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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* JEFFREY S. BARDSLEY and RICHARD M. HORNER

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Appeal 2019-000976  
Application 14/017,431  
Technology Center 2100

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BEFORE JEFFREY S. SMITH, JEREMY J. CURCURI, and BARBARA A. BENOIT, *Administrative Patent Judges*.

CURCURI, *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, 3–15, and 17–24. 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(a). Appellant identifies the real party in interest as Scenera Mobile Technologies, LLC. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to “associating presence information with a digital image.” Spec. ¶ 2. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for providing for using presence information for an object in a digital image, comprising:

receiving user input selecting a portion of a digital image including an object depicted in the digital image and defining an identifier of the object;

storing the identifier as metadata of the digital image;

associating the identifier with the object;

indicating the association between the identifier stored as metadata of the digital image and the object depicted in the portion of the digital image;

determining whether the identifier is sufficient to obtain presence information for the object, wherein the presence information includes at least a communication availability status; and

providing, in association with displaying the digital image, a user interface control configured to perform an action using the presence information if the identifier is sufficient to obtain the presence information;

wherein at least one of the preceding actions is performed on at least one electronic hardware component.

Appeal Br. 30 (Claims Appendix).

## REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Dan	US 2002/0055926 A1	May 9, 2002
Cighir	US 2006/0073853 A1	Apr. 6, 2006
Yang	US 2006/0101005 A1	May 11, 2006

## REJECTION

Claims 1, 3–15, and 17–24 are rejected under pre-AIA 35 U.S.C. § 103(a) as obvious over Yang, Dan, and Cighir. Final Act. 8–15.

## OPINION

*The Obviousness Rejection of Claims 1, 3–15, and 17–24 over Yang, Dan, and Cighir*

The Examiner finds Yang, Dan, and Cighir teach all limitations of claim 1. Final Act. 8–10; *see also* Ans. 4–9.

In particular, the Examiner finds Yang teaches “receiving user input selecting a portion of a digital image including an object depicted in the digital image” as recited in claim 1. *See* Final Act. 8 (citing Yang ¶ 15, Figs. 5–8). The Examiner finds Dan teaches “defining an identifier of the object” as recited in claim 1. *See* Final Act. 8–9 (citing Dan ¶¶ 83–84, Fig. 5). The Examiner reasons “[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to combine Yang with Dan so that users can upload their geographic objects.” Final Act. 9 (citing Dan ¶ 84).

In particular, the Examiner finds Yang teaches “determining whether the identifier is sufficient to obtain presence information for the object, wherein the presence information includes at least a communication

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availability status” as recited in claim 1. *See* Final Act. 9–10 (citing Yang ¶¶ 19, 283, Figs. 34a, 41.).

Appellant presents the following principal arguments:

i. Yang does not teach “determining whether the identifier is sufficient to obtain presence information for the object, wherein the presence information includes at least a communication availability status” as recited in claim 1. *See* Appeal Br. 22–26.

The first cited portion of Yang at paragraph [0283] merely describes changing the size of a search area on a map. It does not describe the recited “identifier,” much less whether such identifier is “sufficient to obtain presence information for the object.” The second cited portion of Yang at paragraph [0019] merely describes indications of a business’s hours (whether it is “open” or “closed”) and a phone number on a map. It does not describe, however, “presence information” including “at least a communication availability status” as claim 1 requires. Merely indicating that a business is “open” or “closed” and a “phone number” on a map does not indicate, disclose, or even suggest a “communication availability status” of the business.

Appeal Br. 23–24.

ii.

Clearly, the portion of Yang at paragraph [0283] firstly relied upon by the Examiner to purportedly show Yang discloses “determining whether the identifier is sufficient to obtain presence information for the object” has nothing whatsoever to do with the portion of Yang at paragraph [0019] secondly relied upon by the Examiner to purportedly [] show Yang discloses a “communication status.”

Appeal Br. 24; *see also* Appeal Br. 25 (citing *Microsoft Corp. v. Biscotti, Inc.*, 878 F.3d 1052 (Fed. Cir. 2017)).

iii. Dan

does not disclose or suggest at least the feature of “receiving user input selecting a portion of a digital image including an object depicted in the digital image and defining an identifier of the object,” wherein it is determined “whether the identifier is sufficient to obtain presence information for the object,” as recited in representative claim 1.

Appeal Br. 26; *see also* Appeal Br. 27 (“The information described at paragraph [0083] of Dan has nothing to do with a communication status, and thus does not disclose defining the recited identifier.”).

We do not see any error in the contested findings of the Examiner. We concur with the Examiner’s conclusion of obviousness.

Regarding “determining whether the identifier is sufficient to obtain presence information for the object, wherein the presence information includes at least a communication availability status” as recited in claim 1, Yang discloses

[t]he symbols may be associated with any entity characteristic, such as hours of operation or availability of a product or service. These characteristics may change over time, so that the symbols can be coded and used to present dynamic information at a glance. For example, when an entity is open for business, the symbol can be a green dot, and when the business is closed, the symbol can be changed to a red dot.

Yang ¶ 19.

We determine this disclosure is sufficient to teach “determining whether the identifier is sufficient to obtain presence information for the object, wherein the presence information includes at least a communication availability status” as recited in claim 1. Yang’s symbol for an entity corresponds to the recited “identifier” in claim 1. *See* Yang ¶ 19. Yang’s

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greet dot and red dot correspond to the recited “presence information” in claim 1. *See* Yang ¶ 19.

Appellant’s arguments (i) and (ii) are unavailing because Yang paragraph 19 teaches the entirety of the argued limitation, and because open (green dot) or closed (red dot) indicates a communication availability status—open for communication or closed for communication. Thus, Appellant’s arguments (i) and (ii) do not show any error.

Regarding Appellant’s argument (iii), we find this argument unavailing because the Examiner does not rely on Dan, alone, for the argued claim limitations; rather, the Examiner relies on the combined teachings of Yang and Dan, as explained above in our summary of the Examiner’s findings and reasons. Appellant’s argument (iii) is directed to Dan, alone. With respect to Dan, alone, the Examiner finds Dan teaches “defining an identifier of the object” as recited in claim 1. *See* Final Act. 8–9 (citing Dan ¶¶ 83–84, Fig. 5). Dan discloses “a screen 500 for inputting details about a geographic object.” Dan ¶ 83. We determine this disclosure is sufficient to teach “defining an identifier of the object” as recited in claim 1. Thus, Appellant’s argument (iii) does not show any error.

We, therefore, sustain the Examiner’s rejection of claim 1. We also sustain the Examiner’s rejection of claims 2–15 and 17–24, which are not separately argued with particularity.

#### CONCLUSION

The Examiner’s rejection of claims 1, 3–15, and 17–24 is affirmed.

DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 3–15, 17–24	103(a)	Yang, Dan, Cighir	1, 3–15, 17–24	

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