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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CARLOS I. SANTAELLA, YURI A. TIJERINO,
JUSTIN A. NGUYEN, and DUC N. PHAM

Appeal 2019-003894
Application 14/132,786
Technology Center 3600

Before DAVID M. KOHUT, NORMAN H. BEAMER, and
GARTH D. BAER, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 24 and 25.² We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

BACKGROUND

A. The Invention

Appellant’s invention is directed to an “incentive rewards program that enables an initiating participant entity to dynamically specify incentive rewards point values with respect to defined activities that may be variously performed by other participant entities and by consumers.” Abstract.

Independent claim 24 is representative and reproduced below, with emphasis added to disputed elements:

24. A computer system implementing an incentive rewards allocation program among vertically tiered entities operating for the delivery of at least one defined product to a consumer, said computer system comprising:
a) a first computer subsystem operative to implement a designed instance of an incentive awards program establishing a specification of defined point grants to be issued to reward accounts in response to

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Fide PBC Europe SL as the real party in interest. Appeal Br. 1.

² The Claims Appendix lists claims 3–7 and 9–25. The Examiner considers claims 3–7 and 9–23 as withdrawn (Final Act. 1–3), whereas Appellant considers “claims 3–7 and 9–25 are pending” but that “[t]he rejection of claims 24 and 25 is being appealed.” Appeal Br. 2. Accordingly, we will only consider the rejection of claims 24 and 25 in this Appeal.

defined activities performed in furtherance of said designed instance;

b) a second computer subsystem, coupled to said first computer subsystem, operative to communicate via a communications network with first and second classes of users, said first class of users including campaign initiators and retail tier operators, *wherein a campaign initiator communicates through said second computer subsystem with said first computer subsystem to create said designed instance including said specification*, said second class of users including consumers, wherein a consumer communicates with said second computer system to identify said defined activities as specified in relation to said designed instance, wherein said consumer performs a chosen one of said defined activities; and

c) a third computer subsystem, coupled to said first and second computer subsystems, operative to communicate with said retail tier operator to retrieve predetermined sales data including a record of said chosen one of said defined activities, said record including an account identifier uniquely associable by said third computer subsystem with said consumer, *said third computer system being further operative to perform a point grant to an account identified by said account identifier according to said specification with respect to said chosen one of said defined activities.*

Appeal Br. 25–26 (Claims Appendix).

B. The Rejection on Appeal³

The Examiner rejects claims 24 and 25 under 35 U.S.C. § 103 as unpatentable over Mooers (US 2002/0046091 A1; Apr. 18, 2002), Fordyce

³ The rejection of claims 24 and 25 under 35 U.S.C. § 101 has been withdrawn in the Answer. *See* Final Act. 3; Ans. 3.

(US 2011/0087530 A1; Apr. 14, 2011), and Gaylord (US 2008/0162282 A1; July 3, 2008). Final Act. 7.

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellant's arguments. Arguments Appellant could have made but chose not to make are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We adopt the Examiner's findings and conclusions as our own, and add the following primarily for emphasis.

B. Obviousness Rejection of Claims 24 and 25

Appellant's entire argument regarding the rejection of independent claim 24 is that

the combination of Mooers, Fordyce and Gaylord fails to disclose:

a second computer subsystem, coupled to said first computer subsystem, operative to communicate via a communications network with first and second classes of users, said first class of users including campaign initiators and retail tier operators, ***wherein a campaign initiator communicates through said second computer subsystem with said first computer subsystem to create said designed instance including said specification***, said second class of users including consumers, wherein a consumer communicates with said second computer system to identify said defined activities as specified in relation to said designed instance, wherein said consumer performs a chosen one of said defined activities . . .

a third computer subsystem . . . operative to communicate with said retail tier operator to retrieve predetermined sales data including a record of said chosen one of said defined activities,

said record including an account identifier uniquely associable by said third computer subsystem with said consumer, said ***third computer system being further operative to perform a point grant to an account identified by said account identifier according to said specification with respect to said chosen one of said defined activities.***

Appeal Br. 16–17 (emphasis in original).

We do not find this argument persuasive as it amounts to mere attorney argument unsupported by factual evidence. *See In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (stating that attorney’s arguments cannot take the place of evidence). Additionally, regarding the claimed “campaign initiator” highlighted above, the Examiner finds that Mooers discloses

computer subsystems connected via a communications network, wherein the “Internet TCP/IP” is a communications network, [and] the “subscriber” is a campaign initiator/retail tier operator first class user on the illustrated second computer subsystem representation

Ans. 4 (citing Mooers Fig. 1) (emphasis omitted). Further, the Examiner finds that

Mooers [discloses] an “interactive incentive marketing system” that enables users to tailor and adjust their incentive programs which is interpreted as passages teaching a campaign initiator creating a designed instance of an incentive rewards program with [a] specification.

Ans. 4 (citing Mooers ¶ 23) (emphasis omitted).

Regarding the claimed “third computer subsystem” highlighted above, the Examiner finds that Fordyce discloses

the usage of account identifiers of users for loyalty/rewards programs, also disclosing the storage of loyalty/rewards program information such as rewards points and purchases

details under the user accounts, also disclosing loyalty/rewards program rules in which benefits/rewards are based on purchases/defined activities.

Ans. 7 (citing Fordyce ¶¶ 30–33) (emphasis omitted).

The Examiner finds that Fordyce further discloses “loyalty/rewards program rules for accumulating rewards points for program rules defined transactions which are stored using an account identifier” (Ans. 7, citing Fordyce ¶ 162) (emphasis omitted), and “the usage of an account identifier to make a purchase and the storage of this purchase data as part of a loyalty/rewards record associated with the account identifier.” Ans. 7 (citing Fordyce ¶ 165) (emphasis omitted).

The Examiner also finds that Fordyce discloses “an example of utilizing an account identifier to determine a rewards program, request/receive/store activity details, and determine benefits to be awarded to user associated with account identifier according to define rewards program rules.” Ans. 7 (citing Fordyce ¶ 213) (emphasis omitted).

Additionally, regarding the claimed “third computer subsystem” highlighted above, the Examiner finds that Gaylord discloses “different specified defined activities a user/consumer can perform to be granted points in a user/consumer account such as receiving, storing, displaying, purchasing, or otherwise processing advertisements, websites, or other content” (Ans. 7, citing Gaylord ¶¶ 23–25) (emphasis omitted), and further discloses “the usage of user information that uniquely identifies the user and/or the user’s device, which is interpreted as an identifier uniquely associable with a consumer as claimed by appellant.” Ans. 8 (citing Gaylord ¶¶ 36–38) (emphasis omitted).

In summary, the Examiner finds that “the utilization of account identifiers associated with transactions and consumers to track transactions and award points is applying a known technique to a known device, method, or product to yield predictable results.” Ans. 8. We agree with the Examiner’s detailed findings.

Appellant’s argument regarding independent claim 24 is merely attorney argument without factual support, and Appellant fails to challenge the Examiner’s detailed findings. Appellant’s argument regarding dependent claim 25 similarly amounts to mere attorney argument without factual support, and Appellant fails to challenge the Examiner’s detailed findings. *See* Ans. 9–12. Accordingly, we sustain the Examiner’s obviousness rejection of claims 24 and 25.

CONCLUSION

In summary:

| Claims Rejected | 35 U.S.C. § | Reference(s)/Basis | Affirmed | Reversed |
|------------------------|--------------------|---------------------------|-----------------|-----------------|
| 24, 25 | 103(a) | Mooers, Fordyce, Gaylord | 24, 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)(1)(iv).

AFFIRMED