

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ELIJAHU SHAPIRA, DAVID S. MONTGOMERY  
and W. GLEN BOYD

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Appeal No. 2003-0050  
Application 09/240,208

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ON BRIEF

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Before HAIRSTON, JERRY SMITH and DIXON, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1, 2, 5-10, 17-19 and 24-46, which constitute all the claims in the application. An amendment after final rejection was filed on May 21, 2001 and was entered by the examiner.

The disclosed invention pertains to a method for analyzing traffic data generated by a web server and to a method for analyzing an advertising campaign for a web server.

Representative claim 1 is reproduced as follows:

1. A method for evaluating an advertising campaign for a first web server to which visitors are referred by a link located on a second web server, said method comprising:

defining a plurality of qualification levels for the first web server, including associating at least one of the qualification levels with a plurality of the URLs located on the first web server;

identifying the visitors who contacted the first web server via the link located on the second web server; and

associating each visitor who visits the plurality of URLs located on the first web server with said one qualification level.

The examiner relies on the following references:

Dedrick	5,724,521	Mar. 03, 1998
Shelton et al. (Shelton)	5,954,798	Sep. 21, 1999 (filed Oct. 06, 1997)
Allard et al. (Allard)	6,018,619	Jan. 25, 2000 (filed May 24, 1996)

Claims 17-19, 24 and 44 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Shelton. Claims 25 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Shelton taken alone<sup>1</sup>. Claims

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<sup>1</sup> The final rejection and the examiner's answer mistakenly list the rejection of claims 25 and 26 as being under 35 U.S.C.

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1, 2, 5-10, 27-43, 45 and 46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Allard in view of Dedrick.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon does not support any of the rejections made by the examiner. Accordingly, we reverse.

We consider first the rejection of claims 17-19, 24 and 44 as being anticipated by the disclosure of Shelton.

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§ 102(e).

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Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner has indicated how he finds the claimed invention to be fully met by Shelton [answer, page 4]. Appellants argue that Shelton does not perform any of the steps recited in independent claims 17 and 44. The examiner responds that Shelton analyzes and maintains information about visitors to a web site which is equivalent to the claimed first and second activities. The examiner further asserts that the hypertext link disclosed by Shelton "could be used" for keeping track of referrals to a program to evaluate visitors to a web site [answer, pages 10-11]. Appellants respond that the sections of Shelton relied on by the examiner fail to support the examiner's findings. Specifically, appellants argue that Shelton does not disclose predetermining a first and second set of web site

activities as claimed [reply brief, pages 2-3].

We will not sustain the examiner's rejection of independent claims 17 and 44 for essentially the reasons argued by appellants in the briefs. Although Shelton discloses a system which can track visitors to a web site and monitor the activities of the visitor to that web site, Shelton does not disclose predetermining first and second web site activities in which the first web site activity includes visiting a first set of specific pages at the website and the second activity includes visiting a second set of specific pages at the web site. Although Shelton has the information to track the number of visitors who perform the first and second activities as defined in claims 17 and 44, there is no disclosure in Shelton that the claimed method is performed in the Shelton system. Although the examiner has read the claimed first and second activities on the session list maintained by Shelton, claims 17 and 44 specifically define the activities as visiting a first set of pages or visiting a second set of pages. We can find no disclosure within Shelton for tracking this specific information as required by the claimed invention. Since we have not sustained the examiner's anticipation rejection of independent claims 17 and 44, we also do not sustain the examiner's rejection of dependent claims 18,

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19 and 24.

We now consider the rejections under 35 U.S.C. § 103. In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re

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Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR § 1.192(a)].

We consider first the rejection of claims 25 and 26 based on the teachings of Shelton taken alone. The examiner's findings with respect to Shelton are erroneous for reasons discussed above with respect to claim 17. Since Shelton does not support the examiner's findings, the examiner has failed to establish a prima facie case of the obviousness of these claims. Accordingly, we do not sustain the examiner's rejection of claims 25 and 26.

We now consider the rejection of the claims based on the teachings of Allard and Dedrick. With respect to independent claims 1 and 8, the examiner finds that Allard teaches the claimed invention except that Allard does not associate each visitor who visits the plurality of URLs on the web server with a qualification. The examiner cites Dedrick as teaching this feature. The examiner finds that it would have been obvious to the artisan to modify Allard to include this teaching from Dedrick [answer, pages 4-7].

With respect to independent claim 1, appellants argue that Allard does not define a plurality of qualification levels, does not associate at least one of the qualification levels with a plurality of URLs located on the web server, and does not associate each visitor who visits the plurality of URLs located on the web server with one qualification level [brief, pages 6-7]. With respect to independent claim 8, appellants argue that Allard does not disclose any qualification levels or analysis of traffic hits in conjunction with qualification levels. Appellants also argue that Dedrick merely discloses a real time comparison of consumer and advertiser attributes [brief, page 10].

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The examiner responds that the interest level disclosed by Allard is equivalent to the claimed qualification level. The examiner also asserts that Dedrick discloses a consumer matching process for matching visitor characteristics associated with an advertisement and consumer interest levels. The examiner reiterates that the claimed invention would have been obvious to the artisan in view of the teachings of the applied prior art [answer, pages 12-16].

Appellants respond that the qualification levels of the claimed invention are associated with a plurality of the URLs located on the first web server. They again assert that Allard fails to associate qualification levels with each visitor who visits the plurality of URLs at the web server. Appellants also respond that Dedrick associates advertising with a user's profile which teaches away from the claimed invention [reply brief].

We will not sustain the examiner's rejection of independent claims 1 and 8. We agree with appellants that neither Allard nor Dedrick teaches associating a visitor to a web site with a qualification level wherein the qualification level is based on a specific plurality of URLs located on the web site. The claimed invention associates a qualification level to a visitor only if the visitor visited each one of a specific

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plurality of URLs on the web site. Although Dedrick matches a user's profile to specific advertisements, there is no teaching that the user's profile is determined by the process recited in independent claims 1 or 8. The examiner's attempt to equate the interest levels of Dedrick to the claimed qualification levels fails because there is no suggestion in Dedrick that the interest levels were obtained in the manner in which the qualification levels of claims 1 and 8 are obtained. Therefore, visitors in Dedrick are not associated with qualification levels in the same manner as recited in the claimed invention.

Since we have not sustained the examiner's rejection of independent claims 1 and 8, we also do not sustain the examiner's rejection of any of the claims which depend therefrom.

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In summary, we have not sustained any of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1, 2, 5-10, 17-19 and 24-46 is reversed.

REVERSED

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
JERRY SMITH	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
JOSEPH L. DIXON	)	
Administrative Patent Judge	)	

JS/ki

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