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KANG LIM
3494 Camino Tassajara #444
Danville, CA 94506

EXAMINER
KASSIM, HAFIZ 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 XAVIER MESTRES, JAVIER DARRIBA,
ALFONSO DE LA NUEZ, ALBERT RECOLONS, and
FRANCESC DEL CASTILLO

——————————

Appeal 2019-003269
Application 13/112,792
Technology Center 3600

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Before JON M. JURGOVAN, MICHAEL M. BARRY, and
IFTIKHAR AHMED, *Administrative Patent Judges*.

AHMED, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from a final rejection of claims 30–45, all of the pending claims. Claims 1–29 are cancelled and claims 46–55 are withdrawn. Appeal Br. 1, 20–24. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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[1] 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 UserZoom Technologies, Inc. Appeal Br. 3.

Technology

The application relates to "gathering usability data for a web site."
Spec. ¶ 2.

Illustrative Claim

Claim 30 is illustrative and reproduced below with certain limitations
at issue emphasized:

> 30.   A computer-implemented   method   of   performing
> unmoderated remote usability testing of a target web site using a
> computing system, the method comprising:
>
> identifying, by the computing system, a target web site, the
> target web site being displayed in a browser application of a
> participant computing system connected to the computing
> system, *wherein the target website includes a virtual tracking*
> *code that is inserted to the target website by the participant*
> *computing system when the target website is being downloaded*
> *by the participant computing system*;
>
> monitoring, by the computing system, a plurality of
> activities of a user of the participant computing system in relation
> to the target web site, wherein monitoring the plurality of
> activities includes receiving an indication of the plurality of
> activities from the participant computing system, the indication
> generated by the participant computing system via executing the
> virtual tracking code;
>
> using, by the computing system, a program to determine a
> usability of the target web site in accordance with the plurality of
> activities; and
>
> modifying, by the computing system, the target web site
> based at least in part on the plurality of activities.

REJECTIONS

Claims 30–33, 35–41, and 43–45 stand rejected under 35 U.S.C. § 103(a) as obvious over the combined teachings of Yavilevich (US 7,941,525 B1; May 10, 2011) and Van Duyne (US 6,859,784 B1; Feb. 22, 2005). Final Act. 6.

Claims 34 and 42 stand rejected under 35 U.S.C. § 103(a) as obvious over the combined teachings of Yavilevich, Van Duyne, and Dong (US 6,738,082 B1; May 18, 2004). Final Act. 15.

ISSUE

Did the Examiner err in finding that Yavilevich teaches or suggests "the target website includes a virtual tracking code that is inserted to the target website by the participant computing system when the target website is being downloaded by the participant computing system," as recited in claim 30?

ANALYSIS

Independent claim 30 recites a "target website [that] includes a virtual tracking code that is inserted to the target website *by the participant computing system when* the target website *is being downloaded* by the participant computing system." Appeal Br. 16 (Claims App.) (emphasis added). Independent claim 38, the only other independent claim, recites a similar limitation.[2]

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[2] Claim 38 recites a non-transitory, computer-readable storage medium comprising instructions to be executed by a computer. Appeal Br. 18 (Claims App.).

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The Examiner finds that Yavilevich teaches or suggests this limitation. According to the Examiner, Yavilevich discloses that "a user can visit a web site that includes one or more web pages," and "[w]hile a web page is displayed the user can perform various activities that are monitored by [a] tracking code." Final Act. 7. That tracking code, the Examiner determines, is "being installed when the user connects to the client computer," and "in response to a request from client computer 100 to download web page 122." Ans. 4 (citing Yavilevich, Abstract, 6:3–23). The Examiner further explains that the tracking code in Yavilevich could be "script 124 and/or script file 132, [and] may start executing automatically or wait for an instruction from some other piece of script in the web page 122." *Id.* The Examiner further finds that Yavilevich discloses that "initially only a part of the tracking code is downloaded during stage 820 and that other parts of a tracking code can be downloaded in response to the execution of the initially downloaded tracking code." *Id.* at 4–5 (citing Yavilevich, 8:31–36 (referring to Fig. 8B)). "Stage 820 conveniently includes stage 802 during which the user visits a certain web page," the Examiner explains. *Id.* at 5 (quoting Yavilevich, 8:36–38) (referring to Fig. 8A).

Appellant argues that Yavilevich teaches "that any website *to be monitored* or evaluated already includes any tracking code *prior to downloading* the website." Appeal Br. 9 (citing Yavilevich, 1:58–2:3). Appellant contends that:

> [T]he Examiner acknowledges that Yavilevich . . . discloses "wherein the <u>subscriber</u> copies the code into each web-site page that is <u>to be monitored</u>. When a visitor to the subscriber's web site ('client' or 'visitor') loads one of the web-site pages into his or her computer, the JavaScript code collects information, including time of day, referring page, page visited, etc."

Id. at 8 (citing Yavilevich, 1:56–66, referring to Final Act. 4). According to Appellant, the subscriber in Yavilevich is "the presumed owner/operator of website to be monitored," not the operator of the client computer, visiting the website. *Id.* at 9. Because "Yavilevich's tracking code is a pre-embedded integral part of the website as it sits, waiting to be requested by a 'visitor,'" Appellant argues "Yavilevich teaches away from Appellant's invention by promulgating a tracking code that is already included in any monitored website by the owner/operator of the website . . . on the web server hosting the website." *Id.* (citing Yavilevich, 1:58–2:3, Fig. 8A, Steps 801, 802) (emphasis omitted). In contrast, Appellant contends, the claimed invention requires the tracking code to be inserted by the participant system while the website is being downloaded, such that website "usability can be tested on *any* web sites including competitions' web sites." *Id.* at 10 (citing Spec. ¶ 23).

The Examiner counters by determining that Yavilevich discloses the insertion of the tracking code "at the participant computer" because "in response to a request from client computer 100 to download web page 122 (using browser 102), the web server 120 returns web page 122 to the client 100 with script 124," i.e., the tracking code. Ans. 6 (citing Yavilevich, Abstract, 6:17–23) (emphasis omitted).

However, the Examiner has not sufficiently explained how Yavilevich teaches or suggests this claim limitation. In Yavilevich, the subscriber, i.e., the website owner, "copies the code into each web-site page that is to be monitored," and "[w]hen a visitor to the subscriber's web site . . . loads one of the web-site pages into his or her computer, the javascript code collects

information." Yavilevich, 1:61–66. Figure 8A, portion of which is reproduced below, shows this order.
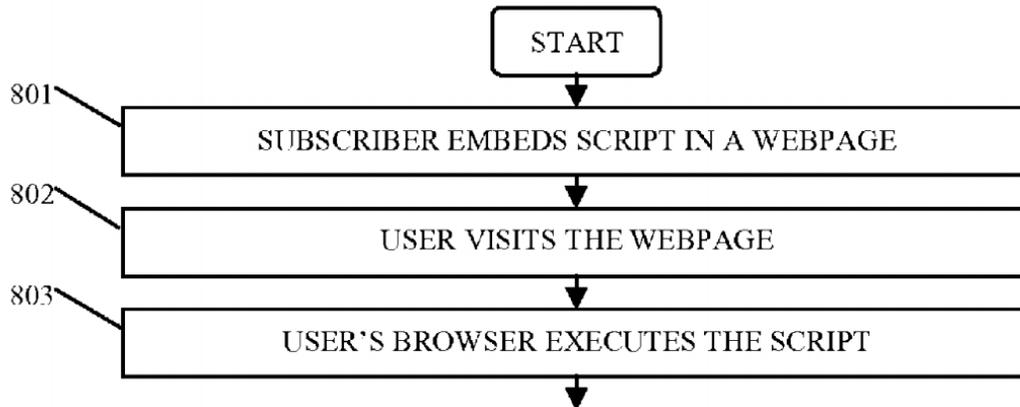

Figure 8A of Yavilevich, above, depicts a flowchart showing the step of the subscriber or website owner embedding the script in a webpage, 801, occurs before the steps of a user visiting the webpage, 802, and the user's browser executing the script, 803. As can be seen, the tracking code is inserted into the webpage to be monitored before a user visits the webpage. Yavilevich states that stage 801 "is a *preliminary* stage that is executed *at the web server* and is *not* an integrated part of method 800 that is executed (at least mainly) by a client computer." Yavilevich, 8:27–30.

The Examiner has not sufficiently explained how the script or tracking code in Yavilevich is inserted "*by the participant computing system when the target website is being downloaded* by the participant computing system," as recited in claim 30. Rather, the tracking code in Yavilevich is inserted at the server computer before the target website is downloaded to the client computer.

The Examiner also does not rely on Van Duyne as teaching this claim limitation in support of the obviousness rejection based on Yavilevich and Van Duyne.

Accordingly, given the record here, we reverse the rejection of independent claims 30 and 38, and their dependent claims 31–37 and 39–45.

DECISION

For the reasons above, we reverse the Examiner's decision rejecting claims 30–45.

In summary:

Claims Rejected	35 U.S.C. §	References/Basis	Affirmed	Reversed
30–33, 35–41, 43–45	103(a)	Yavilevich, Van Duyne		30–33, 35–41, 43–45
34, 42	103(a)	Yavilevich, Van Duyne, Dong		34, 42
Overall Outcome				30–45

REVERSED