



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/368,747	02/10/2009	Rob Van Der Haar	PAT 85636-2	2472
132251	7590	06/10/2020	EXAMINER	
(BLG/Conversant Wireless/27921)			BUSCH, CHRISTOPHER CONRAD	
Borden Ladner Gervais LLP			ART UNIT	
World Exchange Plaza			PAPER NUMBER	
100 Queen Street, Suite 1300			3681	
Ottawa, ONTARIO K1P 1J9			NOTIFICATION DATE	
CANADA			DELIVERY MODE	
			06/10/2020	
			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):

ipinfo@blg.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROB VAN DER HAAR,
LAURA MAJAVA, and ANNA NILSSON

Appeal 2019-001640
Application 12/368,747
Technology Center 3600

Before BRADLEY W. BAUMEISTER, JOHN F. HORVATH,
and SCOTT RAEVSKY, *Administrative Patent Judges*.

HORVATH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ seeks review of the Examiner’s decision to reject claims 1–3, 7–10, 14, 16–20, 22–31, 33, and 34. Appeal Br. 10.² Claims 4–6, 11–13, 15, 21, and 32 have been cancelled. *Id.* at 3. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

¹ 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 Conversant Wireless Licensing S.A.R.L. Appeal Br. 3.

² Appellant only requests “review of the grounds for rejecting claims 1–3, 8–10, 14, 16, 19, 20, 25, 28, 30, 31, 33, and 34.” Appeal Br. 10.

CLAIMED SUBJECT MATTER

The invention is directed to “a user interface, an apparatus and a method for presenting an advertisement in response to gesture input.”
Spec. 1:5–7.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An apparatus comprising:

a user interface for receiving user input text;

a display;

a motion sensor configured to detect motion; and

at least one controller coupled to the display and the motion sensor, the at least one controller configured to:

receive the user input text via the user interface for composing a message in a messaging application;

display a first advertisement on the display along with the user input text;

determine whether a motion of the apparatus detected by the motion sensor exceeds a threshold while the messaging application is active;

responsive to determining that the motion of the apparatus exceeds the threshold,

provide a second advertisement to be output by the apparatus, the second advertisement selected based on a set of contexts monitored by the controller, the set of contexts comprising context of the user input text; and

display the second advertisement along with the same user input text displayed with the first

advertisement, in place of the first advertisement on the display.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Crolley	US 2007/0061205 A1	Mar. 15, 2007
Jiang	US 2008/0287150 A1	Nov. 20, 2008
Louis	US 7,586,032 B2	Sept. 8, 2009
Jones	US 2010/0114720 A1	May 6, 2010
Mastronardi	US 2010/0312639 A1	Dec. 9, 2010

REJECTIONS

Claims 1–3, 7–10, 14, 16, 19, 20, 25, 28, 30, 31, 33, and 34 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Louis, Jiang, and Jones. Final Act. 3–5.

Claims 17, 18, 22, 26, and 27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Louis, Jiang, Jones, and Crolley. Final Act. 5–7.

Claims 24 and 29 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Louis, Jiang, Jones, and Mastronardi. Final Act. 7–8.

OPINION

We review the appealed rejections for error based upon the issues identified by Appellant. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Appellant argues for the patentability of claims 1–3, 8–10, 14, 16, 19, 20, 25, 28, 30, 31, 33, and 34 as a group. Appeal Br. 12–21.³ We select claim 1 as a representative claim, and review the rejection of

³ Appellant argues independent claim 1 is patentable because the cited prior art is missing a limitation and cannot be properly combined. Appeal Br. 12–

claims 2, 3, 7–10, 14, 16–20, 22–31, 33, and 34 based on the rejection of claim 1. *See* 37 C.F.R. § 41.37(c)(iv). Any arguments not raised by Appellant are waived. *Id.*

We have reviewed the Examiner’s rejection of claim 1 in light of Appellant’s arguments that the Examiner has erred. We are not persuaded by Appellant’s arguments, and sustain the Examiner’s rejection for the reasons stated in the Final Action and Answer, which we adopt as our own. We highlight the following for emphasis.

Rejections under 35 U.S.C. § 103(a)

Appellant argues the Examiner erred in rejecting claim 1 because the combination of Louis, Jiang, and Jones fails to teach or suggest the claim 1 limitations of “provid[ing] a second advertisement . . . selected based on . . . the user input text” and “display[ing] the second advertisement along with the same user input text displayed with the first advertisement.” Appeal Br. 12 (emphases omitted). Appellant further argues the Examiner erred in rejecting claim 1 because “there is no suggestion from the applied references to modify their properly combined teachings so as to reach the requirements of claim 1.” *Id.* at 18. We are not persuaded by Appellant’s arguments for the reasons discussed below.

Appellant first argues that Jiang fails to teach or suggest displaying on a device any advertisement based on the device’s input text because Jiang “never displays an advertisement with the user input text displayed on the

15, 18–20. Appellant further argues that independent claims 8, 16, and 30 are patentable for the same reasons as claim 1. *Id.* at 15–18, 20–21. Finally, Appellant argues “the dependent claims stand[] or fall[] with their respective independent claims.” *Id.* at 10.

screen of the . . . device.” *Id.* at 14 (emphases omitted). Rather, Appellant argues, Jiang displays on a second (receiving) device an ad selected based on the input text of a first (sending) device. *Id.* (citing Jiang ¶¶ 77, 78, Figs. 7, 8). Appellant argues “it is only the second device that receives the transmitted message with appended advertisement” and displays the advertisement. Reply Br. 4. The first device only displays “the original sent message text and the reply message from the second device with [an] appended second advertisement” that is “contextually related to the reply message” input into the second device rather than the original message input into the first device. *Id.*

We disagree that Jiang fails to teach or suggest displaying an advertisement on a device based on the text input into the device. Rather, we agree with the Examiner that paragraphs 54 and 66 of Jiang teach this limitation. *See* Final Act. 3–4; Ans. 4. Jiang teaches an advertisement system that selects “*at least one advertisement*” based on the “content of [a] text message.” Jiang ¶ 54 (emphasis added). The system “captures the context of message exchanges between [a] first subscriber [sender] and [a] recipient of the text message,” and selects *at least one advertisement* based on that content. *Id.* ¶¶ 54, 66. Although the system can send the *at least one advertisement* to the recipient, as Appellant contends, it can also send “*another advertisement* to the subscriber,” i.e., *another one* of the *at least one* advertisements. *Id.* ¶¶ 66, 77 (emphasis added).

Jiang’s system can also insert the *at least one advertisement* “into the reply the subscriber receives from the recipient of the text message.” *Id.* ¶ 66. Thus, Jiang’s subscriber can receive and display the advertisement selected based on the subscriber’s text message because Jiang can either

(a) append the *at least one advertisement* to the reply message sent to the subscriber, or (b) send the subscriber *another advertisement* based on the subscriber's text message.

Appellant next argues that Jones fails to teach or suggest selecting and displaying a second advertisement on a device based on the same input text used to select and display a first advertisement on the device because Jones teaches “a first advertisement is presented on [a] webpage, followed by an event notification indicating a modification to the context of the webpage,” and it is only after the webpage's context is modified that “a second advertisement [is] displayed with the modified context of the webpage.” Appeal Br. 13 (citing Jones, Fig. 4). That is, Appellant argues that Jones' second advertisement is generated “as a result of a change in context of the original webpage,” whereas claim 1 “presents a second advertisement in response to motion of the device, but also based on the same original user input text.” Reply Br. 2–3 (emphasis omitted).

We disagree that Jones fails to teach or suggest selecting and displaying a second advertisement on a device based on the same text input used to select and display the first advertisement on the device. Rather, we agree with the Examiner that paragraphs 53 and 84 of Jones teach this limitation. *See* Final Act. 3–4; Ans. 4.

Jones teaches that contextual advertisement systems were known to “scan the text of a web page for keywords, and select advertisements based on any keywords located in the text.” Jones ¶ 5. Jones further teaches a dynamic contextual advertisement system that displays a first set of contextual advertisements on a web page based on a first request for advertisements, and generates “a second request for one or more

advertisements for display on the web page . . . based on . . . at least one event notification.” Jones ¶¶ 48, 53. Although the event notification may be due to “change(s) in context in [the] web page,” as Appellant contends, the event notification may also be due to “passage of a predetermined amount of time” or “another type of triggering event.” *Id.* Thus, Jones can select and display a first set of advertisements on a web page based on the web page’s content, and select and display a second set of advertisements on the same web page based on the same web page content upon receiving an event trigger such as (a) passage of a predetermined amount of time or (b) another type of trigger, such as Louis’s motion detection trigger to change the media item currently being played. *See* Jones ¶ 53; Louis, 2:52–57, 14:28–31.

Appellant next argues that the Examiner’s “stated rationale for combining the teachings of Jiang with those of Louis is not provided by the prior art, but rather necessarily derives from the improper use of Appellant’s own teachings in hindsight.” Appeal Br. 18–19. We note the Examiner’s rationale for combining the teachings of Jiang and Louis was to provide users with (a) targeted ads that are more likely to elicit a response, and (b) interactive means for presenting ads on a user device. *See* Final Act. 4.

Appellant argues Louis lacks such a suggestion because “it fails to mention or suggest the displaying of advertisements entirely,” and Jiang lacks such a suggestion because it “provides no reason why one would want to ‘establish an interactive means for presenting ads on a user device.’” Appeal Br. 19.

We are not persuaded by Appellant’s arguments, which attack the separate teachings of Jiang and Louis rather than their combined teachings. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (“The test for obviousness

is not . . . that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.”).

Jiang teaches that it was known to provide users with targeted text-based ads based on user textual input. *See* Jiang ¶¶ 32, 54. Louis teaches that it was known to replace a currently playing media item, including text, with an automatically selected media item upon detecting the shaking of a media playback device. *See* Louis 14:18–27, 14:49–52, Fig. 4A. Thus, as the Examiner found, Jiang and Louis teach providing users with targeted ads (Jiang) and interactive means (motion detection) for replacing a first targeted ad with a second targeted ad (Louis), and a person skilled in the art would have combined these two teachings to increase the likelihood that the ads would be of interest to the user and elicit a user response (e.g., selection of the ad). *See* Final Act. 4; *see also* *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007) (“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

Finally, Appellant argues that “Jones is not supportive” of the Examiner’s reasons to combine Jiang and Louis because Jones fails to “disclose or suggest the changing of an advertisement without a change in the displayed content.” Appeal Br. 19–20. We are not persuaded by this argument for the reasons stated above. Namely, Jones does, in fact, teach or suggest changing a context-based advertisement without changing the context of the web page by receiving a trigger, such as the passage of a predetermined period of time. *See* Jones ¶ 53.

CONCLUSION

The Examiner's rejection of claims 1–3, 7–10, 14, 16, 19, 20, 23, 25, 28, 30, 31, 33, and 34 as unpatentable over Louis, Jiang, and Jones is sustained.

The Examiner's rejection of claims 17, 18, 22, 26, and 27 as unpatentable over Louis, Jiang, Jones, and Crolley is sustained.

The Examiner's rejection of claims 24 and 29 as unpatentable over Louis, Jiang, Jones, and Mastronardi is sustained.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–3, 7–10, 14, 16, 19, 20, 23, 25, 28, 30, 31, 33, 34	103(a)	Louis, Jiang, Jones	1–3, 7–10, 14, 16, 19, 20, 23, 25, 28, 30, 31, 33, 34	
17, 18, 22, 26, 27	103(a)	Louis, Jiang, Jones	17, 18, 22, 26, 27	
24, 29	103(a)	Louis, Jiang, Jones	24, 29	
Overall Outcome			1–3, 7–10, 14, 16–20, 22–31, 33, 34	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended. *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED