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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL HUNTER GRAY
and MICHEL BAYAN

Appeal 2018-004807
Application 13/831,758
Technology Center 3600

Before BRUCE T. WIEDER, AMEE A. SHAH, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–7, 9–23, 25, 26, and 29–31. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was held on February 4, 2020.

We REVERSE.

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[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 August 29, 2017) and Reply Brief ("Reply Br.," filed April 5, 2018), and the Examiner's Answer ("Ans.," mailed February 7, 2018) and Final Office Action ("Final Act.," mailed February 1, 2017). Appellant identifies Calendar Research LLC, as the real party in interest. Appeal Br. 2.

CLAIMED INVENTION

Appellant's claims relate generally to "the field of scheduling systems," and more particularly, "to a scheduling system and method incorporating an appointment negotiation." Spec. ¶ 2.

Claims 1, 12, and 26 are the independent claims on appeal. Claim 1, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

> 1. A method for providing a scheduling service to two remote devices, comprising:
>
> [a] receiving a request of a first user from a first remote device to generate an appointment request to invite a second user to an appointment, wherein the request of the first user comprises two or more possible appointment times suggested by the first user for the appointment;
>
> [b] generating, using a processor, the appointment request to include the two or more possible appointment times as application data for causing a graphical user interface on a second remote device to display the two or more possible appointment times as selectable items in the graphical user interface;
>
> [c] transmitting through a network the appointment request including the two or more possible appointment times to the second remote device;
>
> [d] receiving a selection of two or more acceptable appointment times from among the two or more possible appointment times from the second remote device indicating acceptable times for the appointment selected by the second user from among the two or more possible appointment times suggested by the first user, the selection of the two or more acceptable appointment times including a ranking of desirability for the second user of the two or more acceptable appointment times;
>
> [e] transmitting an indication of the selection of the two or more acceptable appointment times including the ranking to the first remote device;

> [f] receiving a selection of an appointment time from among the two or more acceptable appointment times from the first remote device; and
>
> [g] synchronizing the appointment between the two remote devices such that a change in the appointment time in a first calendar application by the first user using the first remote device is automatically applied by a user application of the second remote device to an appointment entry in a second calendar application for the second user upon receiving notification of the change;
>
> [h] wherein the second calendar application is a different calendar application than the first calendar application.

REJECTION

Claims 1–7, 9–23, 25, 26, and 29–31 are rejected under 35 U.S.C. § 103(a) as unpatentable over Beckhardt et al. (US 6,085,166, issued July 4, 2000) ("Beckhardt"), Clark et al. (US 2003/0004773 A1, published Jan. 2, 2003) ("Clark"), Jones et al (US 2009/0271716 A1, published Oct. 29, 2009) ("Clark"), and Velusamy et al. (US 2011/0153380 A1, published June 23, 2011) ("Velusamy").

ANALYSIS

Independent Claim 1 and Dependent Claims 2–7 and 9–11

We are persuaded by Appellant's argument that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 103(a) because the combination of Beckhardt, Clark, Jones, and Velusamy does not disclose or suggest

> receiving a selection of two or more acceptable appointment times from among the two or more possible appointment times from the second remote device indicating acceptable times for the appointment selected by the second user from among the two or more possible appointment times suggested by the first user, the selection of the two or more acceptable appointment times

> including a ranking of desirability for the second user of the two or more acceptable appointment times[,]

as recited in claim 1. Appeal Br. 12–17; Reply Br. 2–4.

The Examiner maintains the rejection is proper, and cites Jones, at paragraphs 30–32, 35, 40, Figures 5 and 6, and Claim 1, as disclosing the argued limitation (*see* Final Act. 7–8). However, we agree with the Appellant that there is nothing in the cited portions that discloses or suggests the argued limitation.

In making this determination, we note that Beckhardt is directed to "an electronic calendar system with group scheduling." Beckhardt, 2:66–67. Beckhardt discloses that when a coordinator of an event wants to schedule an event,

> the coordinator specifies the date, time, duration and selects one or more invitees. Invitees, as detailed below, may comprise users, resources (such as computer equipment, for example), or rooms, for example. This information may be input to the system through a graphical user interface, for example. The information that is provided is then taken by the system to determine whether that all of the selected invitees are available at the desired date, time, and duration.

Id. at 3:5–15.

Clark is directed to "[a] scheduling system to schedule events with one to many people using invitations with optional dates, times and locations to determine the soonest or the best date and time along with location for the event." Clark, at code (57). More particularly, Clark discloses that its

> program allows a user to create invitations with multiple date, time and location options that are sent to invited participants. *Invited participants can respond by various means to choose a best date, time and location*. The program then utilizes one or more consensus algorithms to select a date, time and location so

> it can commit the final invitation which will be confirmed by invited participants.

Clark ¶ 13 (emphasis added). Clark discloses that its "invitation creation module 101" "utilize[s] the user manager module 108 to attempt to locate the calendar and/or availability information for invited participants." *Id.* ¶ 23; *see also id.* ¶ 30. Clark's "response collection module 105" allows invited particpants to "choose from options presented in the invitation to select their preferred date and time as well as the preferred location. Additionally, invited participants may enter suggested dates and times." *Id.* ¶ 24.

Jones is directed to "[a] system and method for dynamically scheduling a meeting time in association with an instant messaging client." Jones, at code (57). Jones' system includes a "grid scheduling server" that

> facilitates a grid scheduling session in real-time in conjunction with the multiple instant messaging clients, schedules the time of the meeting according to real-time inputs from participants on the multiple instant messaging clients, and generates a representation of scheduling information from a scheduling matrix that includes a list of times arranged transversely to a list of the participants to the meeting.

Id. ¶ 4. Jones discloses that its "grid scheduling session allows each participant *to prioritize their existing appointments and rank their available time slots according to their preferred meeting times*." *Id.* ¶ 16 (emphasis added). Jones discloses that "a user may perform an operation on the real-time grid scheduling session 127 such as *prioritize an existing appointment or rank an available time slot.*" *Id.* ¶ 36 (emphasis added). Once a user provides ranking information, "the grid scheduling client 130 then communicates the operation to the grid scheduling server 154 which, in turn,

communicates the same operation to all of the client computers of the other users associated with the chat session." *Id.*

Figures 3A and 3B of Jones are reproduced below.

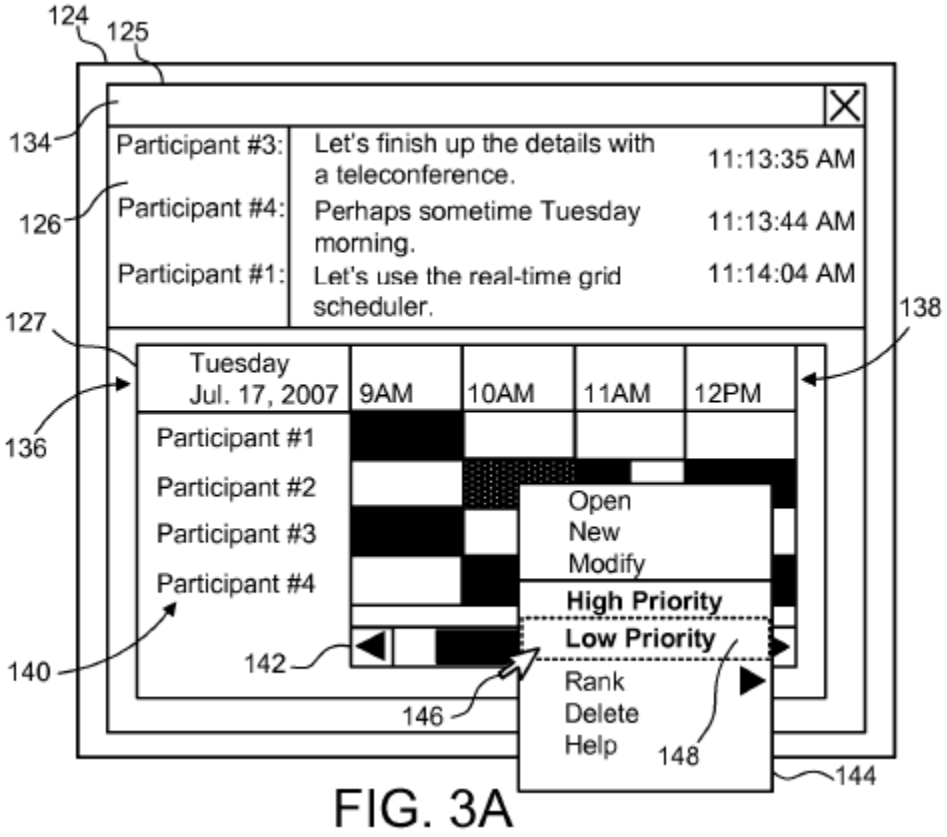

FIG. 3A

(Figure 3A depicts "the IM interface and real-time grid scheduling session on the client computer" (Jones ¶ 9)).

With respect to Figure 3A, Jones discloses that "date box 136 and time slots 138 indicate the *existing appointments* and available time slots for each user on the real-time scheduling session 127 according to the specific date and the indicated time series on the specific date." *Id.* ¶ 31 (emphasis added). By right-clicking on an existing appointment, Jones enables a user "to assign a priority to the corresponding appointment by choosing a priority from the priority menu 148." *Id.* Jones concludes that "the existing appointment right-click menu 144 enables a user to prioritize *existing*

appointments between high priority appointments that cannot be rescheduled and low priority appointments that can be rescheduled." *Id.* (emphasis added).

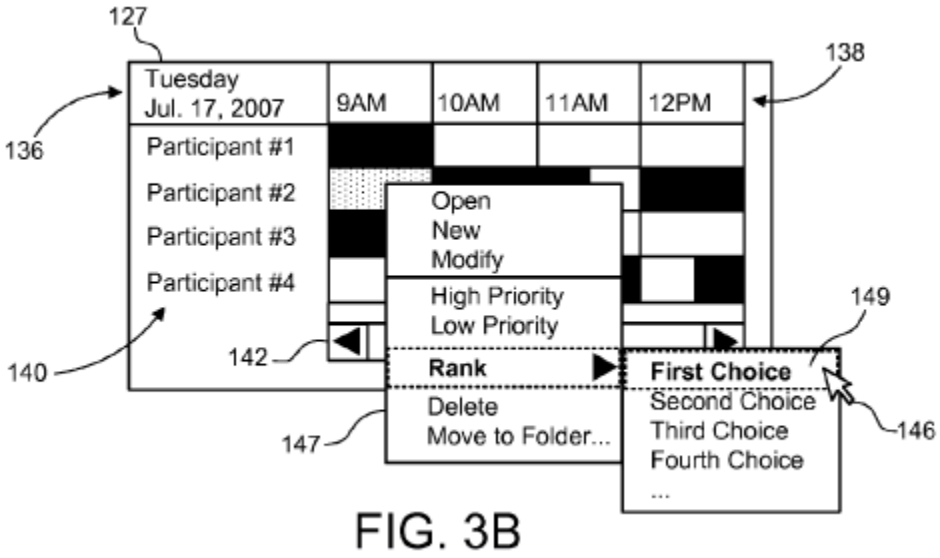

FIG. 3B

(Figure 3B depicts "the IM interface and real-time grid scheduling session on the client computer" (Jones ¶ 9)).

With respect to Figure 3B, Jones discloses that its real-time scheduling session 127 also includes "an available time slot right-click menu 147 . . . for ranking available time slots according to a user's selection." *Id.* ¶ 32. More particularly, Jones discloses that

> [b]y right-clicking on an available time slot, a user is allowed to assign a ranking to an available time slot by choosing a ranking choice from the ranking menu 149. For example, a user may have an available time slot that is preferable over other available time slots for a meeting time, and may have other available time slots that are yet preferable over the other time slots. Thus, the available slot right-click menu 147 enables a user to rank available time slots according to user preference.

Id.

Velusamy is directed to a system "for providing automated appointment management." Velusamy ¶ 12. More particularly, Velusamy

discloses that its system "employs an automated appointment management platform 101 to provide a managed service (or hosted approach) to coordinate the scheduling of appointments or events across the service provider systems." *Id.* ¶ 16.

We have reviewed the cited portions of Jones, as well as the cited portions of Berkhardt, Clark, and Velusamy, and agree with Appellant that none of the cited portions of Jones, alone or in combination, discloses or suggests the argued limitation. Although we agree with the Examiner that Jones discloses that its "ranking menu 149 includes a first choice, a second choice, and so on" (Jones ¶ 32), Jones discloses that "ranking menu 149" simply allows a user to "to assign a ranking to an available time slot." *Id.* More particularly, Jones discloses that

> a user may have an available time slot that is preferable over other available time slots for a meeting time, and may have other available time slots that are yet preferable over the other time slots. Thus, the available slot right-click menu 147 enables a user to rank available time slots according to user preference.

Id. Consequently, we agree with Appellant that "[t]he time slots ranked in Jones by each participant are not time slots suggested by anyone else, but rather each participant chooses any time slots they want, so participants can select entirely different time slots from each other" (Reply Br. 4 (citing Jones ¶¶ 32, 36) (emphasis omitted)), and as such, "Jones does not describe the ability of a second user to select and rank two or more acceptable appointment times from among two or more possible appointment times suggested by a first user." *Id.*

In responding to Appellant's arguments, the Examiner takes the position that

> Jones at 0036, describes a first user sending a scheduling request, then at Fig. 3a, discloses that participant #4, suggest Tuesday as a time from the 2 or more participants and the two or more time slots. Fig. 3b discloses that each participant can select a time slot and also they have the option to rank their choices. Therefore Jones describes the ability of a second user to select and rank two or more acceptable appointment times from among two or more possible appointment times suggested by a first user.

Ans. 4–5. The Examiner also notes that Clark discloses that "[o]nce all required participants have responded, the response collection module will check to see if a common date and time was identified for all required participants." *Id.* at 5 (quoting Clark ¶ 32).

The difficulty with the Examiner's current position, as noted by Appellant (*see* Reply Br. 2–4), is that "Jones does not describe the ability of a second user to select and rank two or more acceptable appointment times from among two or more possible appointment times suggested by a first user." *Id*. at 4. The addition of Clark does not remedy this deficiency. In this regard, Clark discloses that its "collection module 105" allows each participant to "choose from options presented in the invitation to select their preferred date and time as well as the preferred location," and even allows invited participants to "enter suggested dates and times." Clark ¶ 24. However, we agree with Appellant that "the Examiner's response says nothing about an invitee in Clark ranking acceptable appointment times. This is because Clark does not allow for an invitee to rank acceptable appointment times." Reply Br. 4. Thus, the Examiner's asserted combination of Beckhardt, Clark, Jones, and Velusamy fails to disclose or suggest

> receiving a selection of two or more acceptable appointment times from among the two or more possible appointment times

> from the second remote device indicating acceptable times for the appointment selected by the second user from among the two or more possible appointment times suggested by the first user, the selection of the two or more acceptable appointment times including a ranking of desirability for the second user of the two or more acceptable appointment times[,]

as recited in claim 1.

In view of the foregoing, we do not sustain the Examiner's rejection of independent claim 1 under 35 U.S.C. § 103(a). For the same reasons, we also do not sustain the Examiner's rejection of claims 2–7 and 9–11, which depend therefrom.

Independent Claims 12 and 26, and Dependent Claims 13–23, 25, and 29–31

Independent claims 12 and 26 include language substantially similar to the language of independent claim 1, and stand rejected based on the same rationale applied with respect to independent claim 1 (*see* Final Act. 22–23, 30). Therefore, we do not sustain the rejection of independent claims 12 and 26, and claims 13–23, 25, and 29–31, which depend therefrom, respectively, for the same reasons set forth above with respect to independent claim 1.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s) /Basis	Affirmed	Reversed
1–7, 9–23, 25, 26, 29–31	103(a)	Berkhardt, Clark, Jones Velusamy		1–7, 9–23, 25, 26, 29–31

REVERSED