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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DAVID GORODYANSKY, EUGENE LAPIDOUS  
and SERGEI TIMOSCHUK

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Appeal 2019-000548  
Application 13/156,244  
Technology Center 2100

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Before ERIC S. FRAHM, DENISE M. POTHIER, and  
MICHAEL T. CYGAN, *Administrative Patent Judges*.

CYGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–20. Appeal Br. 15–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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

### CLAIMED SUBJECT MATTER

The claims are directed to determining the placement of advertisements and web site elements in a user's browser. Abstr. Advertisements are typically allocated specific areas on the web page by the web site designer. Spec. ¶ 3. However, this makes it difficult to dynamically change either the location or number of such advertisements, so as to tailor advertising to individual users. *Id.* The claimed method provides a script of computer instructions that determines which site elements should be positioned inside the browser window, shifts the positions of at least some of the site elements so as to create an additional space near the site content. *Id.* ¶ 10. The script further provides a second set of computer instructions that are executed to display an advertisement inside the additional space. *Id.* Independent claim 1 is illustrative:

1. A computer-implemented method executed on a computer system comprising a central processing unit and a memory, the method comprising:
  - a. a user browser loading a web site document containing a reference to an advertisement and one or more site elements, the user browser displaying a browser window;
  - b. the user browser issuing a request for an advertisement to an advertisement server and starting positioning one or more site elements within the browser window; and
  - c. the user browser receiving from the advertisement server in response to the issued request a script, the script containing a first and a second sets of executable computer instructions; the first set of executable computer instructions being executed by the central processing unit after the user browser completes loading a document object model and determines which site elements should be positioned inside the browser window, first set of executable computer instructions

shifting positions of at least some of the site elements by a shift vector, thereby creating an additional space near a site content, and the second set of executable computer instructions being executed to display an advertisement inside the additional space, wherein the shifting positions of the at least some of the site elements by the shift vector is performed after the user browser completes loading the document object model and determines which site elements should be positioned inside the browser window.

Appeal Br. 15 (Claims Appx.).

Independent claims 8 and 15 recite, respectively, a non-transitory computer-readable medium and a computerized system having limitations commensurate in scope with claim 1. *Id.* at 16–20. Dependent claims 2–7, 9–14, and 16–20 each incorporate the limitations of their respective independent claims. *Id.* at 15–20.

#### REFERENCES

Name	Reference	Date
Blinnikka et al. (Blinnikka)	US 2008/0281689 A1	Nov. 13, 2008
Baer et al. (Baer)	US 2009/0037809 A1	Feb. 5, 2009
Groth et al. (Groth)	US 2010/0306696 A1	Dec. 2, 2010
Chan et al. (Chan)	US 2011/0264522 A1	Oct. 27, 2011

## REJECTIONS

Claims 1–4, 6–11, 13–17, and 19–20 are rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of Blinnikka, Baer, and Groth.<sup>2</sup>

Claims 5, 12, and 18 are rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of Blinnikka, Baer, Groth, and Chan.

## OPINION

The first issue in this appeal concerns the limitation of claim 1 requiring “executable computer instructions.” Appellant contends:

none of Blinnikka, Baer and Groth teach or suggest the following limitation of the independent claims 1, 8 and 15: ‘the user browser receiving from the advertisement server in response to the issued request a script, the script containing a first and a second sets of executable computer instructions; the first set of executable computer instructions being executed by the central processing unit after the user browser completes loading the document object model and determines which site elements should be positioned inside the browser window, first set of executable computer instructions shifting positions of at least some of the site elements by a shift vector.” Appeal Br. 9.

Appellant argues that none of the individual references teach the entirety of the contested claim limitation. Appeal Br. 9–10. However, the Examiner

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<sup>2</sup> The Final Action indicates in a heading that claim 18 is rejected over the base combination of Blinnikka, Baer, and Groth. Final Act. 3. However, that rejection does not specifically address claim 18, which is instead specifically addressed in the rejection based upon the base combination in view of Chan. Final Act. 12. Accordingly, we treat the heading on page 3 as a typographical error.

has relied not on any individual reference, but instead upon the combination of the teachings and suggestions of Blinnikka, Baer, and Groth.

With respect to the contested limitation, the Examiner finds Blinnikka to teach or suggest that the user browser receives a script containing executable computer instructions, in the form of a retrieved web page having code that “includes a script (e.g., javascript) or other code element that is executed by the browser as part of interpreting the code of the web page.” Final Act. 4 (citing *inter alia* Blinnikka ¶ 35). The Examiner further finds Blinnikka’s executable script to contain instructions for shifting positions of at least some of the site elements, in the form of Blinnikka’s movement of original content “to a different area on the page wherein the browser application retrieves the web page, creates a window, and interprets the code of the web page to generate the displayed content into the window.” Ans. 13–14 (citing Blinnikka ¶¶ 25, 29, 35).

The Examiner relies upon Baer to teach or suggest limiting the timing of shifting positions of at least some of the site elements (as attributed to Blinnikka) until after a determination is made. Final Act. 4–5. The Examiner finds this limitation taught by Baer’s computing device that performs a determination as to whether to display an advertisement, and in response to that determination, other user interface elements move and/or reposition to permit the desired display of the advertisement. *Id.* at 5 (citing Baer ¶¶ 19, 31, 35).

The Examiner relies upon Groth for further limiting the execution of the first set of instructions (as attributed to Blinnikka) until after the user browser completes loading the document object model and determines which site elements should be positioned inside the browser window. *Id.* at

6. The Examiner finds Groth to teach this limitation by Groth’s application that retrieves user-related data and the requested document, characterized as a document object model (DOM), wherein “a module applies a filter to the currently loaded DOM, and requests and applies the results of queries to the local COM the application then assembles the returned DOM into a visual display.” *Id.* (citing Groth ¶¶ 55, 103–108, 111, 158).

Appellant has not explained persuasively why the combination of references, as applied by the Examiner, do not teach or suggest the claimed invention. One cannot show nonobviousness by attacking references individually where the rejection is based on combinations of references. *In re Keller*, 642 F.2d 413 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091 (Fed. Cir. 1986). With respect to Appellant’s argument that the combination of references does not teach “executable computer instructions” Appellant argues that Baer does not teach this limitation. Appeal Br. 9; Reply Br. 2–3). However, Appellant has not accounted for the Examiner’s reliance on Blinnikka for teaching or suggesting “executable computer instructions.” Ans. 14 (finding Blinnikka “teaches an executable script that has instructions for shifting positions.”). Although Appellant contends that Baer is reliant on XML (extensible markup language) documents, and that those are not “executable” (Appeal Br. 9; Reply Br. 2–3), Appellant has not explained how the Examiner’s combination of the teachings and suggestions of Blinnikka and Baer is necessarily non-executable such that the above-described limitation is not taught or suggested. We further note that Appellant’s arguments rely upon an exemplary embodiment of Baer that is limited to XML (Baer ¶ 30), but Appellant has not shown that Baer’s teachings are limited only to nonexecutable XML or non-executable

documents. *See* Ans. 14–15; *see, e.g.*, Baer ¶ 27 (“or any other form of computer-executable instructions or the like”). Accordingly, Appellant has not persuasively shown error in the Examiner’s determination that such a limitation is taught or suggested by the applied combination of references.

Appellant provides additional arguments as to how individual references fail to teach certain limitations of the above-cited section of the claim. However, each argument addresses only the separate teachings of individual references, and does not take into account which reference the Examiner has applied for each separate limitation. We address each in turn.

With respect to Appellant’s argument that Baer does not teach “determining which site elements should be positioned inside the browser window” (Appeal Br. 9), the Examiner has relied instead upon Groth for that teaching (Final Act. 6) (finding Groth to teach requesting and applying the results of queries to the local document the application then assembles the returned document object model into a visual display). With respect to Appellant’s argument that Blinnikka and Baer do not teach “the first set of executable computer instructions being executed by the central processing unit after the user browser completes loading the document object model” (Appeal Br. 9), the Examiner has relied on the combined teachings of Blinnikka (first set of executable computer instructions that determine positioning being executed by the central processing unit with respect to loading a document by the browser) and Groth (determining positioning after the document object model has been loaded). With respect to Appellant’s argument that Groth does not teach “shifting positions of at least some of the site elements by a shift vector after the user browser completes loading the document object model and determines which site elements

should be positioned inside the browser window” (Appeal Br. 10), the Examiner has relied upon Baer for teaching or suggesting shifting positions (Final Act. 4–5), and Groth for loading a document object model and determining which site element should be positioned therein (*Id.* at 6). Accordingly, by arguing references individually rather than what the combination of references together teach or suggest, Appellant has not persuasively shown error in the Examiner’s rejection of claim 1.

Appellant has not separately argued claims 2–20, instead relying on the same arguments presented against the rejection of claim 1 to argue against the rejection of claims 2–20. Appeal Br. 10–15. Pursuant to 37 C.F.R. § 41.37(1)(iv), claims 2–4, 6–11, 13–17, and 19–20, rejected under the same grounds, stand or fall together. Accordingly, Appellant has not persuasively shown error, and we sustain the Examiner’s rejection of claims 1–4, 6–11, and 13–17, and 19–20 under 35 U.S.C. § 103(a) as being obvious over the combination of Blinnikka, Baer, and Groth. Further, Appellant has not separately argued claims 5, 12, and 18, rejected as being obvious over the combination of Blinnikka, Baer, Groth, and Chan. For the same reasons addressed above, Appellant has not persuasively shown error, and we sustain the Examiner’s rejection of claims 5, 12, and 18 under 35 U.S.C. § 103(a).

#### CONCLUSION

For the above-described reasons, we affirm the Examiner’s rejection of claims 1–20 as being obvious under 35 U.S.C. § 103(a).

DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>References/Grounds</b>	<b>Affirmed</b>	<b>Reversed</b>
1-4, 6-11, 13-17, 19-20	103(a)	Blinnikka, Baer, Groth	1-4, 6-11, 13-17, 19-20	
5, 12, 18	103(a)	Blinnikka, Baer, Groth, Chan	5, 12, 18	
<b>Overall Outcome</b>			1-20	

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)(1)(iv).

AFFIRMED