



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
**United States Patent and Trademark Office**  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/630,418	02/24/2015	Michael A. Marth	P5240-US-ORG4	1022
108982	7590	07/02/2020	EXAMINER	
SBMC			ANDREI, RADU	
116 W. Pacific Avenue			ART UNIT	
Suite 200			PAPER NUMBER	
Spokane, WA 99201			3682	
			NOTIFICATION DATE	
			DELIVERY MODE	
			07/02/2020	
			ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

doCKET@sbmc-law.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* MICHAEL A. MARTH, KEN BEATON, and  
PRADHAN S. RAO

---

Appeal 2019-004819  
Application 14/630,418  
Technology Center 3600

---

Before JOHNNY A. KUMAR, JENNIFER S. BISK, and JOYCE CRAIG,  
*Administrative Patent Judges.*

BISK, *Administrative Patent Judge.*

DECISION ON APPEAL<sup>1</sup>

---

<sup>1</sup> Throughout this Decision we have considered the Specification filed February 24, 2015 (“Spec.”), the Final Rejection mailed October 16, 2018 (“Final Act.”), the Appeal Brief filed March 6, 2019 (“Appeal Br.”), the Examiner’s Answer mailed April 15, 2019 (“Ans.”), and the Reply Brief filed May 31, 2019 (“Reply Br.”).

## 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 1–5, 7–11, 13–15, and 21–27. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

## CLAIMED SUBJECT MATTER

The claims are directed to content creation and deployment collaboration techniques. Spec. ¶ 4. Claims 1, 10, and 21 are independent. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. In a digital medium environment for creating a marketing activity, where the marketing activity involves creation of content as part of the marketing activity, a system to create the content comprising:

one or more processors;

one or more computer readable storage media storing instructions that, responsive to execution by the one or more processors, implement one or more modules to perform operations comprising:

controlling functionality of a content creation service that is exposed to a content creator via a network to create content using one or more tools provided by the content creation service;

tracking deployment of the content created by the content creator with the content creation service, through the use of a tracking monitor for each item of content that monitors a number of interactions with a marketing activity the content has been used in, the content created

---

<sup>2</sup> We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Adobe, Inc. Appeal Br. 3.

by the content creator comprising more than one item of content;

determining a level of a plurality of levels of deployment, as part of one or more marketing activities, of the content created by the content creator, each of the plurality of levels of deployment indicating a threshold number of interactions with the content created by the content creator; and

associating a badge with a user profile of the content creator in a user interface of the content creation service that is indicative of the level of deployment of the content created by the content creator.

#### REFERENCE

The prior art relied upon by the Examiner is:

Name	Reference	Date
O'Donnell	US 9,396,279 B1	July 19, 2016
Jablonski	US 2007/0180523 A1	Aug. 2, 2007
Gausereide	US 2011/0008017 A1	Jan. 13, 2011
Garcia	US 2014/0089322 A1	Mar. 27, 2014
Dudas	WO 2008/033840 A2	Mar. 20, 2008

#### REJECTIONS<sup>3</sup>

Claims 1–5, 7–11, 13–15, 21–24, and 27<sup>4</sup> are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dudas, O'Donnell, and Jablonski. Final Act. 7–23.

---

<sup>3</sup> The Examiner also rejected claims 1–5, 7–11, 13–15, and 21–27 under 35 U.S.C. § 101 and claim 15 under 35 U.S.C. § 112(a). Final Act. 2–6. The Examiner withdrew these rejections in the Answer. Ans. 3. Upon further prosecution, the Examiner may wish to reconsider whether the claims are directed to non-patentable subject matter under 35 U.S.C. § 101.

<sup>4</sup> The Examiner lists claims 1–15, 21–24, and 27 in this rejection (Final Act. 7), but claims 6 and 12 have been canceled (Appeal Br. 38, 40 (Claims App.)).

Claim 25 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Dudas, O’Donnell, Jablonski, and Gausereide. Final Act. 23–24.

Claim 26 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Dudas, O’Donnell, Jablonski, and Garcia. Final Act. 24–26.

### OPINION

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). To the extent Appellant has not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. 37 C.F.R. § 41.37(c)(1)(iv).

We have considered all of Appellant’s arguments and any evidence presented. We highlight and address specific findings and arguments for emphasis in our analysis below.

#### *Rejection of Claims 1–5, 7–11, 13–15, 21–24, and 27 under 35 U.S.C. § 103*

The Examiner rejects claims 1–5, 7–11, 13–15, 21–24, and 27 as obvious over the combination of Dudas, O’Donnell, and Jablonski. Final Act. 7–23. Specifically, the Examiner relies on Dudas as teaching the majority of the limitations (Final Act. 7–8), but relies on O’Donnell “to illustrate the functionality of a badge in the same or similar context” (*id.* at 8) and on Jablonski “to illustrate the functionality of tracking deployment of content in the same or similar context” (*id.* at 9).

Appellant argues that O’Donnell does not teach or suggest a badge as recited in claims 1, 10, and 21. Appeal Br. 26–30, 33–35; Reply Br. 4–9. According to Appellant, “O’Donnell would have no use for ‘a badge’ as

claimed” because “O’Donnell describes tracking and displaying markups of webpages and content of webpages by various users.” *Id.* at 29–30.

Appellant does not point to, nor do we find, any definition of the claim term “badge” in the Specification. The Specification states that “[b]adges may also be configured for association with respective items of content and/or user profiles of content creators.” Spec. ¶ 5. The Specification also states that “badges may be indicative of an amount of deployment of the content as part of one or more marketing activities, e.g., associated with particular levels, includ[ing] a counter indicating a number of uses in a marketing activity” and “may also be indicative that may be awarded based on thresholds, content type, views, downloads, purchases, output channels, length of service, length of asset in service, content creation service peer or deployment referrals, social network usages and mentions . . . and so on.” *Id.* ¶ 45. Further, the Specification two example scenarios of using badges as (1) associated with content items to indicate a counter indicating interactions as part of a marketing activity, or (2) associated with user accounts to indicate deployment of content created by the content creator as part of one or more marketing activity. *Id.* Fig. 6 (showing examples of badges 628, 630, and 632 associated with respective content items, and badges 634 and 636 general badges associated with the creator), ¶¶ 80–84; *see also id.* Fig. 30, ¶¶ 45, 56, 71, 76, 138, 139. According to the Specification, “badges may be utilized to encourage participation by content creators as part of the online social-media based portfolio service as well as marketers in determining a reputation of content creators to locate content creators of interest.” *Id.* ¶ 139.

Given these uses of the term badge in the Specification, the Examiner turns to a dictionary to construe the term as “a vehicle to make visible information related to a certain piece of content, e.g. the amount of deployment.” Ans. 4 (quoting Merriam-Webster dictionary, Spec ¶ 45). Appellant does not explicitly dispute this construction, arguing instead that the Examiner’s reliance on the dictionary definition and discussion of the use of the term badge in the Specification (i.e., the Examiner’s explicit claim construction) occurs for the first time in the Answer and “the Examiner may not rely on Appellant’s specification as being prior art unless Appellant admits that the relied upon portions of Appellant’s specification are prior art.” Reply Br. 7–8.

We agree that the Specification and claims use the term badge in a very broad manner consistent with the dictionary definitions. Specifically, we find that the term badge, as used in the claims, encompasses indicating, to users, information related to a certain piece of content or a particular user account. Spec. ¶¶ 45, 56, 71, 76, 80–84, 138, 139. This information includes, but is not limited to, the number of deployments of content and/or the number of interactions with that content in marketing activities. *Id.* Moreover, we note that, although it shows several non-limiting examples (for example, in Figure 6), the Specification does not limit the ways such information may be indicated to a user. For example, the information may be visibly displayed using icons or text or a combination of the two.

Based on this understanding of the term badge, we agree with the Examiner that O’Donnell teaches or suggests a badge. For example, we agree that icon 1081 indicating a “desired markup” and 1083 displaying

“identification of the user and a date time stamp” shown in O’Donnell Figure 10B qualify as badges. O’Donnell, Fig. 10B, 14:8–30.

Appellant also argues that the cited references do not teach or suggest “number of interactions with the content” as recited by claim 1 or “number of times the content has been accessed” (the “number limitation”) as recited by claims 10 and 21. Appeal Br. 31–33. According to Appellant, “Jablonski merely describes a publisher could count the number of accesses by *distinct* consumers,” which is different from the claim language. *Id.* at 33.

The Examiner cites to several references as teaching this limitation, which occurs twice within claim 1. *See, e.g.*, Appeal Br. 37:13, 17 (claim 1), 39 (claim 10), 40–41 (claim 21). First, the Examiner points to Dudas’s disclosure of remixes. Final Act. 7–8 (citing Dudas ¶¶ 16, 171–175); Ans. 6–7 (citing Dudas ¶¶ 16, 24, 26, 27, 88, 89, 94, 171–175). Second, the Examiner points to Jablonski’s disclosure of tags including dynamic usage-tracking information. Final Act. 9 (citing Jablonski Abstract, claims 1, 10, ¶¶ 10, 11, 20); Ans. 8–9.

We, therefore, do not agree with Appellant’s contention that “[t]he Examiner admits that Dudas does not disclose these features.” Appeal Br. 31–32. In the Reply Brief Appellant also does not address the Examiner’s reliance on Dudas as teaching or suggesting the number limitation. Moreover, we agree with the Examiner that Jablonski teaches or suggests the number limitation because it explicitly states that it tracks “usage of on-line content.” Jablonski Abstract. Appellant does not point to, nor do we see, where Jablonski limits that usage to *distinct* consumers. *See* Jablonski ¶¶ 10–11. Even if Jablonski’s teaching is so limited, Appellant does not point to, nor do we see, any limit in the claim language or Specification that

requires the number limitation to count *all* interactions by users. Instead, this limitation is broad enough to include counts of distinct consumer usage.

Accordingly, we are not persuaded of error in the Examiner's rejection of claim 1, 10, and 21 as obvious over the combination of Dudas, O'Donnell, and Jablonski. Appellant does not make any additional arguments for claims 1–5 and 7–9, which depend from claim 1, claims 11, 13–15, and 27, which depend from claim 10, or claims 22–24, which depend from claim 21. Appeal Br. 35. Accordingly, we are not persuaded of error in the Examiner's rejection of claims 2–5, 7–9, 13–15, 22–24, and 27 as obvious over the combination of Dudas, O'Donnell, and Jablonski.

#### *Claim 25*

The Examiner rejects dependent claim 25 over Dudas, O'Donnell, Jablonski, and Gausereide. Final Act. 23–24. Claim 25 depends from claim 21. Appellant does not make additional arguments for claim 25. Appeal Br. 35–36. Accordingly, we are not persuaded of error in the Examiner's rejection of claim 25 as obvious over the combination of Dudas, O'Donnell, Jablonski, and Gausereide.

#### *Claim 26*

The Examiner rejects dependent claim 26 over Dudas, O'Donnell, Jablonski, and Garcia. Final Act. 24–26. Claim 26 depends from claim 1. Appellant does not make additional arguments for claim 26. Appeal Br. 36. Accordingly, we are not persuaded of error in the Examiner's rejection of claim 26 as obvious over the combination of Dudas, O'Donnell, Jablonski, and Garcia.

CONCLUSION

We affirm the Examiner's rejections.

DECISION SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis/ Reference(s)</b>	<b>Affirmed</b>	<b>Reversed</b>
1-5, 7-11, 13-15, 21-24, 27	103(a)	Dudas, O'Donnell, Jablonski	1-5, 7-11, 13-15, 21-24, 27	
25	103(a)	Dudas, O'Donnell, Jablonski, Gausereide	25	
26	103(a)	Dudas, O'Donnell, Jablonski, Garcia	26	
<b>Overall Outcome</b>			1-5, 7-11, 13-15, 21-27	

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) (1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED