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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SHMUEL SHAFFER and REINHARD P. KLEMM

Appeal 2018-007691
Application 13/922,528
Technology Center 2600

Before CARL W. WHITEHEAD JR., DAVID M. KOHUT, and
IRVIN E. BRANCH, *Administrative Patent Judges*.

KOHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the
Examiner's decision to reject claims 1–6 and 8–20.² *See* Appeal Br. 14;
Final Act., Summary. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM IN PART.

¹ We use the word “Appellant” to refer to the “applicant” as defined in
37 C.F.R. § 1.42. Appellant identifies the real party in interest as
“Avaya Inc.” Appeal Br. 2.

² Claim 7 was previously cancelled. Appeal Br. 16 (Claims Appendix).

STATEMENT OF THE CASE

APPELLANT'S INVENTION

Appellant's invention relates to an "adaptive outbound campaign [that] may adapt campaign parameters . . . based on real time public sentiment;" e.g., "if the public shows negative sentiment related to any outbound campaign[,] . . . the present invention may adapt the campaign parameters to [garner a] . . . more positive public reaction." Spec. ¶ 31. Claim 1 recites the invention as follows (paragraphing added).

1. A method for configuring an adaptive outbound campaign provided by a contact center, the method comprising:
monitoring, by a computer of the contact center, in real time through an interface to a communication network, social media to determine public sentiment related to the adaptive outbound campaign, wherein the adaptive outbound campaign comprises one or more parameters related to how the adaptive outbound campaign is conducted; and
based on the determined public sentiment, changing, by the computer of the contact center, at least one of the one or more parameters related to how the adaptive outbound campaign is conducted;
wherein the at least one of the one or more parameters is changed while the adaptive outbound campaign is being conducted and wherein changing the at least one of the one or more parameters comprises modifying a frequency of one or more notifications provided by the adaptive outbound campaign.

Appeal Br. 15 (Claims Appendix).

REJECTION

Claims 1–6 and 8–20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Herring (US 2012/0323627 A1; Dec. 20, 2012) and Berk (US 2012/0002795 A1; Jan. 5, 2012). Final Act. 4–8.

OPINION

CLAIMS 1–5 AND 9–20

For the reasons below, we are unpersuaded of error in the rejection of independent claim 1. For the same reasons, we are unpersuaded of error in the rejections of claims 2–5 and 9–20, which are not separately argued (Appeal Br. 10–14). *See also* 37 C.F.R. § 41.37(c)(1)(iv) (2017) (“Each ground of rejection contested by appellant must be argued under a separate heading[.] . . . When multiple claims subject to the same ground of rejection are argued as a group . . . , the Board may select a single claim . . . [to] decide the appeal . . . with respect to the group.”).

Claim 1 recites in disputed part (*see infra*): monitoring public sentiment related to an adaptive outbound campaign; and, based on the sentiment, modifying a frequency of a notification provided by the campaign. We agree with the Examiner that Herring and Berk, in combination, suggest these claim features. As the Examiner finds, Herring’s web crawler determines and reports public sentiment for (i.e., resulting from) a marketing campaign. Final Act. 4–5; Herring ¶¶ 1, 5, 20, 35, 37, 49. Berk’s campaign management modifies an advertising campaign in response to a report on the campaign’s effectiveness. Final Act. 5; Berk ¶¶ 22, 89–90, 96; abst. By these teachings, the Examiner finds that these references suggest a system that: determines and reports the public’s sentiment for a marketing campaign (Herring); and modifies the marketing campaign (i.e.,

an advertisement is changed) in response to the report on the campaign's effectiveness (Berk). Final Act. 5–6; Ans. 8.

Appellant contends “it is unreasonable to determine that data discovered by the web crawler in Herring discloses [the claimed] ‘notifications provided by the adaptive outbound campaign’, as this phrase would be interpreted in light of the context of the present disclosure.” Appeal Br. 11 (emphasis omitted). We are unpersuaded because Appellant does not state how the claimed notification distinguishes over an advertisement of a marketing campaign. Further, to the extent Appellant is contending the claimed notification has different informational content than an advertisement, claim 1 does not recite the notification's informational content (nor even identify its informational content) as functionally related to the claimed method steps. *See In re Distefano*, 808 F.3d 845, 850–51 (Fed. Cir. 2015) (Printed matter, i.e., “claimed for what it communicates,” has no patentable weight unless functionally or structurally related to the claimed invention.).

Appellant also contends “it is unreasonable to interpret [the claimed] ‘changing the frequency of . . . notifications provided by the adaptive outbound campaign’ . . . to encompass the scheduling of a web crawler that scrapes data from a social media site.” Appeal Br. 11 (emphasis omitted). We are unpersuaded because Appellant disregards the rejection. The Examiner does not find Herring's web crawler changes a frequency of campaign notifications. The Examiner proposes a combination of Herring and Berk that modifies the frequency of a marketing campaign's advertisement in response to sentiment analysis of the campaign. Ans. 8; Final Act. 4–6. The Examiner further determines, in view of Herring's

system dynamically changing the frequency of web crawling reports, it was within the skill in the art to dynamically modify the frequency of campaign notifications. Ans. 8; *see also* Final Act., July 26, 2016, at 8 (explaining that Herring’s web crawler evidences a “‘real-time’ . . . ability of the components . . . to obtain, process and present relevant data; . . . e.g., on the order of minutes”).

Appellant does not dispute that it would have been obvious to modify the frequency of an advertisement based on monitored sentiment for the advertisement (e.g., to cease an ineffective advertisement). *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (“[Obviousness] analysis should be made explicit[, but] . . . need not seek out precise teachings directed to the specific subject matter of the challenged claim.”). Nor does Appellant dispute that Herring and Berk suggest a capability in the art to dynamically modify the frequency of a campaign notifications, e.g., an advertisement. *See id.* (“Often, it will be necessary for a court to look . . . [at] the background knowledge possessed by a person having ordinary skill in the art.”); *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907 (Fed. Cir. 1985) (“A reference must be considered for everything it *teaches* by way of technology and is not limited to the particular *invention* it is describing and attempting to protect.”).

For the foregoing reasons, we sustain this rejection of claims 1–5 and 9–20 under 35 U.S.C. § 103(a).

CLAIM 6

Claim 6 depends from claim 1 and adds: “determining, by the computer of the contact center, public sentiment about one or more competing businesses for assessing an impact of the adaptive outbound

campaign in context of the competing businesses.” Appeal Br. 16 (Claims Appendix). Construing this step as monitoring public sentiment for a competing business, the Examiner determines the step is obvious because “logically part of the success of any competing business is to determine and perform analysis about other businesses” (Final Act. 7) and an artisan “must know what other businesses offer and how they conduct the businesses in order to establish clear opinion on how to present business to public” (Ans. 9). Appellant contends:

[C]laim 6 does not generically recite performing analysis of a competitor. Claim 6 recites that the specific way to accomplish the specific goal of assessing the impact of the outbound campaign is to monitor sentiment related to the outbound campaign that is specifically about a competing business.

Thus, Appellants urge that [the Examiner’s] general observations about possible ways that businesses may perform analysis of competitors are insufficient to render the specific features of claim 6 obvious.

Appeal Br. 12.

We are persuaded of error. Though we do not agree that “general observations . . . are insufficient to render . . . claim 6 obvious” (above block quote), we agree the Examiner misconstrues claim 6 and thereby fails to address its full scope. Claim 6’s invention does not merely determine public sentiment for a competitor. Claim 6’s invention determines such sentiment that results from claim 1’s campaign (“the adaptive outbound campaign,” as recited in claim 6), which can be modified in response to public sentiment. Thus, in addition to a teaching or suggesting to determine public sentiment for a competitor, the Examiner must show (but does not) such public sentiment results from and can be used to modify an advertising campaign.

For the foregoing reasons, we do not sustain this rejection of claim 6 under 35 U.S.C. § 103(a).

CLAIM 8

Claim 8 depends from claim 1 and adds: “wherein changing the at least one of the one or more parameters comprises at least one of: changing a level of details of at least a first one of the one or more notifications provided by the adaptive outbound campaign, or changing content of at least a second one of the one or more notifications provided by the adaptive outbound campaign.” Appeal Br. 16 (Claims Appendix).

Appellant contends “nothing in [Herring’s cited paragraphs 21 and 25–26] . . . refer[s] to parameters of conducting an outbound campaign . . . [or] to changing one or more of the notifications that are sent out in the outbound campaign.” Appeal Br. 13 (emphasis omitted). We are persuaded of error insomuch that Herring’s cited paragraphs describe only changes to sentiment analysis—not changes to notifications of a campaign (e.g., an advertisement of a marketing campaign).

For the foregoing reasons, we do not sustain this rejection of claim 8 under 35 U.S.C. § 103(a).

CONCLUSION

We affirm the Examiner’s rejections of claims 1–5 and 9–20 under 35 U.S.C. § 103(a).

We reverse the Examiner’s rejections of claims 6 and 8 under 35 U.S.C. § 103(a).

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed
1-6, 8-20	§ 103(a)	Herring, Berk	1-5, 9-20	6, 8

TIME PERIOD FOR RESPONSE

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. § 1.136(a)(1)(iv).

AFFIRMED IN PART