salle and Miyamoto are *based on a consumer's actual resource consumption*. Reply Br. 2. Appellants further argue “regardless how such references are combined with the remaining references, the combination remains deficient in proving obvious an environmental impact comparison based on a consumer's actual resource consumption through a first resource validator used in the comparison.” *Id.*

As discussed above, the Examiner relies upon the combination of Dikeman and Salle for teaching or suggesting the disputed limitation. Ans. 3–4. Appellants' arguments fail to substantively address the Examiner's findings regarding the combined teachings of Dikeman and Salle and, therefore, are unpersuasive of error.

Appellants also contend the combination of Sheth, Budike, Dikeman, Salle, Miyamoto, Zicherman, and English fails to teach or suggest “in association with the comparison results being provided to the consumer, providing, by the third party computer system, on the second website for the consumer to activate utility service with the second utility resource consumption validator and terminate utility service with the first utility resource consumption validator,” as recited in claim 1. App. Br. 11–12; Reply Br. 3. Appellants argue:

While Zicherman is generally directed to the purchasing of a product, at no point does Zicherman consider an arrangement in which a consumer, as part of the same website that provided the environmental impact comparison results, can initiate service with one utility provider and terminate service with another in association with comparison results, as is required by the arrangement of independent claim 1. Rather, Zicherman provides for price comparison shopping for a product, such as shown in Zicherman's Figure 1. While Zicherman considers a

product comparison website, Zicherman does not consider any form of environmental impact comparison that allows a consumer to switch between resource consumption validators.

App. Br. 11–12; *see also* Reply Br. 3. Appellants further argue “[a]t best [the combination of Miyamoto and Salle] would allow a user to input data for visual presentation then an automatic selection would be based on the input environmental data.” Reply Br. 3.

We are not persuaded. Appellants’ arguments fail to address the combined teachings of the references relied upon by the Examiner. The Examiner finds the combination of Sheth, Budike, Dikeman, Salle, and Miyamoto teaches or suggests “the concept of displaying the comparison of a current service provider and a potential provider.” Final Act. 14. The Examiner finds Zicherman “teaches the concept of utilizing a second site for providing displaying comparison information.” Final Act. 14–15 (citing Zicherman ¶¶ 30, 37). Based on these findings, the Examiner determines:

[I]t would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the teachings of Zicherman with the combination of Sheth, Budike, Dikeman, Salle, and Miyamoto. As shown, the combination discloses the concept of providing comparison information for a consumer based on consumer consumption data. As shown, Zicherman further teaches that it is old and well known for consumer comparison to be provided as a new window or as part of the same site. Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the display of comparison information by using a second page as Zicherman teaches that it is old and well known to present comparison information in a plurality of forms.

Final Act. 15. The Examiner finds English teaches “the concept of enabling the user to switch from a first provider to a second provider” and, therefore, that the combination of Sheth, Budike, Dikeman, Salle, Miyamoto,

Zicherman, and English teaches or suggests the disputed limitation. Final Act. 16–17; *see also* Ans. 4–5. Appellants’ arguments fail to persuasively address the combined teachings of the references and, therefore, are unpersuasive of error.

For the foregoing reasons, we are not persuaded the Examiner erred in rejecting claim 1. Appellants do not argue claims 1–15, 17, 18 and 21–33 separately with particularity but, instead, rely on the arguments presented with respect to claim 1. *See* App. Br. 13. Accordingly, we are not persuaded the Examiner erred in rejecting claims 1–15, 17, 18 and 21–33 for the reasons discussed above with respect to claim 1.

Claim 16

Claim 15 depends from claim 1 and recites that the method further comprises “analyzing, by the third party computer system, the retrieved actual utility resource consumption information to determine a cost associated with the utility resource consumed.” App. Br. 19 (Claims App.). Claim 16 depends from claim 15 and recites that the method further comprises:

comparing, by the third party computer system, the cost associated with the utility resource consumed with a potential cost associated with the utility resource consumed when the utility resource is validated via an alternative utility resource consumption validator, to produce cost comparison results; and

providing, by the third party computer system, the cost comparison results to the consumer.

App. Br. 19 (Claims App.). Appellants contend the combination of Sheth, Budike, Dikeman, Salle, Miyamoto, Zicherman, and English fails to teach or

suggest the limitations recited in claim 16. App. Br. 13–14; Reply Br. 3–4.

Appellants argue:

At the cited portion of *Salle*, the concept of a contract deal being based on a lowest cost option is disclosed. *Salle*, ¶ 50. This portion of *Salle* is directed to a controller 52 conducting an analysis. *Id.* While the controller selection may be based on a choice being the lowest cost option, at no point is a comparison of cost of two resource consumption validators provided to a consumer based on the consumer's actual consumption with the first resource consumption validator. Rather, *Salle*'s lowest based selection appears to be made internally by a sequence of instructions being executed by a processor (controller) without any cost comparison provided to a consumer.

When combined with the most pertinent other reference, *Miyamoto*, *Salle* is still deficient. *Miyamoto* performs a comparison based on a user's entered environmental parameters. *Salle* discloses that cost may be used to make a determination as to which deal to select. When combined, these references still fail to define an arrangement where a consumer's cost based on actual consumption with a first resource consumption validator is presented in comparison with a potential cost from a second resource consumption validator.

App. Br. 14; *see also* Reply Br. 3–4.

We are not persuaded. Appellants' arguments fail to address the combined teachings of the references relied upon by the Examiner in rejecting claim 16. In particular, the Examiner finds:

[T]he combination of *Dikeman*, *Salle*, and *Miyamoto* teaches the concept of utilizing collected information (*Dikeman*) to perform comparisons (*Salle*) including providing the comparisons side by side (*Miyamoto*). As shown *Salle* teaches the concept of the comparisons to be based on a plurality of factors including comparing both cost and environmental factors. As discussed above, *Miyamoto* teaches the concept of providing comparison information side by side such that it is easily viewed and referenced. Thus, the combination of *Dikeman* and *Salle*

teaches the information being prepared, and Miyamoto further teaches the optimal way of presenting the comparison information. Therefore, the Examiner asserts the combination of Dikeman, Salle, and Miyamoto teaches the concept of performing and providing a cost comparison.

Ans. 5. Appellants' arguments fail to substantively address the combined teachings of Dikeman, Salle, and Miyamoto and, therefore, are unpersuasive of error.

Accordingly, we are not persuaded the Examiner erred in rejecting claim 16.

DECISION

We affirm the Examiner's rejection of claims 1–18 and 21–33 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).

AFFIRMED