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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIAN NEIL FULLER, DANIEL BARNABY GROSS,
PAUL ZULLO, and JAMES M. VALENTINE

Appeal 2022-002678
Application 16/059,435
Technology Center 3600

Before NINA L. MEDLOCK, BRUCE T. WIEDER, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1–30. An oral hearing, by video, was held on Tuesday, September 27, 2022. A transcript of the oral hearing will be made of record when it becomes available. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

CLAIMED INVENTION

The Specification states, “[t]he present invention relates to a system for conducting a social media marketing campaign” (Spec. ¶ 1).

Claims 1, 15, and 24 are the independent claims on appeal. Claim 1, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

1. A system for conducting a social media marketing campaign, comprising:

[(a)] a campaign administration server with a processor and program computer code for administering a campaign;

[(b)] one or more social media servers, each social media server hosting a social media platform;

[(c)] a plurality of influencer devices associated with a plurality of respective influencers participating in the campaign from which said campaign administration server receives identification information for each influencer participating in the campaign, and from which said one or more social media servers

¹ We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Our decision references Appellant’s Appeal Brief (“Appeal Br.,” filed December 13, 2021) and Reply Brief (“Reply Br.,” mailed March 28, 2022), and the Examiner’s Answer (“Ans.,” mailed February 14, 2022) and Final Office Action (“Final Act.,” mailed July 20, 2021). Appellant identifies SPACO LLC as the real party in interest (Appeal Br. 2).

receive social media posts by the plurality of influencers associated with the campaign; and

[(d)] a plurality of customer devices associated with a plurality of customers from which said one or more social media servers receive social media reactions responsive to the social media posts associated with the campaign received from the influencer devices;

[(e)] wherein, for each social media reaction by each customer that is attributable to each influencer, the campaign administration server awards said influencer a social media reaction point amount corresponding to a point value assigned to said social media reaction, wherein said social media reaction point amount is awarded independently of any other social media reaction and the location of said customer;

[(f)] wherein, for each detection of one of said customer devices at a location associated with the campaign that is attributable to said influencer, said campaign administration server awards said influencer a customer location point amount corresponding to a point value assigned to the detection of one of said customer devices at the location, wherein said customer location point amount is awarded independently of any social media reactions at the location;

[(g)] wherein, for each influencer participating in the campaign, said campaign administration server calculates a total point amount reflecting the sum of all social media reaction point amounts and all customer location point amounts awarded to said influencer during the campaign; and

[(h)] wherein said campaign administration server supplies a reward to at least some of the plurality of influencers at the conclusion of the campaign based at least in part on the total point amount awarded to each of the plurality of influencers.

REJECTION

Claims 1–30 are rejected under 35 U.S.C. § 103 as unpatentable over Olson et al. (US 2014/0081879 A1, published Mar. 20, 2014) (“Olson”),

Lore (US 2008/0051201 A1, published Feb. 28, 2008), and Levy et al. (US 2019/0102808 A1, published Apr. 4, 2019) (“Levy”).²

ANALYSIS

Independent Claim 1 and Dependent Claims 2–14 and 27–30

We are persuaded by Appellant’s argument that the Examiner erred in rejecting claim 1 at least because the combination of Olson and Lore, on which the Examiner relies, does not disclose or suggest awarding to each influencer a point amount corresponding to a point value assigned to a social media reaction, calculating a total point value awarded to each influencer, and supplying a reward to at least some of the influencers based at least in part on the total point amount awarded to each of the influencers, i.e.,

wherein, for each social media reaction by each customer that is attributable to each influencer, the campaign administration server awards said influencer a social media reaction point amount corresponding to a point value assigned to said social media reaction, wherein said social media reaction point amount is awarded independently of any other social media reaction and the location of said customer;

wherein, for each detection of one of said customer devices at a location associated with the campaign that is attributable to said influencer, said campaign administration server awards said influencer a customer location point amount corresponding to a point value assigned to the detection of one of said customer devices at the location, wherein said customer location point amount is awarded independently of any social media reactions at the location;

wherein, for each influencer participating in the campaign, said campaign administration server calculates a total point amount reflecting the sum of all social media reaction point

² We treat the Examiner’s reference to claims 1–28 as inadvertent error in view of the discussion of claims 1–30 at pages 2–10 of the Final Office Action.

amounts and all customer location point amounts awarded to said influencer during the campaign; and

wherein said campaign administration server supplies a reward to at least some of the plurality of influencers at the conclusion of the campaign based at least in part on the total point amount awarded to each of the plurality of influencers.

limitations (e) through (h), as recited in claim 1 (Appeal Br. 9–16).

Olson is directed to a social media exchange center that communicates likes between media participants in exchange for economic benefits (Olson ¶ 30). Olson discloses that categories of social media participants are created based on their level of social participation with each other, e.g., best friends; business associates, etc. (*id.* ¶¶ 30, 56), and that a “location aware” system tracks the locations of these users (*id.* ¶¶ 30, 57). The social media users receive economic benefits, e.g., monetary compensation, rewards, perks, or the like, for providing “leads” or “tips”³ to other users (*id.* ¶¶ 36, 57), and Olson discloses that these economic benefits may be “tiered,” i.e., received in different amounts (*id.* ¶¶ 31, 58). For example, when a recommended item is viewed by another social media participant, regardless of location, a first economic reward is deposited into the recommender’s account; then, when the item is liked at a location, a second economic benefit is deposited into the recommender’s account. (*id.* ¶ 36). As another example, a first economic benefit may be awarded when a recommended

³ The term “lead” is defined in paragraph 26 of Olson as “a recommendation, an introduction, direction, or guide to show a way to proceed in advance, or a positive indication concerning a commercial participant’s products or services”; “tip” is defined in paragraph 27 as “any phrase or expression of value, any information provided by anyone to anyone else, [or any] economic benefit that is provided to anyone as a way of rewarding them.”

product is viewed by another social media participant, and a second economic benefit awarded based on a purchase of the recommended item (*id.* ¶ 58).

Lore relates to a system and method for hosting a fantasy sport contest in which a plurality of participants is permitted to populate respective fantasy rosters with actual athletes and compete with each other based on corresponding real-life field-of-play performances of the actual athletes (Lore Abstr.). Lore, thus, discloses that participants compete and are ranked on the basis of point totals accumulated over the course of a season (*id.* ¶ 30).

In rejecting claim 1 under 35 U.S.C. § 103, the Examiner relied on Olson as disclosing substantially all of the claim limitations, including awarding points to an influencer based on a social media reaction (Final Act. 2–4). The Examiner cited Lore for its disclosure “[w]ith respect to the total point amount reflecting all the point amounts during the campaign and the reward being given at the conclusion of the campaign” (*id.* 4–5). And the Examiner concluded that it would have been obvious to a skilled artisan at the time of Appellant’s invention to have “included in the invention of Olson for the [influencers] to have been given a reward based on the total point amount reflecting all the point amounts during the campaign and [for] the reward being given at the conclusion of the campaign,” as taught by Lore, because “such a modification would allow ‘**to determine which participants have accumulated the highest scores**’” (*id.* at 5).

We are persuaded that the Examiner has not established that a person of ordinary skill in the art would have had an apparent reason to combine Olson and Lore, as the Examiner proposes, to arrive at the claimed

invention. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (holding that a prima facie case of obviousness requires showing that one of ordinary skill in the art would have had both an apparent reason to modify the prior art and predictability or a reasonable expectation of success in doing so). The Examiner proposes, as described above, to modify Olson such that influencers are given a reward based on their total point amounts, as taught by Lore. Yet, as Appellant points out, Olson simply describes providing economic compensation to an influencer in response to an action performed by that influencer (Appeal Br. 12–13). No points are awarded in Olson; Olson also is not concerned with creating competition among and between influencers (*id.*). In other words, in order to meet the claim language, Olson would have to be “completely changed to award points for the different claimed activities, which are then totaled and compared, to provide gamification” (Reply Br. 3–4). The Examiner has not established that a person of ordinary skill in the art would have had an apparent reason to “make this major modification to [Olson]” (*id.* at 4).

We are persuaded that the Examiner could only have arrived at Appellant’s claimed invention through the use of impermissible hindsight using Appellant’s claims as a roadmap. Therefore, we do not sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 103. For the same reasons, we also do not sustain the Examiner’s rejection of dependent claims 2–14 and 27–30. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“dependent claims are nonobvious if the independent claims from which they depend are nonobvious”).

Independent Claims 15 and 24 and Dependent Claims 16–23, 25, and 26

Independent claims 15 and 24 include language substantially similar to the language of independent claim 1, and stand rejected based on substantially the same rationale applied with respect to independent claim 1. Therefore, we do not sustain the Examiner’s rejection, under 35 U.S.C. § 103, of independent claims 15 and 24, and claims 16–23, 25, and 26, which depend therefrom, for the same reasons set forth above with respect to claim 1.

CONCLUSION

In summary:

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–30	103	Olson, Lore, Levy		1–30

REVERSED