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DISNEY ENTERPRISES, INC. c/o Patterson & Sheridan, LLP 24 Greenway Plaza Suite 1600 Houston, TX 77046-2472			RABOVIANSKI, JIVKA A	
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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* EDWARD DRAKE, ANDREW J. WRIGHT, and  
BRUCE BLEASDALE

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Appeal 2019-001758  
Application 14/872,748  
Technology Center 2400

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Before JEAN R. HOMERE, MICHAEL J. STRAUSS, and  
JOHN F. HORVATH, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>2</sup> appeals from the Examiner's decision to reject claims 1–3, 5–12, and 14–23, which constitute of all the claims pending in this appeal. Claims App. Claims 4 and 13 have

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<sup>1</sup> We refer to the Specification, filed October 1, 2015 (“Spec.”); Final Office Action, mailed January 12, 2018 (“Final Act.”); Appeal Brief, filed August 28, 2018 (“Appeal Br.”); Examiner’s Answer, mailed October 23, 2018 (“Ans.”); and the Reply Brief, filed December 19, 2018 (“Reply Br.”).

<sup>2</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 Disney Enterprises, Inc. Appeal Br. 1.

been canceled. *Id.* Claims 1, 10, and 19 are independent. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

#### CLAIMED SUBJECT MATTER

The claims are directed to adjusting media availability via a content consumption activity dashboard. Spec., Title. Claim 1, reproduced below with bracketed claim element labels added and a disputed limitation emphasized in *italics*, is illustrative of the claimed subject matter:

1. A graphical user interface method, comprising:

[(a)] displaying on a display of a content playback system a graphical user interface comprising:

[(b)] *a graphical summary of attributes of video content previously accessed by a user account*, wherein the graphical summary of the attributes of the video content is based on metadata captured from the video content previously accessed by the user account, wherein the user account accessed the video content from a server system that delivers video content to the user account over a network; and

[(c)] a plurality of controls for biasing a plurality of attributes of video content delivered to the user account by the server system;

[(d)] receiving data corresponding to user input at the graphical user interface actuating one of the plurality of controls;

[(e)] in response to receiving the data, the content playback system transmitting over the network to the server system data associated with a video content attribute biased by the user input actuating one of the plurality of controls,

[(f)] receiving user account personalization data from the server system in response to transmitting to the server system data associated with the video content attribute biased by the user input; and

[(g)] using at least the received user account personalization data to display on the display a personalized video content

playback graphical user interface for the user account, wherein the personalized video content playback graphical user interface displays selectable video content available for playback, wherein the displayed selectable video content depends at least in part on the video content attribute biased by the user input.

#### REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Suslov	US 2011/0296463 A1	Dec. 1, 2011
Klappert	US 2013/0347039 A1	Dec. 26, 2013
Ionescu	US 2015/0128162 A1	May 7, 2015
Mudd	US 2017/0195728 A1	July 6, 2017

#### REJECTIONS

Claims 1–3, 5–12 and 14–21<sup>3</sup> stand rejected under 35 U.S.C. § 103 as being unpatentable over Mudd and Suslov. Final Act. 2–8.

Claims 9 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Mudd, Suslov, and Ionescu. Final Act. 8–9.

Claims 22 and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Mudd, Suslov, and Klappert. Final Act. 9–10.

#### STANDARD OF REVIEW

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

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<sup>3</sup> Claims 22 and 23 are mistakenly included among the claims listed in the heading of section 5 as being rejected under 35 U.S.C. § 103 over Mudd and Suslov. Final Act. 2.

OPINION

*Claims 1–3, 5–12, 14–18, and 21–23*

Findings and Contentions

The Examiner finds Mudd’s system for personalizing playback content teaches (1) displaying content on a graphical user interface (claim element (a)), (2) a graphical user interface including controls for biasing attributes of video content (claim element (c)), (3) receiving user input data (claim element (d)), and, (4) in response, transmitting data associated with the biased video content attribute (claim element (e)). Final Act. 3–4. The Examiner finds Suslov’s search ranking system teaches (1) displaying a graphical summary of attributes of video content previously accessed by a user account . . . (claim element (b)), (2) receiving user account personalization data (claim element (f)), and, (3) using the personalization data to display a personalized video content playback user interface (claim element (g)). *Id.* at 3–5.

According to the Examiner, it would have been obvious to incorporate Suslov’s teaching of adjusting a user’s profile by prioritizing content of interest to a user into Mudd’s system for personalizing playback content to facilitate user selection of content. *Id.* at 5.

Appellant contends, *inter alia*,

Suslov’s user profile specifies a user’s saved preferences for prioritizing certain search results of content, and does not in any way provide [] “a graphical summary of attributes of video content previously accessed by” the user. Indeed, Suslov does not even teach keeping track of what video content was previously accessed by a user. Rather, Suslov provides the user the option of creating a profile that assigns different priorities to different video content types to rank video content programming search results.

Appeal Br. 13.

The Examiner responds

Suslov teaches the user's preferences from a previous session may be loaded at this point, as the user may have previously modified the default settings to customize a variety of aspects of his or her user experience wherein preferences may allow the user to prioritize particular types and/or genres of content, among other things. Additionally or alternatively, these preferences may allow the user to assign a numerical weight to the different preferences, such that where two preferences result in increasing the search result ranking or priority of different types and/or genres of content, the assigned numerical weight of the preferences may control which type and/or genre of content receives a greater increase in search result ranking or priority, Suslov, [0065], [0066].

Ans. 14. The Examiner explains

Modifying the previous profile based on the metadata/ numerical weight to the different preferences and adjusting priority of different portions of content of a particular type and/or genre is a graphical summary of attributes of video content previously accessed by a user account, wherein the graphical summary of the attributes of the video content is based on metadata captured from the video content previously accessed by the user account as cited in claim 1.

*Id.* at 15.

Appellant replies "Suslov's interface for ranking search results is based on a user's stated preferences for a particular type of content. Suslov's interface does not present search results based on video that a user account accessed, let alone using metadata captured from video content that was accessed by the user account." Reply Br. 7.

Analysis

Claim construction is an important step in a patentability determination. *Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed. Cir. 2003) (“Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the claims . . . . The second step in the analyses requires a comparison of the properly construed claim to the prior art.” (citations omitted)). A determination of anticipation, as well as obviousness, involves two steps. First is construing the claim, a question of law, followed by, in the case of anticipation or obviousness, a comparison of the construed claim to the prior art. This comparison process involves fact-finding. *See Key Pharms. v. Hercon Labs. Corp.*, 161 F.3d 709, 714 (Fed. Cir. 1998).

The disputed limitation of claim element (b) recites “a graphical summary of attributes of video content previously accessed by a user account.” Claim element (b) further recites “the graphical summary of the attributes of the video content is based on metadata captured from *the video content previously accessed* by the user account” (emphasis added). A reasonable interpretation of claim element (b) requires a graphical summary of attributes of video content, the video content having been previously accessed by a user account. Use of the definite article “the” in the second recitation of “the video content previously accessed by the user account” disambiguates the recitation of what was previously accessed by a user account, i.e., (i) the video content rather than (ii) *attributes of* the video content. Because a proper interpretation of claim element (b) requires a graphical summary of attributes of previously accessed video content (rather than of previously accessed attributes), to teach the disputed limitation the

prior art must describe, not just a graphical presentation of attributes provided by a user as preferences, but a graphical presentation of attributes of video content *that was previously accessed by the user*.

As argued by Appellant, Suslov discloses graphically presenting a user's previously saved preferences. However, the Examiner does not find, and we do not ascertain, that Suslov's saved preferences (i.e., the recited attributes) are of video content previously accessed by a user account as required by claim 1. Therefore, on the record before us, we agree with Appellant that the portions of Suslov cited by the Examiner fail to teach or suggest the disputed limitation.

Because we agree with at least one of the arguments advanced by Appellant, we do not reach the merits of Appellant's other arguments presented in connection with claim 1. Accordingly, we do not sustain the rejection of claim 1 under 35 U.S.C. § 103 as being unpatentable over Mudd and Suslov. Independent claim 10 includes language corresponding to claim element (b) of claim 1. Accordingly, we do not sustain the rejection claim 10. Furthermore, we do not sustain the rejections of dependent claims 2, 3, 5-9, 11, 12, 14-18, and 21-23, which stand with their respective base claim.

### *Claims 19 and 20*

Claim 19 recites:

19. A method for adjusting video content availability associated with a user account configured to receive video content from a server system over a network, comprising the server system:
  - capturing metadata corresponding to video content viewed by the user account;
  - receiving over the network from a content playback device:
    - account information identifying the user account; and

data associated with a video content attribute biased by user input at the content playback device actuating one of a plurality of controls for biasing a plurality of attributes of the video content delivered to the user account by the server system;  
storing the received data at the server system; and  
based on the received data and the captured metadata, applying personalized machine learning of the user account's video content preferences, wherein the personalized machine learning is used to generate a personalized video content playback graphical user interface for the user account at the content playback device.

### Findings and Contentions

The Examiner rejects claim 19 together with independent claims 1 and 10 (discussed above) under 35 U.S.C. § 103 as unpatentable over Mudd and Suslov. Final Act. 2–8. According to the Examiner “[t]he rejection of claims 1, 10 and 19 was combined because the inventive concepts in all independent claims is the same[,] encompass[ing] similar limitations with different words.” Ans. 10.

Appellant separately argues claim 19 apart from independent claims 1 and 10, contending that, by failing to analyze the specific language of claim 19, the Examiner failed to make out a prima facie showing of obviousness over Mudd and Suslov. Appeal Br. 9. Appellant argues

the Final Office Action’s failure to specifically identify which features of Mudd and Suslov are believed to disclose each element of claim 19 likely renders the Final Office Action “arbitrary and capricious,” and therefore invalid, under the Administrative Procedure Act (5 U.S.C. § 706), a standard to which all Actions by the USPTO must adhere (see *Dickinson v. Zurko*, 527 U.S. 150 (1999)). Without proper guidance as to which “element” of the claim is believed to correspond with

which section cited in the rejection, Appellant is forced to guess which features in the cited art the Final Office Action believed to disclose each of the claimed features.

*Id.* at 10. Appellant further contends, “Mudd and Suslov do not teach or suggest any of the limitations of independent claim 19” without providing supporting substantive analysis. *Id.*

### *Analysis*

Appellant’s argument is not persuasive. The Examiner has provided specific citations to portions of the Mudd and Suslov references relied upon for teaching the subject matter of claim 19. There is no requirement for the Examiner to provide a mapping of each limitation to specific portions of the applied prior art. There is only a requirement to provide such notice that Appellant can recognize and seek to counter the grounds for the rejection.

As this court has repeatedly noted, “the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). See also *In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). The Patent and Trademark Office (“PTO”) satisfies its initial burden of production by “adequately explain[ing] the shortcomings it perceives so that the applicant is properly notified and able to respond.” *Hyatt*, 492 F.3d at 1370. In other words, the PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in “notify[ing] the applicant . . . [by] stating the reasons for [its] rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. That section “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.” *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990).

*In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (emphasis added).

“Section 132 merely ensures that an applicant at least be informed of the broad statutory basis for the rejection of his claims, so that he may determine what the issues are on which he can or should produce evidence.” *Chester*, 906 F.2d at 1578 (internal citation omitted). As discussed above, all that is required of the office to meet its prima facie burden of production is to set forth the statutory basis of the rejection and the reference or references relied upon in a sufficiently articulate and informative manner as to meet the notice requirement of §132. As the statute itself instructs, the examiner must “notify the applicant,” “stating the reasons for such rejection,” “together with such information and references as may be useful in judging the propriety of continuing prosecution of his application.” 35 U.S.C. § 132.

*In re Jung*, 637 F.3d at 1363 (emphasis added).

As evidenced by Appellant’s response to the rejection, the Examiner has provided sufficient information to enable Appellant to argue that the subject matter of claim 19 is not taught by the combination of Mudd and Suslov. Appeal Br. 10–11. Thus, we find that Appellant was provided with sufficient notice of the basis of the rejection to respond. Accordingly, we disagree the Examiner did not establish a prima facie case of obviousness.

Having presented a prima facie case, the burden shifted to Appellant to respond. However, rather than provide a substantive analysis explaining why the limitations of claim 19 are not taught or suggested by the combination of Mudd and Suslov, Appellant merely repeats each claim limitation preceded by an allegation that “Mudd and Suslov do not teach or suggest” that limitation. *Id.* Such conclusory statements are unpersuasive of error as amounting to little more than a general denial that fails to address the Examiner’s findings and are, therefore, insufficient. *See* 37 C.F.R. § 41.37(c)(1)(iv) (“A statement which merely points out what a claim recites

will not be considered an argument for separate patentability of the claim.”); *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.”). Accordingly, we are unpersuaded by Appellant’s argument that the Examiner failed to establish a prima facie rejection of claim 19 or by Appellant’s arguments that the Examiner erred in rejecting claim 19, and we sustain the rejection of claims 19 and 20 under 35 U.S.C. § 103(a) over Mudd and Suslov.

#### CONCLUSION

We affirm the rejection of claims 19 and 20 under 35 U.S.C. § 103 over Mudd and Suslov.

We reverse the rejection of claims 1–3, 5–12 and 14–18, and 21 under 35 U.S.C. § 103 over Mudd and Suslov.

We reverse the rejection of claims 9 and 18 under 35 U.S.C. § 103 over Mudd, Suslov, and Ionescu.

We reverse the rejection of claims 22 and 23 under 35 U.S.C. § 103 over Mudd, Suslov, and Klappert.

DECISION SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1 –3, 5 – 12, 14 – 23	103	Mudd, Suslov	19, 20	1 –3, 5 – 12, 14 – 18, 21
9, 18	103	Mudd, Suslov, Ionescu		9, 18
22, 23	103	Mudd, Suslov, Klappert		22, 23
<b>Overall Outcome</b>			19, 20	1–3, 5–12, 14–18, 21– 23

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