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14/313,235	06/24/2014	David M. Bjordammen	ARRH0024	8599

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EXAMINER	
REAGAN, JAMES A	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID M. BJORDAMMEN

Appeal 2020-000656
Application 14/313,235
Technology Center 3600

Before ELENI MANTIS MERCADER, NORMAN H. BEAMER, and GARTH D. BAER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–19, which are all the pending claims.[2] We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

Appellant's claimed invention is directed to "[a]n adaptive bit rate system us[ing] adaptive streaming to deliver content to client devices capable of adaptive bit rate streaming" and "include[s] monitoring a client action or inaction as it relates to advertisement skipping for future advertisement selections" (Abstract).

Independent claim 1, reproduced below with emphases added, is representative of the subject matter on appeal:

> 1. A network-based method for ad management in an adaptive bit rate network, the method comprising:
>
> generating a manifest file referencing adaptive bit rate media segments that occur within a first programming content period of at least one of a plurality of differently encoded versions of a programming content for retrieval by a client's adaptive bit rate client device,
>
> identifying a start of an ad break that is associated with the manifest file;

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies ARRIS Technology, Inc. as the real party in interest (Appeal Br. 3).

[2] Claim 20 was cancelled in an after-final amendment entered by the Examiner on Jan. 14, 2019.

responsive to an indication that desired adaptive bit rate media segments during the first programming period have been retrieved:

selecting a first advertisement content using a network-based management system for providing to the client's adaptive bit rate client device;

appending to the manifest file references to the first advertisement content, wherein the first advertisement is associated with a first playout time;

identifying whether the adaptive bit rate client device skips the first advertisement content during the playout time; and

correlating the client's adaptive bit rate client device with the first advertisement based on the skipping action in a subscriber history storage for reference for selecting future advertisements for the client, *the correlating based on the network-based management system independent of control by the client that occurred prior to the first programming content period*.

(Claims Appendix (Appeal Br. 8)).

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is the following:

Name	Reference	Date
Dmitriev	US 7,806,329 B2	Oct. 5, 2010
Stern	US 8,855,470 B2	Oct. 7, 2014
Dhruv	US 9,049,494 B2	June 2, 2015
Henry	US 9,082,092 B1	July 14, 2015
Shkedi	US 2009/0172723 A1	July 2, 2009
Swaminathan	US 2014/0040026 A1	Feb. 6, 2014
Rapaport	US 2014/0236953 A1	Aug. 21, 2014

REJECTIONS

The Examiner made the following rejections:

Claims 1–3, 6, 8–12, and 14–19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Swaminathan, Henry, Dmitriev, and Rapaport. Final Act. 7.

Claim 4 stands rejected under 35 U.S.C. § 103 as being unpatentable over Swaminathan, Henry, Dmitriev, Rapaport, and Shkedi. Final Act. 20.

Claims 5 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Swaminathan, Henry, Dmitriev, Rapaport, and Stern. Final Act. 21.

Claim 13 stands rejected under 35 U.S.C. § 103 as being unpatentable over Swaminathan, Henry, Dmitriev, Rapaport, and Dhruv. Final Act. 23.

ISSUE

The pivotal issue is whether the Examiner erred in finding that the combination of Swaminathan, Henry, Dmitriev, and Rapaport teaches or suggests the limitation of "the correlating based on the network-based management system independent of control by the client that occurred prior to the first programming content period," as recited in independent claim 1.

ANALYSIS

We adopt the Examiner's findings in the Answer and Final Office Action and we add the following primarily for emphasis. We note that if Appellant failed to present arguments on a particular rejection, we will not unilaterally review those uncontested aspects of the rejection. *See Ex parte*

Frye, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential); *Hyatt v. Dudas*, 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (the Board may treat arguments Appellant failed to make for a given ground of rejection as waived).

Appellant argues that the claimed

> "first programming content period" is the current period where the ad insertion decision is being made. Swaminathan as well as the other cited references used client control from the far past

(Appeal Br. 6). Appellant contends that the cited portions of Rapaport do not teach or suggest the claimed "occurred prior to the first programming content period," because

> the citation of Rapaport to show this makes no sense. Rapaport discloses a system that includes a chat room where occupants are discussing different topics, where those topics can be dynamically changed. Rapaport has nothing to do with inserting ads into media program content as claimed in claim 1. Paragraph [238] of Rapaport is dealing with collection of demographic information about users who are discussing different topics in the chat room. Paragraph [298] of Rapaport discusses how users of chat rooms can vote on different topics to be discussed

(Appeal Br. 6).

We are not persuaded by Appellant's arguments. The Examiner finds, and we agree, that Rapaport teaches "correlations between the user profile, history, knowledge-based rules, and the selection of marketing and advertising activities" (Ans. 5, citing Rapaport ¶ 238). For example, this portion of Rapaport teaches a system that

> can automatically collect demographic and credential statistics about the kinds of users who most often visit what topic node and when and/or under what other surrounding conditions. Marketing and advertising professionals can use the collected

> statistics to detect trends in the interests of lay and professional user populations in different topics at different times and/or under different other conditions (e.g., holidays, unusual weather conditions, unusual news event conditions etc.) and use the same for real time adaptive tailoring of their marketing and advertising activities

(Rapaport ¶ 238). The Examiner further finds, and we agree, that Rapaport teaches "an automated process where the user's initial profile and demographic information is updated based on user behavior, and this is done automatically without the direct input of the user" (Ans. 6, citing Rapaport ¶ 298).

This portion of Rapaport teaches an automated process in which "trending update service modules" modify a user's domains, and "system administrators and/or voting users can cause new domain nodes to be added on a data center-by-data center basis or on a system-wide basis as well as demoting certain less popular old domains to a topic status or eliminating them entirely" (Rapaport ¶ 298).

Thus, Rapaport's teachings would be directly relevant to one skilled in the art who is attempting to match advertisements to the users likely to respond with a purchase. In sum, Rapaport teaches or suggests correlation actions taken by a network advertising management system that are independent of actions (i.e., demographic statistics to tailor marketing is independent of actions taken by user) or control taken by the user (or client), and are thus "independent of control by the client that occurred prior to the first programming content period."[3]

[3] Should there be further prosecution, the Examiner should consider whether the disclosure contains adequate support for the limitation at issue.

Appellant attacks Rapaport individually, and fails to address the combined teachings of Swaminathan, Henry, Dmitriev, and Rapaport. "[O]ne cannot show non-obviousness by attacking references individually where ... the rejections are based on combinations of references." *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). Appellant further does not challenge the Examiner's detailed findings in the Answer, as no reply was filed.

Accordingly, we sustain the Examiner's obviousness rejection of independent claim 1, as well as the rejections of dependent claims 2–19 not separately argued. *See* Appeal Br. 7.

CONCLUSION

The Examiner did not err in finding that the combination of Swaminathan, Henry, Dmitriev, and Rapaport teaches or suggests the limitation of "the correlating based on the network-based management system independent of control by the client that occurred prior to the first programming content period," as recited in independent claim 1.

We note that the remarks submitted with Appellant's Amendment filed July 30, 2018 do not indicate the support in the disclosure for the added limitation "that occurred prior to the first programming content period," and it is unclear if paragraphs cited in the Summary of Claimed Subject Matter provide the necessary support. *See* Appeal Br. 3–4, citing Spec. ¶¶ 28, 60, 62, 64–66, 78, 83, 85.

DECISION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–3, 6, 8–12, 14–19	103	Swaminathan, Henry, Dmitriev, Rapaport	1–3, 6, 8–12, 14–19	
4	103	Swaminathan, Henry, Dmitriev, Rapaport, Shkedi	4	
5, 7	103	Swaminathan, Henry, Dmitriev, Rapaport, Stern	5, 7	
13	103	Swaminathan, Henry, Dmitriev, Rapaport, Dhruv	13	
Overall Outcome			1–19	

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).

AFFIRMED