UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/968,245	08/15/2013	Matthew James Stephure	10172-046US1	9028

96039   7590   05/13/2019
Meunier Carlin & Curfman LLC
999 Peachtree Street NE
Suite 1300
Atlanta, GA 30309

EXAMINER
TANK, ANDREW L

ART UNIT	PAPER NUMBER
2142	

NOTIFICATION DATE	DELIVERY MODE
05/13/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@mcciplaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

Ex parte MATTHEW JAMES STEPHURE, SAM ANTHONY LEITCH,
and CHRISTOPHER JAMES GARRETT

_____

Appeal 2018-007666
Application 13/968,245[1]
Technology Center 2100

_____

Before JOHN A. EVANS, JAMES W. DEJMEK, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

DEJMEK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Non-Final
Rejection of claims 1, 2, 4–6, 8, 9, 11–13, 15, 21–23, and 25–28. Appellants
have canceled claims 3, 7, 10, 14, 16–20, 24, and 29. *See* Br. 17–20, 22.
Because the claims on appeal have been twice-rejected, we have jurisdiction
over the remaining pending claims under 35 U.S.C. § 6(b). *See Ex parte
Lemoine*, 46 USPQ2d 1420, 1423 (BPAI 1994) (precedential).

We affirm.

_____

[1] Appellants identify Calgary Scientific, Inc. as the real party in interest.
Br. 3.

STATEMENT OF THE CASE

Introduction

Appellants' disclosed and claimed invention relates to systems and methods for collaborative web browsing (co-browsing). Spec. ¶ 1. Appellants explain that oftentimes with prior art co-browsing systems, "one participant acts a host and performs the navigation, whereas the other participants are guests and merely view the host's navigation. As such the functionality is limited." Spec. ¶ 1. According to the Specification, co-browsing "enables participants in a session to browse and interact with the same web pages at the same time," even though "[t]he participants may be in different locations using . . . web browsers on different types of computing devices." Spec. ¶ 14. During the session, web pages visited and information entered by a first participant may be synchronized automatically to the computing devices of the other participants. Spec. ¶ 14.

In a disclosed embodiment, a first participant at a first client device uses a web browser to connect to a browsing session at a web browser service. Spec. ¶ 28; Fig. 3, item 302. Within the browsing session, the first participant initiates a co-browsing session, and invitation links are sent to other users to join the co-browsing session. Spec. ¶¶ 28–29; Fig. 3, items 304, 306. Subsequently, the invited users may join the co-browsing session. Spec. ¶ 29; Fig. 3, item 308. Subsequent requests may be made by a co-browsing participant's client device to the web browser service using a co-browsing service as a proxy. Spec. ¶ 30; Fig. 3, items 310, 312. Following such a request, the co-browsing translator of the co-browsing service receives a response from the web browser service as well as a state model that contains an association of logical elements displayed in a user

interface of the web browser service. Spec. ¶¶ 31, 33; Fig. 3, item 314. Based on the state model, presentation data is generated in accordance with the logical elements and a display area of at least one of the participants' client devices, such that the presentation data is a rendered view of the visual state of the web browser service. Spec. ¶¶ 31, 33 Fig. 3, item 316. The presentation data is communicated to each participant in the co-browsing session using a translation-enabled client device. Spec. ¶ 31; Fig. 3, item 318. The response from the web browser service is communicated from the co-browsing service to each of the participants using a translation non-enabled client device. Spec. ¶ 32; Fig. 3, item 320.

Claim 1 is representative of the subject matter on appeal and is reproduced below:

> 1. A method for collaborative browsing within a session, comprising:
>
> receiving a first connection to a web browser service from a first client device;
>
> receiving, at the web browser service, an indication to begin a co-browsing session, the co-browsing session including at least the web browser service, the first client device and at least one second client device;
>
> receiving subsequent connections to the web browser service from the first client device and the second client device, the connections being made to the web browser service at an enumerated Uniform Resource Locator (URL) associated with a remote server;
>
> receiving, at a co-browsing service, a request made to the web browser service from one of the first client device and the at least one second client device;
>
> sending the request from the co-browsing service to the web browser service;
>
> receiving, at the co-browsing service, a response to the request from the web browser service;

receiving, at a co-browsing translator associated with the co-browsing service, a state model that contains an association of logical elements displayed in a user interface of the web browser service associated with the response;

generating presentation data from the state model in accordance with the logical elements and a display area of at least one of the client device and the second client device participating in the co-browsing session, the presentation data being a rendered view of a visual state of the web browser service; and

communicating the presentation data to the at least one of the client device and the second client device as the response; and

communicating the response from the co-browsing service to each of the first client device and the second client device.

The Examiner's Rejections

1.   Claims 1, 2, 4–6, 8, 9, 11–13, 15, 21–23, and 25–28 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Non-Final Act. 4–5.

2.   Claims 1, 2, 4–6, 8, 9, 11–13, 15, 21–23, and 25–28 stand rejected under pre-AIA 35 U.S.C. § 102(a) as being anticipated by Rogers (US 8,010,901 B1; Aug. 30, 2011).[2] Non-Final Act. 5–16.

---

[2] Both Appellants and the Examiner misspell the named inventor in this reference as "Rodgers." *See, e.g.*, Br. 2, 7, 12–15; Ans. 7–8; Non-Final Act. 2–3, 5, 7–8. We instead will use the correct spelling "Rogers," even when quoting Appellants' or the Examiner's position.

ANALYSIS[3]

Rejection under 35 U.S.C. § 101

Appellants dispute the Examiner's conclusion that the pending claims are directed to patent-ineligible subject matter. Br. 7–12. In particular, Appellants argue the Examiner erred in concluding the claims are directed to an alleged abstract idea (*see, e.g.*, Non-Final Act. 4). Instead, Appellants assert the claims recite a specific technological solution to specific problems associated with conventional co-browsing and do not preclude all computer-based methods for collaborative browsing within a session. Br. 10. Moreover, Appellants assert the claims recite significantly more than the alleged abstract idea. Br. 11–12.

The Supreme Court's two-step framework guides our analysis of patent eligibility under 35 U.S.C. § 101. *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014). In addition, the Office recently published revised guidance for evaluating subject matter eligibility under 35 U.S.C. § 101, specifically with respect to applying the *Alice* framework. USPTO's 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50 (Jan. 7, 2019) ("Office Guidance"). If a claim falls within one of the statutory categories of patent eligibility (i.e., a process, machine, manufacture, or composition of matter) then the next inquiry is whether the claim is directed to one of the judicially recognized exceptions (i.e., a law of

---

[3] Throughout this Decision, we have considered the Appeal Brief, filed November 8, 2017 ("Br."); the Examiner's Answer, mailed April 27, 2018 ("Ans."); and the Non-Final Office Action, mailed June 16, 2017 ("Non-Final Act."), from which this Appeal is taken. Appellants did not file a Reply Brief. To the extent Appellants have not advanced separate, substantive arguments for particular claims or issues, such arguments are considered waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2017).

nature, a natural phenomenon, or an abstract idea). *Alice*, 573 U.S. at 217. As part of this inquiry, we must "look at the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs of Tex., LLC v. DirecTV, LLC*, 838 F.3d 1253, 1257–58 (Fed. Cir. 2016) (internal citations omitted). Per Office Guidance, this first inquiry has two prongs of analysis: (i) does the claim recite a judicial exception (e.g., an abstract idea), and (ii) if so, is the judicial exception integrated into a practical application. 84 Fed. Reg. at 54. Under the Office Guidance, if the judicial exception is integrated into a practical application (*see infra*), the claim is patent eligible under § 101. 84 Fed. Reg. at 54–55. If the claims are not directed to an abstract idea, the inquiry ends. *See McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016); 84 Fed. Reg. at 54.

The Examiner concludes the claims are directed to "to providing a co-browsing service to two client devices such that a rendered view of web browser service is generated using a translated state model and a display area of each client device." Non-Final Act. 4–5. The Examiner finds the underlying concepts of providing a co-browsing service "are merely collecting, displaying and manipulating data and delivering user selected content to second devices," which the courts have concluded to be abstract ideas. Non-Final Act. 4 (citing *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017); *Affinity Labs of Tex., LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1269 (Fed. Cir. 2016); and *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1244 (Fed. Cir. 2016)). Moreover, the Examiner concludes the claims do not recite significantly more than the underlying abstract ideas to confer patent eligibility. Non-Final Act. 4–5.

As an initial matter, we do not understand the court's conclusions in either *Intellectual Ventures I*, *Amazon*, or *Ameranth* to hold that *all* claims that include any type of data collection, manipulation and display are abstract ideas, and therefore patent ineligible. Rather, in *Intellectual Ventures I*, the court determined the claims were "*at their core*, directed to the abstract idea of collecting, displaying, and manipulating data." *Intellectual Ventures I*, 850 F.3d at 1340 (emphasis added). In *Amazon*, the court determined the pending claims "do no more than describe a desired function or outcome, without providing any limiting detail that confines the claim to a particular solution to an identified problem." *Amazon*, 838 F.3d at 1269. In other words, it was not solely the delivery of user-selected content to portable devices the court found patent ineligible, but the "purely functional nature of the claim . . . ." *Amazon*, 838 F.3d at 1269. Moreover, we are mindful of the Court's caution expressed in *Alice* that "an invention is not rendered ineligible for patent simply because it involves an abstract concept." *Alice*, 573 U.S. at 217.

Here, although the claims do *involve* collecting, manipulating, and displaying data, we conclude the claims are directed to specific methods and apparatuses for conducting collaborative co-browsing sessions on a web page. In particular, the focus of the claims is not on merely receiving, manipulating, and displaying data, but rather using a state model by a co-browsing translator to generate presentation data (i.e., a rendered view of a visual state) from data received by a participating client device and present the updated (rendered) view to all of the client devices participating in a co-browsing session. As described in the Specification, previous

7

co-browsing systems were restricted to a host device performing the navigation of a web page and other devices were limited to merely viewing the host's navigation. Spec. ¶ 1. In contrast, Appellants' claimed invention allows for all participants in the co-browsing session to navigate a web page and present the results (i.e., rendered view) to the other participants in the co-browsing session. Spec. ¶ 2.

Further, as the court discussed in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016), claims that improve an existing technology might not succumb to the abstract idea exception of patent eligibility. *Enfish*, 822 F.3d at 1335. In *Enfish*, the court framed the first step of the *Alice* inquiry as whether the focus of the claims is on a specific asserted improvement in computer capabilities or, instead on an abstract idea that merely uses a computer as a tool for carrying out the abstract idea. *Enfish*, 822 F.3d at 1335–36. As discussed above, the claimed co-browsing session is directed to an improvement to existing sessions wherein only one participant could navigate (i.e., host) the web page being presented and the other participants were relegated to passively viewing the navigation. *See* Spec. ¶ 2.

Moreover, analysis under the Office Guidance does not alter our conclusion. To the extent the claims recite receiving, manipulating, and displaying data, which the Examiner explains the court determined to be mental processes, and therefore, abstract ideas, the claims recite additional elements that integrated the alleged abstract idea into a practical application. 84 Fed. Reg. at 54.

Claim 1 is reproduced below and includes the following claim limitation(s) that recite receiving, manipulating and displaying data, emphasized in *italics*:

1. A method for collaborative browsing within a session, comprising:

receiving a first connection to a web browser service from a first client device;

receiving, at the web browser service, *an indication to begin a co-browsing session,* the co-browsing session including at least the web browser service, the first client device and at least one second client device;

receiving subsequent connections to the web browser service from the first client device and the second client device, the connections being made to the web browser service at an enumerated Uniform Resource Locator (URL) associated with a remote server;

receiving, at a co-browsing service, *a request* made to the web browser service from one of the first client device and the at least one second client device;

sending the request from the co-browsing service to the web browser service;

receiving, at the co-browsing service, *a response* to the request from the web browser service;

receiving, at a co-browsing translator associated with the co-browsing service, a state model that contains an association of logical elements displayed in a user interface of the web browser service associated with the response;

generating presentation data from the state model in accordance with the logical elements and a display area of at least one of the client device and the second client device participating in the co-browsing session, the presentation data being a rendered view of a visual state of the web browser service; and

communicating the presentation data to the at least one of the client device and the second client device as the response; and

> *communicating the response* from the co-browsing service to each of the first client device and the second client device.

To determine whether the judicial exception is integrated into a practical application, we identify whether there are *"any additional elements recited in the claim beyond the judicial exception(s)"* and evaluate those elements to determine whether they integrate the judicial exception into a recognized practical application. 84 Fed. Reg. at 54–55 (emphasis added); *see also* MANUAL OF PATENT EXAMINING PROCEDURE ("MPEP") § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018).

Here, we find the additional limitations integrate the "underlying concepts" (*see* Non-Final Act. 4) of collecting (i.e., receiving), displaying, and manipulating data into a practical application. In particular, we find the claim does not merely receive and manipulate data, but rather, recites a specific implementation for generating an updated web page in response to received input from a plurality of co-browsing session participants (i.e., updating a state model containing an association of logical elements displayed in a user interface). As discussed above, and as described in the Specification, allowing a plurality of users in a co-browsing session the ability to separately control (i.e., navigate) the web page provides an improvement over the existing co-browsing sessions. *See* Spec. ¶¶ 1–2; *see also* MPEP § 2106.05(a) ("An indication that the claimed invention provides an improvement can include a discussion in the specification that identifies a technical problem and explains the details of an unconventional technical solution expressed in the claim, or identifies technical improvements realized by the claim over the prior art.").

10

For the reasons discussed *supra*, we conclude that Appellants' claims are patent eligible under 35 U.S.C. § 101. Accordingly, we do not sustain the Examiner's rejection of claims 1, 2, 4–6, 8, 9, 11–13, 15, 21–23, and 25–28 under 35 U.S.C. § 101.

Rejection under 35 U.S.C. § 102(a)

Appellants assert each of their claims "recite[s] that the 'state model' includes logical elements of the user interface of the web browser service from which presentation data is generated, where the presentation data is a rendered view of a visual state of the web browser" and that "[i]n some instances, the presentation data is generated in accordance with a display area of a client device participating in a co-browsing session." Br. 12. Appellants further assert that, "in accordance with claims 1, 6[,] and 25, the generated, rendered view is communicated to the at least one of the client device or the second client device." Br. 12. Thus, Appellants argue "no proper interpretation of [Rogers] . . . teaches or suggests this feature, as no rendered view is ever communicated from the first device to second device, as erroneously asserted by the Examiner." Br. 12–13. Appellants explain that

> [n]either the HTML tags, nor the bounds of the social viewport [of Rogers] are "logical elements displayed in a user interface" contained in a state model because [Rogers] . . . fails to teach or suggest generating "presentation data" from the HTML tags or the bounds of the social viewport that is communicated to the social viewports 135, 136. Rather, only HTML content and correlation information is communicated between the social viewports 135, 136 to synchronize the displayed Web pages.

Br. 14 (citing Rogers, col. 8, ll. 23–33, col. 15, ll. 36–50).

Figure 7 of Rogers, as cited by the Examiner (*see, e.g.*, Non-Final

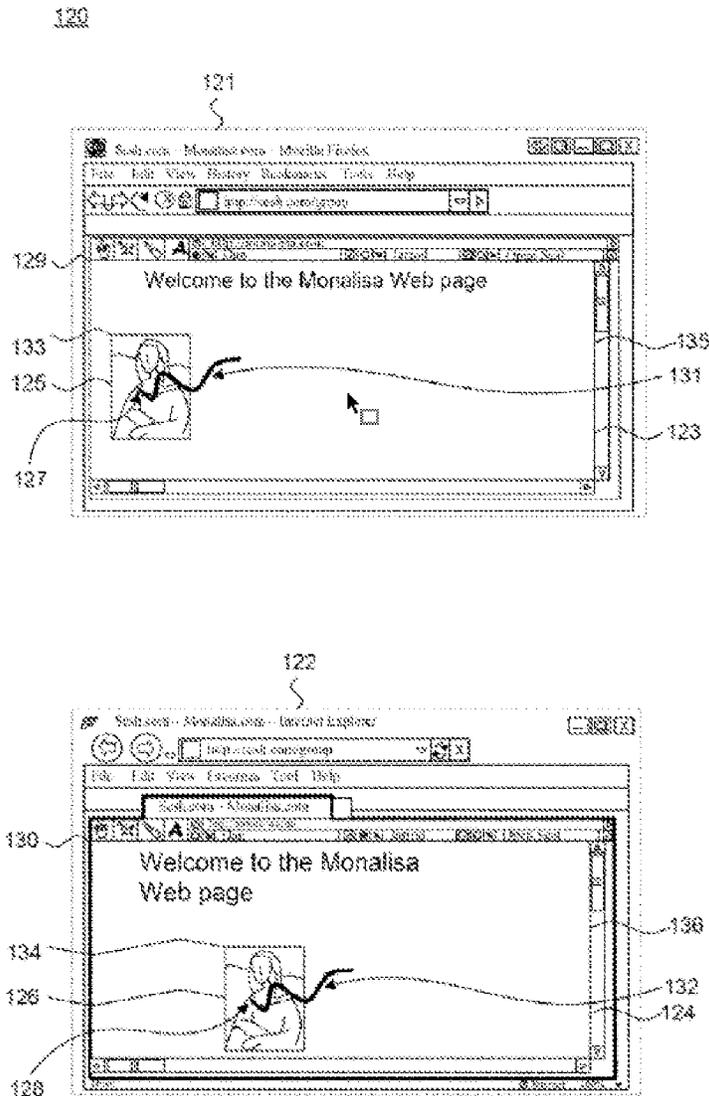Act. 3, 6, 7) is illustrative and reproduced below:

Figure 7, produced above, shows a screen shot of two Web browsers with

different layouts of a content Web page. Rogers, col. 13, ll. 1–2. Rogers

discloses an embodiment in which a first user makes a social change (131)

by free drawing a curvy line through the center of an image (125) displayed in a social viewport (135) of a first Web browser (121). Rogers, col 13, ll. 27–30. Correlation data may be determined for the social change (131) by correlating the origin of the social change with one or more of at least one nearby HTML tag element and the bounds of the social viewport. Rogers, col. 13, ll. 35–37. The social change segments and correlation data may be transmitted to the other Web browsers, each of which may align the social change (131) with the content in the content Web page based on the correlation and segment data. Rogers, col. 13, ll. 37–42. The social session Web page loaded in the second Web browser (122) may receive the segment information and correlation data for rendering a mirror image of social change (132) in the social viewport. Rogers, col. 13, ll. 53–56. An origin (128) of the recreated social change (132) may be placed in the same relative location on the same image (126) using the origin (134) of the image (126) and the correlation data received. Rogers, col. 13, ll. 56–59.

As an initial matter, we note the claim language does not specify the manner in which the rendered view of the presentation data is being communicated to the client device. For example, the claim language does not require a rendered view of the presentation data to be communicated directly from the first device to the second device. In other words, the claims do not preclude the step of communicating the rendered view of the presentation data from occurring at or within the second device. Thus, to the extent Appellants are arguing limitations not present in the claims, we are unpersuaded of Examiner error. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (limitations not appearing in the claims cannot be relied upon for patentability).

Contrary to Appellants' arguments, we agree with the Examiner that Rogers discloses generating and communicating presentation data as claimed. As described, Rogers discloses creating a mirror image of a first user's social change (e.g., free-drawn curvy line) on a first web browser from social change segment information and correlation data. Thus, Rogers discloses generating presentation data that is a rendered view of a visual state of the web browser service (i.e., creating a mirror image of the social change in the social viewport) from a state model (i.e., social change segment information, which reflects the state of the first user's interaction with the first user's social viewport) in accordance with the logical elements and a display area of at least one of the participating client devices (i.e., correlation data such as an HTML tag or the bounds of the first user's social viewport). Further, Rogers discloses communicating the generated, rendered presentation data to the at least one of the client device and the second client device because once the mirror image of the first user's social change has been created or rendered in Rogers, it is displayed on—and, thus, communicated to—the social viewport of the second user's computing device. *See, e.g.,* Rogers Fig. 7, item 132; Fig. 1, item 12.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner's § 102(a) rejection of independent claims 1, 6, 21, and 25, which were argued together. *See* Br. 12–15. We also sustain the Examiner's § 102(a) rejection of claims 2, 4, 5, 8, 9, 11–13, 15, 22, 23, and 26–28, which depend directly or indirectly therefrom and were not argued separately. *See* Br. 15; *see also* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We reverse the Examiner's decision rejecting claims 1, 2, 4–6, 8, 9, 11–13, 15, 21–23, and 25–28 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 1, 2, 4–6, 8, 9, 11–13, 15, 21–23, and 25–28 under 35 U.S.C. § 102(a).

Because we affirm at least one ground of rejection with respect to each claim on appeal, the Examiner's decision rejecting claims 1, 2, 4–6, 8, 9, 11–13, 15, 21–23, and 25–28 is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED