

The opinion in support of the decision being entered today
is *not* binding precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RADU S. JASINSCHI,
NEVENKA DIMITROVA, and JOHN ZIMMERMAN

Appeal 2007-1699
Application 10/165,904¹
Technology Center 2100

Decided: October 26, 2007

Before JAMES D. THOMAS, HOWARD B. BLANKENSHIP,
and MARC S. HOFF, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a Final Rejection of
claims 1-24. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ Application filed June 10, 2002. The real party in interest is U.S. Philips Corporation.

Appellants' invention relates to a content augmentation system to generate, update and transform television personal preference profiles. Both push and pull technologies are used to ascertain preferences based on viewing patterns. The invention further analyzes user queries to determine the depth of user requests for information; infers values from the user requests; relates augmented content information to the internet and specialized databases; and draws inferences about the user's interests and preferences (Specification 3).

Claim 1 is exemplary:

1. A method for performing content augmentation of personal profiles comprising:

(a) building a user history of a plurality of augmented content information of relevant TV programs;

(b) analyzing user queries and determining a degree to which the user queried for additional content information;

(c) inferring values about the user from the user queries for additional content information in step (b) so as to augment the additional content information;

(d) updating the augmented content information to at least one of the user history, Internet and specialized databases; and

(e) linking individual ones of the plurality of augmented content information to each other;

(f) determining inferences about the user's interests and preferences based on the linkage of the plurality of augmented content information.

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

Eichstaedt	US 6,654,735 B1	Nov. 25, 2003
Schaffer	WO 01/13264 A2	Feb. 22, 2001

Claims 1-3, 6-15, 17-22 and 24 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Schaffer.

Appellants contend that the Examiner erred in his rejection because Schaffer does not teach analyzing user queries and determining a degree to which the user queried for more information; inferring values about the user from the user queries; or determining inferences about the user's interests and preferences (Br. 8, 9). The Examiner contends that Schaffer, particularly the section on creating a customized piece of enhanced data content (Answer 5-6), discloses the limitations of the claims.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2005).

ISSUE

The principal issue in the appeal before us is whether the Examiner erred in holding that Schaffer analyzes user queries, infers values about a user, and determines inferences about a user's interests and preferences in the manner claimed by Appellants.

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

The Invention

1. Appellants invented a system to provide content augmentation to generate, update and transform television personal profiles. The content augmentation corresponds to the particular TV program data that is relevant content information (Specification 2).

2. A user history can be built by correlating the program being watched with an electronic program guide (EPG) that displays listings for the available channels. Often the EPG displays the channel, the starting and end times, the title, the names of starring actors and may even include a short synopsis of the story line (Specification 8).

3. Viewing information can be periodically uploaded. The building of the user history in this manner is implicit in that the user does not expressly provide feedback or indicate likes/dislikes. The EPG data uploaded in this manner can be analyzed to update the user history to identify more subtle preferences. A profile based on implicit viewing can often accurately indicate a viewer preference in lieu of or in addition to explicit feedback (Specification 9-10).

Schaffer

4. Schaffer teaches a system for providing additional information relating to a media selection. Enhanced content data is embodied in a plurality of data structures, each having a plurality of nodes. A processor

chooses between the nodes responsive to a list of user features in a user profile (pp. 1-2, 5-6).

5. Preferably, local memory contains an embodiment of a user profile. The profile may be assembled in accordance with the teachings of WO 99/04561, or according to any known technique for assembling user profiles. Alternatively, the user profile might be established in response to a questionnaire administered to the user (pp. 2-3).

6. In order to choose between such content nodes, the node rules of a current node are analyzed and the best node is chosen. The best node is added to the enhanced content buffer (p. 6).

7. In one embodiment, the subtopics of an advertisement might be chosen in accordance with a user profile (p. 6).

Eichstaedt

8. Eichstaedt teaches methods for automatic, real-time generation of a user interest profile from current user input communication data streams (e.g. e-mail, telephone), and automatically providing useful information to the user based on such data streams (col. 1).

PRINCIPLES OF LAW

Anticipation is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a prima facie case of obviousness. *In re*

Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007) (citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellant. *Piasecki*, 745 F.2d at 1472, 223 USPQ at 788. Thus, the Examiner must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the Examiner's conclusion.

ANALYSIS

Appellants argue that the Examiner erred in holding claim 1 to be anticipated by Schaffer, because Schaffer fails to teach or suggest analyzing user queries and determining a degree to which the user has queried for additional content information; inferring values about the user from the user queries for additional content and to augment the additional content information; updating the augmented content information to at least one of the user history, internet and specialized databases; or determining inferences about the user's interests and preferences based on the linkage of the plurality of augmented content information, as required by the claim (Br. 8, 9).

We agree with Appellants. The critical deficiency of Schaffer with respect to the claimed invention is that Schaffer creates enhanced content from a (previously built) user profile, rather than building a user history

from a plurality of augmented content information (FF 2, 3, 5; Reply Br. 2-3).

The Examiner cites pages 5-6 of Schaffer as allegedly teaching “analyzing user queries and determining a degree to which the user queried for additional content information.” This section describes in general terms how Schaffer creates a “customized piece of enhanced data content,” which is additional information associated with a media selection accessed by a user, by evaluating “nodes” of information and choosing the best one (FF 6). Schaffer, however, contains no teaching that *user queries* are analyzed as a basis for choosing the best node. The Examiner argues that because “‘choosing’ inherently requires analysis of the data,” Schaffer’s disclosure of choosing between potential nodes of enhanced content corresponds to “analyzing user queries” (Answer 11). Schaffer’s analysis here, however, amounts to analysis of the (preset) user history of accessed media selections in order to select enhanced content to present to a user, not an analysis of user queries for said enhanced content. Schaffer thus fails to teach this claim limitation.

The Examiner cites page 6, lines 1-5 of Schaffer as allegedly meeting the limitation of “inferring values about the user from the user queries for additional content.” This is the same section relied upon the Examiner *supra*, concerned with evaluating nodes and choosing the “best.” Schaffer contains no teaching of inferring values about a user, and the Examiner has no rebuttal to Appellants’ challenge of this citation in the Brief.

The Examiner cites page 6, lines 1-9 of Schaffer in an attempt to meet the limitation of “determining inferences about the user’s interests and

preferences based on the linkage of the plurality of augmented content information.” The cited section, as noted *supra*, discusses picking the best “node” of enhanced content to present to a user, and gives as an example that “the subtopics of an advertisement might be chosen in accordance with a user profile” (FF 6, 7). This section illustrates the difference between the claimed invention and the Schaffer reference. Schaffer is concerned with selecting the optimal enhanced content to present, taking the user profile as given, whereas the disclosed and claimed invention is directed to developing and sharpening the user profile in the first instance. Schaffer does not teach determining inferences about the user’s interests and preferences, because Schaffer assumes the existence of the user profile, noting that such a profile “may be assembled ... according to any other known technique for assembling user profiles” (FF 2, 3, 5).

Because we find that Schaffer does not teach these limitations of claim 1, we reverse the 35 U.S.C. § 102 rejection of claim 1, as well as claims 2-11 dependent therefrom.

Independent claim 12 contains many limitations parallel to those of claim 1. As noted *supra*, Schaffer fails to teach (at least) the means for analyzing a degree to which a user queried for additional content information, as well as the means for linking the viewer profile with one of the Internet and specialized databases. Independent claim 19, drawn to a content augmentation device, contains limitations that parallel those in claim 12, which Schaffer does not teach or suggest. We therefore reverse the rejection of claims 12 and 19, as well as claims 13-18 and 20-24 dependent therefrom.

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With respect to the rejection of claims 4, 5, 16 and 23 under 35 U.S.C. § 103, Schaffer fails to teach several limitations of the claims, as explained *supra*. Eichstaedt fails to make up the deficiencies of Schaffer. Therefore, we will not sustain the rejection of claims 4, 5, 16 and 23 as being obvious over Schaffer in view of Eichstaedt.

CONCLUSION OF LAW

We conclude that Appellants have shown that the Examiner erred in rejecting claims 1-24. On the record before us, claims 1-24 have not been shown to be unpatentable.

DECISION

The Examiner's rejection of claims 1-24 is reversed.

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).

REVERSED

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