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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/662,868	03/19/2015	Emre Mehmet Kiciman	328288.02	1067
69316	7590	09/25/2020	EXAMINER	
MICROSOFT CORPORATION ONE MICROSOFT WAY REDMOND, WA 98052			ZONG, RUOLEI	
			ART UNIT	PAPER NUMBER
			2441	
			NOTIFICATION DATE	DELIVERY MODE
			09/25/2020	ELECTRONIC

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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* EMRE MEHMET KICIMAN, CHUN-KAI WANG and  
YI-MIN WANG

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Appeal 2019-003206  
Application 14/662,868  
Technology Center 2400

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Before ST. JOHN COURTENAY III, LARRY J. HUME, and  
PHILLIP A. BENNETT, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1–25. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm in part.

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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). According to Appellant, the real party in interest is Microsoft Technology Licensing, LLC. *See* Appeal Br. 2.

## STATEMENT OF THE CASE<sup>2</sup>

### *Introduction*

Appellant's claimed invention relates generally to "automatically providing activities that may be of interest to a recipient of social networking data, which may include a message, a photograph, a video, etc." Spec. ¶ 5.

### *Independent Method Claim 1*

1. A method comprising the following computer-executable acts:

at a computing system that comprises a server computing device that is in network communication with a client computing device of a user:

receiving social networking data of a user, the social networking data comprises text;

*extracting an entity from the text of the social networking data of the user, the entity comprising a keyword and a **disambiguated canonical meaning** of the keyword;*

identifying an activity from amongst a plurality of predefined activities based upon the entity extracted from the social networking data of the user, the activity performable with respect to the entity;

transmitting information that is indicative of the identified activity to the client computing device of the user, the information transmitted for presentment to the user by way of an output interface of the client computing device; and

performing at least one computing operation in response to receipt of an indication that the user, by way of an input interface of the client computing device, has instructed the

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<sup>2</sup> We herein refer to the Final Office Action, mailed Feb. 15, 2018 ("Final Act."); Appeal Brief, filed Nov. 2, 2018 ("Appeal Br."); the Examiner's Answer, mailed Jan. 15, 2019 ("Ans."), and the Reply Brief, filed Mar. 15, 2019 ("Reply Br.).

computing system to pursue the identified activity with respect to the entity.

Appeal Br. 26, “CLAIMS APPENDIX” (emphasis added to dispositive disputed claim language).

### *References*

The prior art relied upon by the Examiner as evidence is:

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Goodman et al. (“Goodman”)	US 2004/0128353 A1	July 1, 2004
Kumar et al. (“Kumar”)	US 2009/0129278 A1	May 21, 2009
Benyamin et al. (“Benyamin”)	US 2009/0307003 A1	Dec. 10, 2009
Davis et al. (“Davis”)	US 2010/0082398 A1	Apr. 1, 2010
Mittal et al. (“Mittal”)	US 2010/0153488 A1	June 17, 2010

### *Rejections*

A. Claims 1–10 are rejected under pre-AIA 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor regards as the invention. Final Act. 2.

B. Claims 1–8 and 10–22 are rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over Kumar and Davis. *See* Final Act. 4.

C. Claim 9 is rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over Kumar, Davis, and Benyamin. *See* Final Act. 13.

D. Claims 23 and 25 are rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over Kumar, Davis, and Mittal. *See* Final Act. 14.

E. Claim 24 is rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over Kumar, Davis, and Goodman. *See* Final Act. 16.

## ISSUES AND ANALYSIS

### *Rejection A of Claims 1–10 under 35 U.S.C. § 112, second paragraph*

**Issue:** Did the Examiner err in concluding that claims 1–10 are indefinite under 35 U.S.C. § 112, second paragraph?

The Examiner concludes the claim language “receiving social networking data of a user, the social networking data comprises text” is indefinite because it is unclear whether “a user” refers to a different user or the user in “at a computing system that comprises a server computing device that is in network communication with a client computing device of a user.” Final Act. 2–3. The Examiner further concludes that the claim 10 limitation “identifying the activity from amongst the plurality of possible activities based upon known or inferred interests of the user” does not have antecedent basis. *Id.*

Appellant does not address Rejection A in the Appeal Brief or the Reply Brief. Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). Accordingly, we affirm the Examiner’s Rejection A under 35 U.S.C. § 112, second paragraph, of claims 1–10.

### *Rejection B of Independent Claim 1 under § 103(a)*

**Issue**

Under 35 U.S.C. § 103(a), we focus our analysis on the following argued limitation that we find is dispositive regarding the rejection of independent method claim 1:

Did the Examiner err by finding Kumar and Davis collectively teach or suggest the disputed limitation:

A method comprising . . .

*extracting an entity from the text of the social networking data of the user, the entity comprising a keyword and a **disambiguated canonical meaning of the keyword**;*

within the meaning of representative independent claim 1?<sup>3</sup> (emphasis added). See Final Act. 5 (citing Kumar, ¶¶ 73-76, 68-71, 87-92, 36, 47).

### **Analysis**

We have considered all of Appellants’ arguments and any evidence presented. In our analysis below, we highlight and address specific findings and arguments for emphasis.

The Examiner finds the disputed claim 1 limitation (“*the entity comprising a keyword and a **disambiguated canonical meaning of the keyword***”) is taught or suggested by Kumar’s content enhancement platform 100 that analyzes a message to identify keywords. See Final Act. 5 (citing Kumar, Fig. 6A-B, 10A, ¶¶ 73–76, 68–71, 87–92, 36 and 47).

Appellant disputes the Examiner’s findings regarding this limitation of claim 1, and contends:

The rules-based approach described in Kumar cannot fairly be characterized as *extracting an entity from the text of the social networking data of the user, the entity comprising a keyword and a **disambiguated canonical meaning of the keyword***, as [Kumar’s] content enhancement platform undertakes no analysis as to the canonical meaning of keywords in text, but instead only determines whether text includes a list of predefined keywords.

Appeal Br. 10.

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<sup>3</sup> We give the contested claim limitations the broadest reasonable interpretation consistent with the Specification. See *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

Appellant urges that there is no discussion of a “disambiguated canonical meaning” of a keyword found in Kumar:

The rules-based approach described in the cited portions of Kumar, as indicated previously, cannot fairly be characterized as extracting an entity from text, *the entity comprising a keyword and a disambiguated canonical meaning of the keyword*. Using a modification to the example set forth in paragraphs [0068]-[0071] of Kumar, if the content enhancement platform of Kumar were to receive the text message “I spilled a drink in Saks Fifth Avenue” (and the demographics in the example in the above-referenced paragraphs were the same), the content enhancement platform of Kumar would identify the keywords “drink” and “Fifth Avenue” in the message, and would provide an advertisement pertaining to a DUNKIN' DONUTS on Fifth Avenue – despite the original message referring to a store that is nowhere near Fifth Avenue in New York.

Appeal Br. 11–12.

Appellant further argues:

In the “Response to Arguments” section of the Final Office Action, the Examiner appears to indicate that the keyword “movie” in the example message “Let's watch a movie at Times Square” is disambiguated based upon the location “Times Square.” As described above, however, Kumar describes identifying combinations of keywords in messages, and then selecting an appropriate advertiser when a certain combination of keywords exists in a message. Kumar does not suggest any processing to understand canonical meanings of keywords in messages, and therefore the Examiner is in error when asserting that Kumar suggests *extracting an entity from the text of the social networking data of the user, the entity comprising a keyword and a disambiguated canonical meaning of the keyword* as recited in claim 1. Further, as referenced above, the content enhancement platform of Kumar intercepts peer-to-peer messages but does not contemplate enhancing content of *social networking data*.

Appeal Br. 12.

The Examiner disagrees with Appellant, and further explains the basis for the rejection. The Examiner finds that Kumar’s cited features teach or suggest the disputed claim 1 limitation. In support, the Examiner refers to Kumar’s descriptions of: (1) the extraction of keywords, (2) analyzing the context of a message in view of the demographics of the destination peer, and (3) the locations of the respective peers, including the time the messages were sent. *See* Ans. 5–6 (citing Kumar ¶¶ 26, 47, 60).

As an initial issue of claim construction regarding the disputed claim 1 language (“*disambiguated canonical meaning of the keyword*”), our reviewing court provides guidance we find is applicable here:

The correct inquiry in giving a claim term its broadest reasonable interpretation in light of the specification is not whether the specification proscribes or precludes some broad reading of the claim term adopted by the examiner. And it is not simply an interpretation that is not inconsistent with the specification. It is an interpretation that corresponds with what and how the inventor describes his invention in the specification, i.e., an interpretation that is “consistent with the specification.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997) (citation and internal quotation marks omitted); *see also In re Suitco Surface*, 603 F.3d 1255, 1259–60 (Fed. Cir. 2010).

*In re Smith Int’l, Inc.*, 871 F.3d 1375, 1382–83 (Fed. Cir. 2017).

Here, we turn to Appellant’s Specification for *context* regarding the broadest reasonable interpretation of the disputed claim 1 term

“*disambiguated canonical meaning of the keyword.*”

Once a keyword has been extracted, the extractor component 116 can analyze the keyword and context associated with such keyword and access the trained dictionary 510 to **disambiguate** between meanings of a **keyword** and ascertain a **canonical meaning** pertaining to the extracted keyword. In an example, this allows the extractor component 116 to **disambiguate** between

the state of Washington, Washington, D.C. and George Washington. Additionally, the extractor component 116 can determine a canonical meaning of the term “Washington”, which may be “President Washington.” The extractor component 116 can utilize any suitable extraction technique together with, or as an alternative to, the extraction technique described herein and any such extraction is contemplated by the inventors and intended to fall under the scope of the hereto-appended claims.

Spec. ¶ 57 (emphasis added).

Given this supporting context (*id.*), and on this record, we are persuaded by Appellant’s arguments. We agree with Appellant that the Examiner has not shown by a preponderance of the evidence a teaching or suggestion of “*extracting an entity from the text of the social networking data of the user, the entity comprising a keyword and a disambiguated canonical meaning of the keyword,*” within the meaning of claim 1.

(emphasis added).

Therefore, for essentially the same reasons argued by Appellant, we find the Examiner has not fully developed the record to show how the teachings of Kumar and Davis individually or collectively teach or suggest the disputed limitation, “*the entity comprising a keyword and a disambiguated canonical meaning of the keyword,*” as recited in claim 1.

(emphasis added).

Accordingly, we are constrained on this record to reverse the Examiner’s § 103(a) rejection of independent claim 1. For the same reasons, we also reverse the obviousness Rejection B of independent claims 11 and 21, which recite the disputed limitation of claim 1 in commensurate form using similar language.

However, independent claim 20, also rejected under Rejection B, does not recite the disputed limitation of claim 1, either literally or in sufficiently commensurate form.

Appellant argues: “Independent claim 20, in contrast to assertions by the Examiner, does not recite features that are sufficiently similar to those set forth in claims 1 and 11 to allow the Examiner to fail to examine claim 20 independently from claims 1 and 11.” Appeal Br. 19–20. Appellant further identifies specific claim 20 features that “are not sufficiently similar to those set forth in claims 1 and 11 to enable the Examiner to avoid examination of such features.” Appeal Br. 20.

We agree with Appellant’s contentions and find the Examiner has failed to set forth a prima facie case in rejecting independent claim 20 that satisfies the notice requirement under 35 U.S.C. § 132(a).<sup>4</sup> See Final Act. 10. The Federal Circuit has held, “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). This burden is met by “adequately explain[ing] the shortcomings it perceives so that the applicant is properly notified and able to respond.” *Id.* at 1370. It is

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<sup>4</sup> See *In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011),

[A]ll 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 [35 U.S.C.] § 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.”

only “when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection” that the prima facie burden has not been met and the rejection violates the minimal requirements of 35 U.S.C. § 132. *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990).

Here, we find the rejection of independent claim 20 is so uninformative that it prevents the Appellant from recognizing and seeking to counter the grounds of rejection. In particular, the Examiner supports the rejection of grouped claims 8, 19, and 20 with the *same list* of multiple paragraph citations, without providing any explanation or *specific* mapping as to the best teaching found in the reference for *each* respective claim limitation. See Final Act. 10 (citing “**Kumar, Para. 0073-0076, 0068-0071, 0087-0092; Davis, Para. Abstract, 0065-0073.**”).

We additionally note the Examiner relies upon this same list of paragraphs to reject multiple other claims, also without providing a sufficient mapping of specific claim limitations to specific features found in the cited references. See, for example, the rejection of claim 10, identically citing “**Kumar, Para. 0073-0076, 0068-0071, 0087-0092; Davis, Para. Abstract, 0065-0073**” with no specific mapping or explanation. Final Act. 10.

We emphasize that the Examiner violates our procedural rule (37 C.F.R. §1.104(c)(2)) by reading different claims and different claim limitations on an identical list of paragraphs found in the cited references, without providing any specific mappings or further explanations.

The mapping rule specifically requires: “When a reference is complex or shows or describes inventions other than that claimed by the

applicant, *the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.*” 37 C.F.R.

§1.104(c)(2) (emphasis added). Moreover, an agency is bound by its own regulations. *See Service v. Dulles*, 354 U.S. 363, 388 (1957).

Accordingly, we are constrained on this record to reverse the Examiner’s rejection of independent claim 20. We note claim 20 has no dependent claims.

Because we have reversed Rejection B of independent claims 1, 11, 20, and 21, for the same reasons set forth above for independent claims 1, 11, and 21, we reverse Rejection B of associated dependent claims 2–8, 10, 12–19, and 22.

In light of our reversal of Rejection B of independent claims 1, 11, 20, and 21, we also reverse obviousness rejections C, D, and E of remaining dependent claims 9, and 23–25. On this record, the Examiner has not shown how the additionally cited secondary references overcome the aforementioned deficiencies with the base combination of Kumar and Davis, as discussed above regarding claim 1.

## CONCLUSIONS

Appellant has not shown the Examiner erred with respect to Rejection A of claims 1–10, under pre-AIA 35 U.S.C. § 112, second paragraph.

The Examiner erred with respect to Rejections B, C, D, and E of claims 1–25, under pre-AIA 35 U.S.C. § 103(a).

DECISION SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-10	112, second paragraph	Indefiniteness	1-10	
1-8, 10-22	103(a)	Kumar, Davis		1-8, 10-22
9	103(a)	Kumar, Davis, Benyamin		9
23, 25	103(a)	Kumar, Davis, Mittal		23, 25
24	103(a)	Kumar, Davis, Goodman		24
<b>Overall Outcome</b>			1-10	11-25

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