UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID L. GOULDEN and DOMINIC BENNETT

Appeal 2007-2506
Application 10/464,419
Technology Center 2100

Decided: November 27, 2007

Before JOSEPH L. DIXON, JEAN R. HOMERE, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-8, 11, 15, and 16. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM-IN-PART.

THE INVENTION

The disclosed invention relates generally to computer systems. More particularly, the disclosed invention is directed to methods and apparatus for generating statistical information in a computer network, including statistical information related to advertising on the Internet.

(Spec. 1-2).

Independent claims 1, 8, and 11 are illustrative:

1. A method of generating statistical information in a computer network, the method comprising:

in a client computer, detecting a first identifying information associated with a first document, the first document being received in the client computer from a first web server computer in response to an end-user interaction with an impression from the first web server computer;

forwarding data from the client computer to a server computer, the data including information about the detection of the first identifying information in the client computer;

in the server computer, generating a statistical information based at least on the detection of the first identifying information in the client computer, the statistical information being indicative of an effectiveness of an advertising campaign that includes displaying of the impression from the first web server computer.

8. A method to be performed in a client computer, the method comprising:

detecting navigation of a web browser to a first web page as a result of an end-user's interaction with an advertisement displayed in the client computer;

detecting navigation of the web browser to a confirmation web page, the confirmation web page indicating that the end-user made a purchase based on the advertisement;

maintaining a log of browsing activities in the client computer, the log of browsing activities including information about the detection of the navigation of the web browser to the first web page and the confirmation page; and

forwarding the log from the client computer to a server computer for purposes of generating a statistical information relating to an advertising campaign.

11. A method to be performed in a server computer, the method comprising:

receiving an event information from a client computer, the event information indicating an identifying information for each of at least two documents received in the client computer; and

generating a statistical information based on the event information;

wherein the at least two documents comprise a landing page and a confirmation page, wherein the landing page comprises a web page where a browser is pointed to after an end-user interacts with an advertisement, and wherein the confirmation page comprises a web page indicating that the end-user made a purchase based on the advertisement.

THE REFERENCES

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

Lee	US 6,601,100 B2	Jul. 29, 2003
Peerson	US 2003/0033155 A1	Feb. 13, 2003
Rollins	US 2004/0078294 A1	Apr. 22, 2004

"ConversionRuler" document located at www.conversionruler.com1faq.php, Feb.04, 2003, pp. 1-7.

THE REJECTIONS

Claims 1-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Lee in view of Peerson.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Lee in view of ConversionRuler.

Claims 8, 15, and 16 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Lee in view of Rollins.

PRINCIPLES OF LAW

"What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007). To be nonobvious, an improvement must be "more than the predictable use of prior art elements according to their established functions." *Id.* at 1740. Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case

with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). Therefore, we look to Appellants' Briefs to show error in the proffered prima facie case of obviousness.

Independent claim 1

We consider first the Examiner's rejection of independent claim 1 as being unpatentable over the teachings of Lee in view of Peerson.

Appellants contend that neither Lee nor Peerson discloses or suggests "forwarding data from the client computer to a server computer," where the data includes "information about the detection of the first identifying information in the client computer," as claimed (*See* claim 1). Thus, Appellants conclude that claim 1 is patentable over the Examiner's proffered combination of Lee and Peerson (App. Br. 7).

The Examiner disagrees. The Examiner contends that Appellants are attacking the references individually where the rejection is based upon the combination of Lee and Peerson. The Examiner notes that the secondary Peerson reference is relied on as teaching the identification of documents on the client side (Ans. 10). The Examiner specifically points to Peerson's teaching of a client-side cookie at page 5, paragraph 0058 (Ans. 11). The Examiner further states that Peerson discloses the client detects first identifying information associated with a first document at page 4, paragraph 0052: i.e., "the customer can obtain information associated with the user computer 602 depending on the where the user computer 602 visits on the customer web site." (Ans. 11).

In the Reply Brief, Appellants respond that Peerson's paragraph 0058 is explicit that cookies are used "chiefly by Web sites to identify users . . . ." Thus, Appellants contend that Peerson merely teaches using cookies to associate a computer to *a particular user*, and not to identify received requested documents. Appellants further contend that Peerson's web log 604 contains information about web sites visited by Peerson's user computer 602 (Reply Br. 4; *see also* Peerson, ¶0052). Thus, Appellants conclude that Peerson does not track received documents using cookies (Reply Br. 3).

After carefully considering the evidence before us, we concur with Appellants' contention that the Examiner's obviousness rejection is in error. As noted by Appellants, Peerson expressly discloses that "[c]ookies are used chiefly by Web sites to *identify users* who have previously registered or visited their site." (*See* Peerson, ¶0058, emphasis added). Likewise, we find Lee expressly discloses "[t]he URLs in the Web server log often contain special *user identifiers* obtained by using "cookies." (*See* Lee, col. 2. ll. 16-18). Thus, we find the weight of the evidence supports Appellants' contention that neither Peerson nor Lee tracks received documents using cookies.

With respect to the use of log data, we note that Lee expressly discloses that "[a] logger process is executed by the *server process*." (*See* col. 4, l. 12, emphasis added). Moreover, Peerson expressly discloses that the web log data may be collected from a *local server* or a *remote server*, as follows:

> Briefly, a preferred embodiment of the present invention is a method for providing analytical information to a customer. Departmental data is received from a customer. The departmental data may include customer relationship management data, marketing data, operations data, sales force data, or transactions data. A first set of data associated with a user is also received from the customer. The first set of data may include web log data, which may be converted into a standard format. The web log data may be collected from a *local server* or a *remote server* [emphasis added].

(Peerson, ¶0013).

Thus, we agree with Appellants that Peerson (and Lee)[1] are each directed to a network of *server computers* that keep track of documents provided by server computers to client computers (*See* App. Br. 7, ¶1). We find neither Lee nor Peerson teaches or fairly suggests the claim limitations of "forwarding data from the client computer to a server computer," where the data includes "information about the detection of the first identifying information in the client computer," as claimed (*See* Claim 1). Therefore, we conclude Appellants have met the burden of showing the Examiner erred in rejecting independent claim 1 as being unpatentable over Lee in view of Peerson. Accordingly, we reverse the Examiner's rejection of independent claim 1.

[1] *See* Lee, abstract, "A server system on a network such as the World Wide Web aggregates and stores information about the content of Web pages server by a server on a network."

Dependent claims 2-7

Because we have reversed the Examiner's rejection of independent claim 1, we also reverse the Examiner's rejection of claims 2-7 as being unpatentable over the teachings of Lee in view of Peerson, noting that these claims depend directly or indirectly upon independent claim 1.

Independent claim 8

We consider next the Examiner's rejection of independent claim 8 as being unpatentable over the teachings of Lee in view of Rollins

Appellants contend that the Examiner must give patentable weight to the preamble of claim 8, because the term "a client computer" in the preamble provides antecedent basis to "the client computer" recited [three times] in the body of the claim (App. Br. 8). Appellants further contend that the web requestor 101 of Lee does not maintain a log of browsing activities, nor does web requestor 101 forward such a log to the server computer (App. Br. 9). Appellants also contend that Rollins does not disclose or suggest any relevant client-side processes (*Id.*).

The Examiner disagrees. The Examiner confirms that the preamble language "a method to be performed in a client computer" has not been given any patentable weight (Ans. 16). The Examiner again points to the use of cookies by Lee as allegedly teaching steps that are performed on the client-side (*Id.*).

"In general, a preamble limits the [claimed] invention if it recites essential structure or steps, or if it is 'necessary to give life, meaning, and vitality' to the claim." *Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.,*

289 F.3d 801, 808 (Fed. Cir. 2002) (quoting *Pitney Bowes, Inc. v. Hewlett-Packard Co.,* 182 F.3d 1298, 1305 (Fed. Cir. 1999)). "[A] claim preamble has the import that the claim as a whole suggests for it. In other words, when the claim drafter chooses to use *both* the preamble and the body to define the subject matter of the claimed invention, the invention so defined, and not some other, is the one the patent protects." *Bell Communications Research, Inc. v. Vitalink Communications Corp.,* 55 F.3d 615, 620 (Fed. Cir. 1995) (citation omitted). When limitations in the body of the claim rely upon and derive antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention. *See, e.g., Electro Sci. Indus. v. Dynamic Details, Inc.,* 307 F.3d 1343, 1348 (Fed. Cir. 2002); *Rapoport v. Dement,* 254 F.3d 1053, 1059 (Fed. Cir. 2001); *Pitney Bowes,* 182 F.3d at 1306.

Here, we find limitations in the body of the claim (i.e., "the client computer" recited three times) that rely upon and derive antecedent basis from the preamble (i.e., "a method to be performed in a client computer"). Thus, we conclude that the preamble here acts as a necessary component of the claimed invention. We have found *supra* that Lee is directed to a network of *server computers* that keep track of documents provided by server computers to client computers (*See* footnote 1). Regarding log data, we have noted that Lee expressly discloses "[a] logger process is executed by the *server process*." (*See* col. 4, l. 12, emphasis added). Thus, we find Lee does not teach nor fairly suggest the recited step of "maintaining a log of browsing activities in the client computer . . . ." (*See* Claim 8). We note that the Examiner merely relies upon Rollins for its teaching of an order

confirmation page (*See* Ans. 9; *see also* Rollins, ¶0019). Because we find nothing in Rollins that overcomes the deficiencies of Lee, we concur with Appellants' that the Examiner's obviousness rejection is in error. Therefore, we reverse the Examiner's rejection of independent claim 8 as being unpatentable over Lee in view of Rollins.

Claims 15 and 16

We note that independent claim 15 recites essentially equivalent limitations to the limitations of independent claim 8. Therefore, we similarly reverse the Examiner's rejection of independent claim 15 as being unpatentable over the teachings of Lee in view of Rollins for the same reasons discussed *supra* with respect to independent claim 8. Because claim 16 depends upon independent claim 15, we also reverse the Examiner's rejection of claim 16 as being unpatentable over the teachings of Lee in view of Rollins.

Independent claim 11

We consider next the Examiner's rejection of independent claim 11 as being unpatentable over the teachings of Lee in view of ConversionRuler.

Appellants contend that neither Lee nor ConversionRuler teaches or suggests "receiving an event information from a client computer, the event information indicating an identifying information for each of at least two documents received in the client computer," as claimed (*See* Claim 11). Appellants contend that Lee's web server system 150 does not receive event information indicating identifying information of received documents

(plural) from web requester 101, because web requester 101 does not report the received web pages back to web server system 150 (*See* Lee, Fig. 1). Instead, Appellants contend that web requester 101 merely requests web pages from web server system 150 (*See* Lee, Fig. 1). Appellants proffer that web server system 150 does not need to be informed of the receipt of a landing page and a confirmation page in web requester 101 because web server system 150 provides all the web pages in Lee's conversion tracking (App. Br. 6-7).

Regarding the ConversionRuler reference, Appellants contend that ConversionRuler merely discloses a conventional server-side tracking program. Appellants contend that ConversionRuler does not have client presence and thus suffers from the same limitations as Lee and Peerson (App. Br. 8).

The Examiner disagrees. The Examiner contends that the claim language argued by Appellants broadly encompasses Lee's teaching of "count[ing] the number of occurrences of certain events for any object, i.e., Web page, product, category, or hyperlink shown on the page, when Web pages are served." (*See* Lee, col. 11, l. 65 through col. 12, l. 1). The Examiner further points to Lee's teaching of monitoring and tracking events (*See* Lee, col. 12, ll. 1-45) (Ans. 14-15).

In the Reply Brief, Appellants emphasize that "[c]laim 11 recites a method to be performed in a server computer," that requires "receiving an event information from *a client computer* . . . ." (Reply Br. 6). Appellants contend that [Lee's] "server can count the web pages it has served but that does not mean the server receives from the client identifying information of

the web pages received in the client." (*Id.*). Appellants assert that [Lee's] "order process merely involves identification of products to be purchased, not identifying information of documents (plural) received in the client computer." (*Id.*) Appellants restate that "Lee's web server system 150 does not need to be informed of the receipt of a landing page and a confirmation page in the web requester 101 (client) because the web server system 150 provides all the web pages in Lee's conversion tracking." (*Id.*).

We begin our analysis by noting that the Examiner merely relies on the ConversionRuler reference for its teaching of a confirmation page (*See* ConversionRuler, p. 3, ¶1; p. 5, i.e., "Instructions for Order Confirmation Page"). After carefully considering the evidence before us, we conclude the claim language "receiving an event information from a client computer" broadly but reasonably encompasses Lee's server that tracks Web pages or hyperlinks (i.e., "objects") that are visited by Lee's client (i.e., Web requester 101, Fig. 1). (*See* Lee, col. 11, ll. 17-19). In particular, we find the event of a client visiting a particular Web page to be "event information from a client," that is received by Lee's server (*See* Claim 11).

Moreover, we find the Event table shown in Lee's col. 12 to be instructive. Appellants' disclosure states that a "landing page" is "the web page where the end-user 'lands' after clicking on [an] advertisement . . . ." (Spec. 13, ll. 10-11). Thus, we find the "landing page" of claim 11 corresponds to the "Hyperlink Click-through" event shown in the second column of Lee's Event table (*See* Lee, col. 12, ll. 29-45). Appellants' disclosure further states that a "confirmation page . . . comprises a web page confirming [an item] has been purchased." (Spec. 13, ll. 19-20). Therefore,

we find the claimed "confirmation page" corresponds the "Purchase" event shown in the last column of Lee's Event table (*See* Lee, col. 12, ll. 29-45).

For at least the aforementioned reasons, we find the event information shown in Lee's Event table (col. 12) to be event information received from a client computer, where the event information indicates identifying information for each of at least two documents (i.e., a landing page and a confirmation page) received in the client computer, as required by the claim language argued by Appellants (*See* Claim 11). Therefore, we find Appellants have failed to rebut the Examiner's legal conclusion of obviousness by establishing insufficient evidence of *prima facie* obviousness or evidence of secondary indicia of nonobviousness. Accordingly, we sustain the Examiner's rejection of independent claim 11 as being unpatentable over Lee in view of ConversionRuler for the same reasons set forth in the Answer, and as discussed above.

DECISION

Based on the findings of facts and analysis above, we conclude that the Examiner did not err in rejecting claim 11 under 35 U.S.C. § 103(a). However, we conclude that Appellants have met their burden of showing that the Examiner erred in rejecting claims 1-8, 15, and 16 under 35 U.S.C. § 103(a). Therefore, the decision of the Examiner rejecting claims 1-8, 11, 15, and 16 is affirmed-in-part.

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-IN-PART

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