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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NIGEL KING and THIJS JONATHAN BAX

Appeal 2019-004516
Application 14/539,858
Technology Center 3700

Before MICHAEL J. FITZPATRICK, WILLIAM A. CAPP, and
PAUL J. KORNICZKY, *Administrative Patent Judges*.

CAPP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ seeks our review under 35 U.S.C. § 134(a) of the final rejection of claims 1–3, 5–12, 14–19, and 21. 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 Oracle International Corporation as the Applicant and real party in interest. Appeal Br. 3.

THE INVENTION

Appellant's invention entails data management and alert notification as it relates to consumer purchase behavior. Spec. ¶ 7. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A system comprising:

a smart phone of a user, the smart phone comprising an electronic serial number (ESN) of the smart phone and a scannable barcode uniquely identifying the user, wherein the smart phone displaying the scannable barcode is used in place of providing a physical card having a physical barcode identifying the user, wherein identification of the user via the smart phone displaying the scannable barcode is performed to correlate data between a first computer system and a second computer system;

the first computer system comprising:

an in-store infrastructure comprising a plurality of sensors, the plurality of sensors comprising multiple types of sensors, wherein a first type of sensor comprises a beacon reader, the beacon reader detecting a location of the user in a store via the smart phone of the user to provide alerts, the beacon reader located in the store, and a second type of sensor comprises a barcode reader, the barcode reader uniquely identifying the user via the scannable barcode displayed on the smart phone, and
a first database storing a set of data records having at least some items corresponding to a personal identifier of the user, wherein the user is identified by the scannable barcode displayed on the smart phone received by the barcode reader, the personal identifier is derived based at least in part on at least one of the ESN of the smart phone of the user read by the beacon reader or the scannable barcode, the at least some items corresponding to items stored in a first format at a current period of time; and

the second computer system comprising:

a second database having stored data received from the first database over a period of time, wherein future data items associated to the personal identifier retrieved from the first computer system are added to a portion of the stored data;

- a computer processor to execute a set of program code instructions; and
- a memory to hold the set of program code instructions, in which the set of program code instructions comprises program code to perform:
 - retrieving the set of data records from the first database based at least in part on the personal identifier;
 - accessing, from the set of data, a set of records that pertain to the personal identifier, wherein accessing the set of data comprises use of at least one of: the personal identifier, and a credential;
 - mapping the set of records from the first format to characteristics of the items and calculating up-to-date data from a result of the mapping to a second format for the current period;
 - processing, by a rules engine, a set of one or more rules over the second format, the rules engine accessing a rule base comprising the set of one or more rules for analysis of the second format of the set of records, wherein analysis of the second format of the set of records comprises:
 - determining a tracking history period,
 - applying the up-to-date data calculated for the current period to the stored data within the tracking history period, and
 - calculating moving averages based at least in part on the up-to-date data in the second format applied to the stored data;
 - retrieving, by a database engine, at least one aspect of a profile pertaining to the personal identifier;
 - analyzing at least a portion of the second format of the set of records to determine a value that is correlated with the at least one aspect of the profile, the value based at least in part upon the analysis of the second format of the set of records correlating to the at least one aspect of the profile pertaining to the personal identifier; and
 - sending an alert to the user via the smart phone of the user when the value determined meets certain thresholds of a target.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

NAME	REFERENCE	DATE
Shamoun	US 2003/0163354 A1	Aug. 28, 2003
Bisogno	US 2003/0165799 A1	Sept. 4, 2003
Simons-Nikolova	US 2008/0255955 A1	Oct. 16, 2008
Moscovitch	US 2009/0096628 A1	Apr. 16, 2009
Yang	US 2009/0106124 A1	Apr. 23, 2009
Begley	US 2011/0277024 A1	Nov. 10, 2011
Wengrovitz	US 2012/0004972 A1	Jan. 5, 2012
WSJ	(see note 2 below) ²	Feb. 18, 2013
Luecke	US 2013/0209971 A1	Aug. 15, 2013

The following rejections are before us for review:^{3,4}

1. Claims 1–3, 5, 7, 9–12, 14, 16, 18, and 19 are rejected under 35 U.S.C. § 103 as being unpatentable over Simon-Nikolova, Shamoun, Luecke, Wengrovitz, and Moscovitch.

2. Claims 6 and 15 are rejected under 35 U.S.C. § 103 as being unpatentable over Simon-Nikolova, Shamoun, Luecke, Wengrovitz, Moscovitch and Yang.

3. Claims 8, 17, and 21 are rejected under 35 U.S.C. § 103 as being unpatentable over Simon-Nikolova, Shamoun, Luecke, Wengrovitz, and WSJ.

² *Should Employees Get Insurance Discounts for Completing Wellness Programs?* Wall Street Journal, Feb. 18, 2013.

³ Subsequent to the Final Action, Appellant cancelled claims 4, 13, and 20. Claims App.

⁴ Rejections under 35 U.S.C. §§ 101, 112(b) have been withdrawn by the Examiner. Ans. 20.

OPINION

*Unpatentability of Claims 1–3, 5, 7, 9–12, 14, 16, 18, and 19
over Simon-Nikolova, Shamoun, Luecke, Wengrovitz, and Moscovitch*

Claim 1

Appellant argues claims 1–3, 5, 7, 9–12, 14, 16, 18, and 19 as a group. Appeal Br. 22–30. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that the cited art, in combination, discloses the invention and that it would have been obvious to a person of ordinary skill in the art at the time of the invention to combine them in the manner proposed in the rejection to achieve the claimed invention. Final Action 17–24. According to the Examiner, a person of ordinary skill in the art would have done this, among other things, to identify a customer, access information related to the customer, and assist the customer in the store. *Id.* at 22–23.

Appellant raises two arguments in traverse of the rejection. First, Appellant argues that the prior art, and Moscovitch in particular, fails to disclose a beacon reader that detects the location of a user’s smart phone in a store as claimed. Appeal Br. 27–29; Reply Br. 4. Second, Appellant argues that the cited art fails to disclose a smart phone with a scannable barcode that identifies a user so as correlate data between a first and second computer system. Appeal Br. 30.

In response to the first argument regarding a beacon reader, the Examiner directs our attention to the Final Rejection where the Examiner cited paragraphs 22–24 of Moscovitch and found that Moscovitch explicitly requires determination of the location of a user’s cell phone in the store, because directional instructions are provided to the user, on the user’s cell phone, in relation to the location of the user. Ans. 21–24. The Examiner

interprets “beacon reader” as encompassing in-store devices that track a location of a user’s mobile device. *Id.* at 23.

In reply, Appellant argues that Moscovitch merely locates a particular item in the store, not a location of the user (user’s mobile phone) in the store. Reply Br. 4. Appellant argues that the passage cited by the Examiner in the rejection, namely paragraphs 22–24, supports Appellant’s position and refutes the Examiner’s position. *Id.* at 5 (quoting Moscovitch ¶¶ 22–23).

Moscovitch is directed to a system for purchasing a particular item within a store. Moscovitch, Abstract. In operation, a user enters a store and approaches computer kiosk 12, into which the user enters his or her name and data associated with a product to be sought and purchased. *Id.* ¶ 20. On the kiosk display, several products may be illustrated and the user can choose a particular product. *Id.* The user may then issue a command indicating that the user wishes to go to the location in the store where the product is located. *Id.* In response, the computer kiosk sends a signal, via the communication apparatus, that causes an indicator display near the product to flash the user's name. *Id.* When the user approaches the general area where the product is located, the user’s flashing name on the display indicates that the particular product is nearby. *Id.* Paragraph 24 of Moscovitch further teaches that:

To further guide the user/purchaser, the cell phone can provide audible messages to direct the user to the particular item. Thus, the cell phone might convey the following message: “walk northwards until you reach the second aisle,” and then just before reaching the second aisle “turn east at the next aisle.” . . . *Any navigation system known to those in the art that can track the position of a cell phone and direct the user to a specified location where the item to be purchased is located may be used.*

Id. ¶ 24 (emphasis added).

Appellant’s argument that Moscovitch only deals with the location of an item, but not the location of the user (user’s cell phone) cannot be reconciled with the disclosure that “*any navigation system. . . that can track the position of a cell phone . . . may be used.*” *Id.* Moreover, Appellant does not explain how Moscovitch can alert a user “*just before reaching the second aisle*” if the system is not tracking the location of the user’s cell phone. Thus, having considered the competing positions of Appellant and the Examiner and reviewing the evidence of record, including paragraph 24 of Moscovitch, we determine that the Examiner’s finding of fact is supported by a preponderance of the evidence.

We now address Appellant’s second argument that the cited art fails to disclose a smart phone with a scannable barcode as claimed. Appeal Br. 30. In the rejection, the Examiner finds that Simons-Nikolova discloses a step of identifying and associating data with a user. *Id.* Final Action 22 (citing Simons-Nikolova ¶ 38). The Examiner further finds that Wengrovitz teaches a smart phone loyalty system in which an application on a user’s smart phone displays a barcode that can be read by a barcode reader connected to a point-of-sale appliance. *Id.* at 23 (citing Wengrovitz ¶ 9). The Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combined teachings of Simons-Nikolova, Shamoun, and Lueck to include a smartphone app that displays a barcode to a barcode reader as taught by Wengrovitz. *Id.* Notwithstanding such explicit findings in the rejection, Appellant’s entire argument in the Appeal Brief amounts to a recital of the claim limitation and the naked assertion that: “The Office Action cited to absolutely nothing within the cited references to disclose the claim

limitations -- no citation at all to the cited references.” Appeal Br. 30 (emphasis supplied by Appellant).

In the Answer, the Examiner reiterates the findings in the final rejection and reiterates that the combination of Simons-Nikolova and Wengrovitz discloses providing computer systems with a user ID by means of a barcode from a user’s phone that is read by a barcode reader on a cash register system. Ans. 24–27.

In reply, Appellant accuses the Examiner of raising a new basis for the rejection “for the first time” in the Examiner’s Answer. Reply Br. 5–6. Then, Appellant asserts Simons-Nikolova and Wengrovitz cannot be modified as proposed by the Examiner because doing so would change the principle of operation of Simons-Nikolova and would also render it unsatisfactory for its intended purpose. *Id.* 6–7. Appellant argues that Simons-Nikolova teaches the use of a “personal card with a code” instead of a more expensive electronic device. *Id.* Essentially, Appellant argues that the added cost of using an electronic device, instead of a plastic card, would change the principle of operation of Simons-Nikolova and render it unsatisfactory for its intended purpose. In other words, Appellant considers the lowered cost associated with a plastic card to be Simons-Nokolova’s principle of operation and intended use.

Appellant’s arguments are unpersuasive for numerous reasons. First of all, we do not accept Appellant’s argument that the Examiner raised a new basis of rejection “for the first time” in the Answer. The Examiner laid out the basis for the rejection at least in pages 22–23 of the rejection, which basis was quoted, in pertinent part, *verbatim*, in the Answer. *Compare* Final Action 22–23, *with* Ans. 24–27. In our opinion, the findings of fact and

conclusions of law initially set forth in the rejection were sufficient to put Appellant on notice of the basis for the rejection such that any arguments regarding changing the principle of operation and rendering a reference unsatisfactory for its intended purposes should have been raised in the Appeal Brief and not, for the first time, in the Reply Brief. *See* 37 C.F.R. § 41.41(a)(2).⁵ Appellant has not demonstrated good cause to assert changing the principle of operation and unsatisfactory for intended purpose arguments for the first time in the Reply Brief. *Id.*

Even if we were to consider Appellant's new arguments raised, for the first time, in the Reply Brief, neither argument has any merit. We do not view cost savings associated with use of a plastic card to be Simons-Nikolova's "principle of operation." Simons-Nikolova discloses a weight management system that exchanges information between a user and various computer modules coupled to a network. Simons-Nikolova, Abstract. The system's principle of operation is to manage data to assist a user in managing his or her weight. That principle remains intact whether the user identification is maintained on a plastic card or a cell phone. Moreover, Simons-Nikolova explicitly teaches that a mobile phone may be used instead of the personal card for providing the user identification code to the system. Simons-Nikolova, ¶ 49. Given the explicit teachings of paragraph 49, it cannot be said that using a mobile phone to provide a user identification

⁵ "Any argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner's answer, including any designated new ground of rejection, will not be considered by the Board for purposes of the present appeal, unless good cause is shown." *Id.*

code instead of a plastic card either changes the principle of operation or Simons-Nikolova or renders it unfit for its intended purpose.

We have fully considered Appellant's remaining arguments and find them to be without merit. In view of the foregoing discussion, we determine the Examiner's findings of fact are supported by a preponderance of the evidence and that the Examiner's legal conclusion of unpatentability is well-founded. Consequently, we sustain the Examiner's unpatentability rejection of claims 1–3, 5, 7, 9–12, 14, 16, 18, and 19.

*Unpatentability of Claims 6 and 15 over
Simon-Nikolova, Shamoun, Luecke, Wengrovitz, Moscovitch, and Yang*

Claims 6 and 15 depend, directly or indirectly, from independent claims 1 and 11 respectively. Claims App. Appellant does not argue for the separate patentability of these claims apart from arguments presented with respect to claims 1 and 11, which we have previously considered. Appeal Br. 30–31. We sustain the Examiner's rejection of claims 6 and 15. *See* 37 C.F.R. § 41.37(c)(1)(iv); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (explaining that Rule 41.37 requires more than recitation of the claim elements and a naked assertion that the elements are not found in the prior art).

*Unpatentability of Claims 8, 17, and 21
over Simon-Nikolova, Shamoun, Luecke, Wengrovitz, and WSJ*

Claims 8, 17, and 21 depend from independent claims 1, 11, and 18 respectively. Claims App. Appellant does not argue for the separate patentability of these claims apart from arguments presented with respect to claims 1, 11, and 18, which we have previously considered. *See* Appeal

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Br. 31–32. We sustain the Examiner’s rejection of claims 8, 17, and 18. 37
C.F.R. § 41.37(c)(1)(iv); *Lovin*, 652 F.3d at 1357.

CONCLUSION

In summary:

Claims Rejected	§	Reference(s)/Bases	Aff’d	Rev’d
1-3, 5, 7, 9-12, 14, 16, 18, 19	103	Simon-Nikolova, Shamoun, Luecke, Wengrovitz, Moscovitch	1-3, 5, 7, 9-12, 14, 16, 18, 19	
6, 15	103	Simon-Nikolova, Shamoun, Luecke, Wengrovitz, Moscovitch, Yang	6, 15	
8, 17, 21	103	Simon-Nikolova, Shamoun, Luecke, Wengrovitz, WSJ	8, 17, 21	
Overall Outcome			1-3, 5-12, 14-19, 21	

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