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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LINDA TONG, STEPHEN JAMES McCARTHY, RYAN ALLEN JOHNS, HAI-VAN PHAM, NORMAN CHAN, AMIR BASHIR MANJI, JIA FENG, MARC BOURGET, JOEY PAN, and HWAN-JOON CHOI

Appeal 2018-002502
Application 14/329,796
Technology Center 3600

Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and NINA L. MEDLOCK, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–12, 14–26, and 28. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

CLAIMED INVENTION

Appellant's claimed invention "relate[s] to the field of delivering online advertisements to computing devices such as mobile computing devices" (Spec. ¶ 2).

Claims 1 and 15 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A method comprising:
>
> using a marketplace server computer, storing, at the marketplace server computer, application marketplace account information that identifies one or more computing devices that are linked to one or more marketplace accounts;
>
> wherein a first computing device and a second computing device are linked to a particular marketplace account;
>
> using the marketplace server computer, storing at the marketplace server, for one or more marketplace associated applications, interaction information comprising a plurality of entries, wherein the marketplace server adds an entry each time a device interacts with an instance of an application of the one or more marketplace associated applications and wherein the entry

[1] We use the term "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Our decision references Appellant's Appeal Brief ("Appeal Br.," filed July 24, 2017) and Reply Brief ("Reply Br.," filed January 4, 2018), and the Examiner's Answer ("Ans.," mailed November 30, 2017) and Final Office Action ("Final Act.," mailed March 8, 2017). Appellant identifies the real party in interest as Tapjoy, Incorporated. Appeal Br. 1.

identifies the application and the device that interacted with the instance of the particular application;

using the marketplace server computer, receiving at the marketplace server, from the first computing device, a request for a list of offer eligible applications;

using the marketplace server computer, identifying a set of two or more applications associated with the first computing device by identifying, in the interaction information of the one or more marketplace associated applications, data indicating that the first computing device executed an instance of each application of the set of two or more applications;

using the marketplace server computer, selecting a plurality of eligible applications including the set of two or more applications based, at least in part, on identifying the set of two or more applications associated with the first computing device;

using the marketplace server computer, sending a list of the plurality of eligible applications including the set of two or more applications to the first computing device;

using the marketplace server computer, receiving a selection of an eligible application of the list of selected eligible applications;

using the marketplace server computer, identifying a plurality of offers for the selected eligible application, based, at least in part, on user account information of the particular marketplace account identifying capabilities of the second computing device; [and]

using the marketplace server computer, displaying a plurality of offer descriptions, each offer description of the plurality of offer descriptions describing a respective offer for the selected eligible application, wherein each respective offer offers a reward in exchange for a performance of an offer action.

REJECTIONS

Claims 1–5, 7, 8, 12, 14, 15–19, 21, 22, 26, and 28 are rejected under 35 U.S.C. § 103(a) as unpatentable over Mehta et al. (US 2012/0291022 A1, published Nov. 15, 2012) ("Mehta"), Kääriäinen et al. (US 2012/0102008 A1, published Apr. 26, 2012) ("Kääriäinen"), Patterson

(US 2007/10255576 A1, published Nov. 1, 2007), Perkins et al. (US 2003/0084439 A1, published May 1, 2003 ("Perkins"), and Levi et al. (US 2011/0119131 A1, published May 19, 2011) ("Levi").

Claims 6 and 20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Mehta, Kääriäinen, Patterson, Perkins, Levi, and Gorman et al. (US 2011/0208616 A1, published Aug. 25, 2011) ("Gorman").

Claims 9, 10, 11, 23, 24, and 25 are rejected under 35 U.S.C. § 103(a) as unpatentable over Mehta, Kääriäinen, Patterson, Perkins, Levi, and Van Luchene et al. (US 2011/0300923 A1, published Dec. 8, 2011) ("Van Luchene").

ANALYSIS

Independent Claims 1 and 15 and Dependent Claims 2–5, 7, 8, 12, 14, 16-19, 21, 22, 26, and 28

We are persuaded by Appellant's argument that the Examiner erred in rejecting independent claims 1 and 15 under 35 U.S.C. § 103(a) because Levi, on which the Examiner relies, does not disclose or suggest "identifying a plurality of offers for the selected eligible application, based, at least in part, on user account information of the particular marketplace account identifying capabilities of the second computing device," as recited in claim 1, and similarly recited in claim 15 (Appeal Br. 5–7).

Levi is directed to a system and method for peer-to-peer advertising between mobile communication devices (Levi Abstract), and discloses an arrangement in which a subscriber subscribes to a communication subsidy program of an intermediary by connecting to the intermediary website and setting up a subscriber profile (*id.* ¶¶ 19, 29). Levi discloses, in paragraph 31, on which the Examiner relies (*see* Final Act. 11–12), that once

the subscriber's profile is set up, the intermediary analyzes the profile data and identifies advertisers whose criteria for subsidy match the subscriber's criteria. Levi, thus, discloses that if, for example, advertiser A offers static graphic media and video media and advertiser B offers only audio media, the intermediary qualifies those subscribers (based on the media type offered) whose communication devices have the capability to accept static graphics, video, and/or audio (Levi ¶ 31).

We agree with Appellant that although Levi discloses that the requested advertisements are sent to a user based on the capabilities of the user's device, Levi only discloses determining the capabilities of the device making the request (Appeal Br. 6–7). We find nothing in the cited portion of Levi that discloses or suggests identifying a plurality of offers for a first user device based on the capabilities of a second device different from the first device but linked to the same profile, i.e., "identifying a plurality of offers for the selected eligible application, based, at least in part, on user account information of the particular marketplace account identifying capabilities of the second computing device," as recited in claim 1 and similarly recited in claim 15.

Responding to Appellant's argument in the Answer, the Examiner asserts,"[c]ontrary to the Appellant's assertion, the examiner does not rely upon Levi alone to teach the feature in question but instead relies upon a combination of references to teach this feature" (Ans. 3). However, we agree with Appellant that the Examiner has failed to explain how any of the references use the capabilities of a non-requesting device to perform any function and, therefore, failed to explain how the cited references, which only disclose identifying information about a requesting device, in

combination, disclose or suggest identifying offers based the capabilities of a second, different device linked to the same profile as the requesting device (Reply Br. 1–2).

In view of the foregoing, we do not sustain the rejection of claims 1 and 15 under 35 U.S.C. § 103(a). For the same reason, we also do not sustain the rejection of dependent claims 2–5, 7, 8, 12, 14, 16 19, 21, 22, 26, and 28. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) ("dependent claims are nonobvious if the independent claims from which they depend are nonobvious").

Dependent Claims 6, 9, 10, 11, 20, 23, 24, and 25

The rejections of dependent claims 6, 9, 10, 11, 20, 23, 24, and 25 do not cure the deficiency in the rejection of independent claims 1 and 15. Therefore, we do not sustain the rejections under 35 U.S.C. § 103(a) of dependent claims 6, 9, 10, 11, 20, 23, 24, and 25 for the same reason set forth above with respect to the independent claims.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–5, 7, 8, 12, 14–19, 21, 22, 26, 28	103(a)	Mehta, Kääriäinen, Patterson, Perkins, Levi		1–5, 7, 8, 12, 14–19, 21, 22, 26, 28
6, 20	103(a)	Mehta, Kääriäinen, Patterson, Perkins, Levi, Gorman		6, 20

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
9, 10, 11, 23, 24, 25	103(a)	Mehta, Kääriäinen, Patterson, Perkins, Levi, Van Luchene		9, 10, 11, 23, 24, 25
Overall Outcome				1–12, 14–26, 28

REVERSED