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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AMITABH SETH

Appeal 2019-000744
Application 14/329,779
Technology Center 2400

Before ROBERT E. NAPPI, SCOTT E. BAIN, 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[1] appeals from the Examiner's decision to reject claims 1–10 and 19–38. Appeal Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] 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 The Nielsen Company (US), LLC. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The claimed invention generally relates to monitoring media; specifically, to measuring media using media object characteristics. Spec. ¶ 2. Traditionally, audience engagement in media programming has been measured based on monitoring of audience members who have consented to being on a monitored panel. *Id.* ¶ 3. More recently, such monitoring has been performed via Internet server logs; i.e., records of requests for particular content and/or advertisements. *Id.* ¶ 4. However, such logs are not immune from tampering, nor can they keep track of a user re-playing locally stored media. *Id.* ¶ 17. A method disclosed in U.S. Patent 6,108,637 to Blumenau "fundamentally changed" such monitoring to overcome the above-mentioned limitations by tagging Internet media with beacon instructions, so as to associate monitoring instructions with the HTML of the media to be tracked. *Id.* ¶ 18. Whenever the media is requested, the beacon instructions are downloaded with the media, and are executed whenever the media is accessed. *Id.*

In order to leverage existing databases of database proprietors to collect more extensive Internet usage and demographic data, the claimed invention extends the beaconing process to encompass participating proprietors, and to use those proprietors as interim data collectors. *Id.* ¶ 25. Further, when multiple media objects are presented at client devices, one of the media objects is designated as a collector media object that includes collector instructions and beacon instructions, collecting media object characteristics from all of the other media objects being concurrently presented. *Id.* ¶ 26. This permits relationships between the different media objects to be determined. *Id.* ¶ 27.

Independent claim 1 is illustrative:

1. A method comprising:

receiving at a client device a plurality of first network communications from at least a first server, the first network communications including a collector media object and a plurality of second media objects for presenting at the client device, the collector media object and the plurality of second media objects embedded in a webpage;

based on a processor executing a first instruction in the collector media object presented at the client device, collecting a first characteristic of the collector media object and collecting second characteristics corresponding to the plurality of second media objects presented at the client device concurrently with the collector media object; and

based on the processor executing a second instruction associated with the collector media object, transmitting a second network communication from the client device to a second server of an audience measurement entity, the second network communication reporting multiple impressions corresponding to the presentations of the collector media object and the second media objects at the client device, the reporting of the multiple impressions including sending the first and second characteristics and an identifier associated with the client device in the second network communication.

Appeal Br. 26 (Claims App.).

Independent claims 24 and 34 recite a storage medium and apparatus, respectively, each having limitations commensurate in scope with claim 1. *Id.* at 28–29, 31–32. Dependent claims 2–10, 19–23, 25–33, and 35–38 each incorporate the limitations of their respective independent claims. *Id.* at 26–32. Claims 11–18 were cancelled during prosecution. *Id.* at 28.

REFERENCES

Name	Reference	Date
Blumenau	US 6,108,637	Aug. 22, 2000
Heffernan et al. (Heffernan)	US 2012/0158954 A1	June 21, 2012 Filed Sep. 21, 2011
Vass	US 2013/0166520 A1	June 27, 2013 Filed Sep. 21, 2009
Sharon et al. (Sharon)	US 9,508,011 B2	Nov. 29, 2016 Filed May 10, 2011

REJECTIONS

Claims 1, 19, and 29 are rejected under AIA 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Blumenau and Vass.

Claims 2–7, 9–10, 20–25, 27–28, 30–35 and 37–38 are rejected under AIA 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Blumenau, Vass, and Hefferman.

Claims 8, 26, and 36 are rejected under AIA 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Blumenau, Vass, Hefferman, and Sharon.

OPINION

With respect to claim 1, Appellant contends that the Blumenau and Vass combination fails to teach or suggest the recitation:

> based on a processor executing a first instruction in a collector media object, collecting a first characteristic of the collector media object and collecting second characteristics corresponding to a plurality of second media objects, where the collector media object and the plurality of second media objects are embedded in a webpage.

Appeal Br. 7.

With respect to that recitation, the Examiner finds Blumenau to teach or suggest a processor executing a first instruction in a collector media object, in the form of monitoring instructions that are part of an applet written in the Java programming language. Ans. 10 (citing Blumenau 11:57–67). Further, the Examiner finds Blumenau to teach collecting a first characteristic of the collector media object and second characteristics of the plurality of second media objects, in the form of executing the applet to cause aspects of all of the displayed content to be monitored. *Id.* at 11 (citing Blumenau 12:29–39). Further, that the provided content includes advertisements as part of the content provider's webpage. *Id.* (citing Blumenau 5:26–32). The Examiner finds the "collector media object" to be taught by Blumenau's content provider's webpage having the applet therein. *Id.* at 10–11. The Examiner further finds the "second media objects" to be taught by the advertisements placed on the content provider's webpage. *Id.* at 11.

Appellant first argues that the references do not teach or suggest transferring monitoring instructions "in" a collector media object. Appeal Br. 7–11. Appellant argues that Blumenau transfers monitoring instructions "before, with or after"; i.e., separately from, the content. *Id.* at 7–8; Reply Br. 2–4 (citing Blumenau 10:63–65). Appellant argues that the applet is a separate program that includes the monitoring instructions, and that the Examiner has not shown Blumenau to describe the applet as being "in" the webpage. Appeal Br. 9; Reply Br. 4.

We are not persuaded by Appellant's argument. The Examiner finds Blumenau's applet, containing instructions to monitor media, to be a

collector media object that is embedded in a webpage. Ans. 10–11. Although Appellant argues that the applet containing the instructions is separate from the content, the claim does not require the collector media object to be "in" the content. The claim only requires the collector media object to be "in" the webpage. We are further guided by Appellant's characterization of Blumenau as having "monitoring instructions . . . associated with the HTML of the media to be tracked." Spec. ¶ 18. Blumenau explains that a web page is generated from an HTML file. Blumenau 3:18–19. In Blumenau, "the monitoring instructions are part of a computer program that includes instructions for displaying the content," and the instructions may be "in accordance with the html syntax that can be used to cause execution of an applet that both displays content and monitors the display." *Id.* 11:59–67. Blumenau's applet contains further instructions that are transferred to the requesting web site and executed by the browser to perform monitoring of aspects of the display of content. *Id.* 12:9–36. Accordingly, we are not persuaded that the Examiner erred in finding Blumenau to teach or suggest executing a first instruction in a collector media object that is embedded in a webpage.

Appellant next argues that the references do not teach a processor executing a first instruction in a particular one of the media content items as being associated with collecting characteristic of both a collector media object and a plurality of second media objects. Appeal Br. 12–15. Specifically, Appellant contends that while Blumenau may indicate that an advertisement and other content in a web page may both be monitored, Blumenau does not show the monitoring instructions being "in the advertisement being monitored." Appeal Br. 10. Further, that Vass does not

teach an instruction "in" a media object, and that the "trigger" in Vass does not collect characteristics of both a collector media object and a plurality of second media objects that are embedded in a single web page. *Id.* at 11–13.

The Examiner finds Blumenau to teach or suggest that the content being monitored can comprise all of the content being displayed, including advertisements (second media objects) that are also part of the content provider's web page. Final Act. 3 (citing Blumenau 12:36–39); Ans. 11 (citing Blumenau 5:26–32). The Examiner determines that Blumenau does not explicitly teach the second communication reporting multiple impressions corresponding to the presentations of the collector objects and the second media objects, but that such is taught by Vass. *Id.* at 3. The Examiner characterizes Vass as teaching or suggesting a monitoring program that can collect data regarding each media content item object being rendered. *Id.* at 3–4 (citing Vass ¶ 65).

With respect to the monitoring instructions being "in" the monitored advertisement, the claims do not recite such a requirement. The claims require the monitoring instructions to be in the collector media object, corresponding here to Blumenau's applet, not in the second media objects, corresponding here to Blumenau's advertisements. With respect to Vass not teaching an instruction "in" a media object, the Examiner has relied on Blumenau's teaching, not Vass's teaching, for that limitation. Ans. 10 (citing Blumenau 11:57–67).

With respect to Appellant's argument that Vass does not collect characteristics of both the collector media object and a plurality of second media objects that are embedded in a single web page, the Examiner has relied upon Blumenau for teaching both the collector media object and

plurality of media objects embedded in a single web page, and that both Blumenau and Vass teach the collector media object collecting data from another (Blumenau) or multiple (Vass ¶ 65) media objects. Final Act. 3; Ans. 10–11. "[O]ne cannot show nonobviousness by attacking references individually where, as here, the rejection[] [is] based on combinations of references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Consequently, we are not persuaded, by Appellant's arguments solely against Vass, that the Examiner has failed to show the combination of Blumenau and Vass teaches or suggests the limitation at issue.

Appellant next argues that the Examiner has not presented an acceptable rationale to show that the references would be combined. Appeal Br. 15–18. In response, the Examiner explains that Vass "describes collecting particular types of data that may 'aid in aggregating the collected data to generate statistics'." Ans. 12 (quoting Vass ¶ 78). Appellant clarifies, "even if the Examiner can identify some motivation to combine the two references," and that the Examiner's explanation "may provide a motivation to combine Blumenau and Vass," collecting particular types of data is not a concern of claim 1. Reply Br. 7–8.

We are not persuaded. Obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 986 (Fed. Cir. 2006). The Examiner relies upon Vass for teaching the collection of two types of data: that concerning multiple media objects, and an identifier associated with the client device in the second network communication. Final Act. 3. Both are required features of

claim 1, and the Examiner relies upon advantages provided by those teachings of Vass for the reason to combine the teachings or suggestions of Vass with those of Blumenau. *Id.* Accordingly, the advantages determined by the Examiner to provide a reason to combine Blumenau and Vass so as to meet the limitations of claim 1 provide a reasoned explanation as to why one would combine Blumenau and Vass to teach or suggest the limitations of claim 1. Thus, we are not persuaded of error in the Examiner's obviousness rejection of claim 1 and sustain the Examiner's rejection of claim 1.

Appellant sets forth the same arguments against the rejections of claims 19 and 29. For the reasons set forth above for claim 1, we sustain the Examiner's obviousness rejection of claims 19 and 29. With respect to dependent claims 2–10, 20–28, and 30–38, Appellant has not argued any features of the dependent claims separately from the claims from which they depend. Appeal Br. 15, 20, 25. For the same reasons as for claims 1, 19, and 29, we sustain the Examiner's obviousness rejection of claims 2–7, 9–10, 20–25, 27–28, 30–35, and 37–38 over Blumenau, Vass, and Heffernan, and the Examiner's obviousness rejection of claims 8, 26, and 36 over Blumenau, Vass, Heffernan and Sharon.

CONCLUSION

For the above-described reasons, we sustain the Examiner's rejection of claims 1–10 and 19–38 as being obvious under 35 U.S.C. § 103.

DECISION SUMMARY

In summary:

Claims Rejected	**35 U.S.C. §**	**References/Grounds**	**Affirmed**	**Reversed**
1, 19, 29	103	Blumenau, Vass	1, 19, 29	
2–7, 9–	103	Blumenau, Vass,	2–7, 9–10,	

10, 20–25, 27–28, 30–35, 37–38		Heffernan	20–25, 27–28, 30–35, 37–38	
8, 26, 36	103	Blumenau, Vass, Heffernan, Sharon	8, 26, 36	
Overall Outcome			1–10, 19–38	

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