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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/828,234	03/14/2013	William Towell	015657	9141
23456	7590	11/21/2018	EXAMINER	
PATTERSON Intellectual Property Law, P.C. 1600 DIVISION STREET, SUITE 500 NASHVILLE, TN 37203			KIYABU, KARIN A	
			ART UNIT	PAPER NUMBER
			2695	
			NOTIFICATION DATE	DELIVERY MODE
			11/21/2018	ELECTRONIC

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* WILLIAM TOWELL and IAN PURVIS

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Appeal 2018-000754  
Application 13/828,234  
Technology Center 2600

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Before ROBERT E. NAPPI, NORMAN H. BEAMER, and  
JAMES W. DEJMEK, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–6, 13–16, 18–20, 22, and 24–29.<sup>1</sup> Claims 7–12, 17, 21, and 23 are cancelled. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Appellants identify Bad Donkey Social, LLC as the real party in interest. (App. Br. 1.)

## THE INVENTION

The claims are directed to the communication and display of alphanumeric data with inline user-driven non-alphanumeric content.

(Abstract.) Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A system for communicating over a communication network, the system comprising:

a server in communication via the communication network with at least a first user computing device and a second user computing device, wherein at least the first user computing device comprises an image forming or capturing device;

a storage system for the storage of data and user-created content obtained via the communication network from one or more of the server and the user computing devices, including user-driven non-alphanumeric content formed or captured by the image forming or capturing device;

software operated on one or more of the server and the second user computing device which:

tracks operations by a user of the second user computing device, wherein prediction criteria are learned in response to user behavior;

predicts user-driven non-alphanumeric content from the image forming or capturing device of the first user computing device for insertion into a communication by the second user comprising alphanumeric content based on the learned prediction criteria;

obtains the predicted user-driven non-alphanumeric content from the storage system;

inserts the obtained user-driven non-alphanumeric content into the communication and inline with the alphanumeric content; and

transmits the communication comprising the user-driven non-alphanumeric content inline with the alphanumeric content from the second user to one or more different users.

(App. Br. 22–23 (Claims Appendix).)

## REJECTIONS

The Examiner rejected claims 1, 4, 5, 13–16, 19, 24, 28, and 29 under 35 U.S.C. § 103(a) as being unpatentable over Zimmermann (US 2005/0163379 A1, pub. July 28, 2005) and Leydon (US 2013/0159919 A1, pub. June 20, 2013). (Final Act. 5–18.)

The Examiner rejected claims 2, 6, 20, 25, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Zimmermann, Leydon, and Walter et al. (US 2005/0156873 A1, pub. July 21, 2005). (Final Act. 18–25.)

The Examiner rejected claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Zimmermann, Leydon, Walter, and Lee et al. (US 2013/0125063 A1, pub. May 16, 2013). (Final Act. 25–26.)

The Examiner rejected claim 18 under 35 U.S.C. § 103(a) as being unpatentable over Zimmermann, Leydon, and Moore et al. (US 2010/0125811 A1, pub. May 20, 2010). (Final Act. 26–28.)

The Examiner rejected claim 22 under 35 U.S.C. § 103(a) as being unpatentable over Zimmermann, Leydon, and Berry et al. (US 2013/0159431 A1, pub. June 20, 2013). (Final Act. 28–30.)

The Examiner rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Zimmermann, Leydon, Walter, and Berry. (Final Act. 30–31.)

## ISSUES ON APPEAL

Appellants' Appeal Brief raises the following issues:<sup>2</sup>

*First Issue:* Whether the combination of Zimmermann and Leydon teaches or suggests the limitations of independent claim 1, and the commensurate limitations of independent claims 24 and 28. (App. Br. 12–16, 19–20.)

*Second Issue:* Whether the combination of Zimmermann, Leydon, and Walter teaches or suggests the additional limitations of dependent claim 2, and the commensurate limitations of dependent claim 25. (App. Br. 17–19.)

## ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments that the Examiner has erred. We disagree with Appellants' arguments, and adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 5–31); and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief (Ans. 2–9), and concur with the conclusions reached by the Examiner.

### *First Issue*

In finding Zimmermann and Leydon teach or suggest the subject matter of the independent claims, the Examiner relies on the disclosure in Zimmermann of the use of “emoticons” in instant messaging, email, or other

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<sup>2</sup> Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed June 30, 2017), Reply Brief (filed Oct. 30, 2017), Final Action (mailed Dec. 2, 2016), and the Answer (mailed Aug. 31, 2017) for the respective details.

applications, in which the emoticons are created from still images or video captured by a digital camera. (Final Act. 6; Zimmermann, Abstract, Figs. 1, 4, ¶¶ 19, 20, 35, 48, 50.) The Examiner also relies on the disclosure in Leydon of the insertion of graphical and animated emoticons in place of text segments, in which the emoticons are identified and suggested based on user activity statistics, and are available to multiple users. (Final Act. 7–8; Leydon, Abstract, Figs. 1, 5, ¶¶ 5, 7, 14, 26, 32, 50, 60.)

Appellants argue the custom emoticons of Zimmerman are not “user-driven non-alphanumeric content formed or captured by the image forming or capturing device,” as required by the claims. (App. Br. 13.) However, we agree with the Examiner’s finding that the customized emoticons, described in Zimmerman as being “captured still images that are reduced in size or resolution, or that are selected frames from a video clip, etc.,” are non-alphanumeric and otherwise satisfy the claim requirement. (Ans. 3.) The Specification suggests that predefined Unicode-based emoticons are not “non-alphanumeric content” as claimed. (Spec. ¶ 78.) However, even if the claims were construed to exclude such predefined emoticons, the customized emoticons of Zimmerman are non-alphanumeric and are within the scope of the claims as reasonably construed.

Appellants also argue Zimmerman is limited to customized emoticons inserted via conventional messaging applications. (App. Br. 13–14.) We are not persuaded by this argument, as it is not commensurate with the scope of the claims. In any event, as the Examiner points out, Zimmerman provides:

***Further, it is to be noted that the generation and insertion of emoticons described herein is not limited to IM applications, but rather can be used for other applications (e.g., email) as***

*well as for insertion in other electronic communications and/or media.*

(Ans. 4.)

Regarding the Examiner's reliance on Leydon, Appellants argue "Leydon does not teach or suggest collective access by users (in either of an open or closed network) to individually customized or uploaded emoticons," nor "that user-driven non-alphanumeric content from a first user is made available for insertion into communications from a second user." (App. Br. 15.) To the contrary, as the Examiner finds:

[F]igure 1 and paragraph [0032] of Leydon disclose and/or suggest "content database 118 storing and making available user-created non-alphanumeric content to other users." Paragraph [0032] provides: "the library of emoticons may comprise emoticons that are ... accessible by a limited group of users restricted access (e.g., ... only accessible to certain groups), user-customized or user-uploaded emoticons.... Emoticons stored on the emoticon suggestion datastore 118 may include character emoticons, graphical emoticons, graphically animated emoticons, and emoticons accompanied by sound."

(Ans. 5–6.)

Therefore, we sustain the obviousness rejection of independent claims 1, 24, and 28.

### *Second Issue*

Claim 2 depends from claim 1 and provides:

The system of Claim 1, wherein the software further:

displays non-alphanumeric content to a user, wherein the non-alphanumeric content further comprises a content identifier,

associates the content identifier with an escaped text identifier,

inserts the escaped text identifier in line with alphanumeric content,

consults a database to correlate the non-alphanumeric content with the escaped text identifier, and

displays the non-alphanumeric content inline with the alphanumeric content.

(App. Br. 23.) Claim 25 adds commensurate limitations to independent claim 24. (App. Br. 29.)

In rejecting the claims, the Examiner relies on the disclosure in Walter of the use of character sequences to trigger insertion of custom emoticons in text. (Final Act. 18–19.) In particular, Walter discloses the use of special characters to set apart otherwise common names:

In one implementation, character sequences are limited to a short sequence of characters, such as seven. The character sequence “dog” can result in a custom emoticon of a dog appearing each time “dog” is used in a message, so other characters may be added to common names to set mappable character sequences apart from text that does not map to a custom emoticon. Hence a character sequence may use brackets, such as [dog] or an introductory character, such as @dog.

(Walter ¶ 32.)

Appellants argue the relied-on combination does not teach or suggest “an escaped text identifier as being associated with the content identifier, inserted inline, or correlated in a database with the non-alphanumeric content.” (App. Br. 17.) We note the Specification does not define “escaped text identifier,” other than to illustrate an example: “{1234567}” in Figure 3 is so identified. (Walter, Fig. 3, ¶ 48.) The above-quoted use of “[dog]” disclosed in Walter is, in all pertinent respects, identical to this example.

Therefore, we sustain the obviousness rejection of claims 2 and 25.



## CONCLUSION

For the reasons discussed above, we sustain the Examiner's obviousness rejections of claims 1, 24, and 28 over Zimmermann and Leydon, and of claims 2 and 25 over Zimmermann, Leydon, and Walter.

In addition, we sustain the obviousness rejections of claims 4, 5, 13–16, 19, and 29 over Zimmermann and Leydon, of claims 6, 20, and 26 over Zimmermann, Leydon, and Walter, of claim 3 over Zimmermann, Leydon, Walter, and Lee, of claim 18 over Zimmermann, Leydon, and Moore, of claim 22 over Zimmermann, Leydon, and Berry, and of claim 27 over Zimmermann, Leydon, Walter, and Berry, which rejections are not argued separately with particularity. (App. Br. 16–17, 19–20.)

## DECISION

We affirm the Examiner's rejection of claims 1–6, 13–16, 18–20, 22, and 24–29.

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