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12/618,950	11/16/2009	Mark D. Klein	20271/ARB264US01	7713
81905	7590	02/21/2019	EXAMINER	
Hanley, Flight & Zimmerman, LLC (Nielsen) 150 S. Wacker Dr. Suite 2200 Chicago, IL 60606			FRUNZI, VICTORIA E.	
			ART UNIT	PAPER NUMBER
			3688	
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			02/21/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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DETAILED CORRESPONDENCE

Notice of Pre-AIA or AIA Status

1. The present application is being examined under the pre-AIA first to invent provisions.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/20/2018 has been entered.

3. Claims 1, 4, 21, 22, 28, 31,33, and 36 have been amended, claims 2, 7, 11, 16, 29, 32, 34 and 37 have been canceled and claims 39 and 40 have been added. Claims 1, 3-6, 8-10, 12-15, 17-28, 30-31, 33, 35-36, and 38-40 are pending and have been rejected as follows.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1, 3-6, 8-10, 12-15, 17-28, 30-31, 33, 35-36, and 38-40 are rejected under 35 U.S.C. 101 because the claimed invention is directed to an abstract idea without significantly more.

6. **Step 1:** The claims recite a method (claim 1) and a system (claim 33) which are statutory category of an invention. *(see further rejection below for claim 28)*

7. **Step 2A:**

8. **Prong 1:** The claims recite correlating effectiveness score of advertisements in order to optimize the presentation of advertisements. The limitations falls within “Certain Methods Of Organizing Human Activity” for managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions) as well as commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations).

9. **Prong 2:** The judicial exception is not integrated into a practical application because the only additional elements of a computing device and the actions being related to those on the internet for identifying media exposure, accessing internet actions performed, determining the effectiveness of a plurality of media contents, comparing the effectiveness measures and then optimizing the presentation of the media based on the comparison. The computing device is recited at a high-level of generality (i.e., as a generic processor performing a generic computer function of processing data) such that it amounts no more than mere instructions to apply the exception using a generic computer component – MPEP 2106.05(f). The computing device is merely adding insignificant extra-solution activity to the judicial exception by collecting interaction data, analyzing the data, and make a determination based on the analysis (i.e. data gathering) - see MPEP 2106.05(g). The claimed machines are not

particular, and the claim as a whole monopolizes the abstract idea of optimizing media presentation.

10. **Step 2B:** The claim does not include additional elements that are sufficient to amount to significantly more than the judicial exception. As discussed above with respect to integration of the abstract idea into a practical application, the additional element of the computing device is merely adding insignificant extra-solution activity to the judicial exception by collecting interaction data, analyzing the data, and make a determination based on the analysis amount to insignificant extra-solution activity. Mere instructions to apply an exception using a generic computer component, and adding insignificant extra-solution activity to the judicial exception cannot provide an inventive concept. The claims are not patent eligible.

11. The dependent claims 3-6, 8-10, 12-15, 17-28, 30-31, 35-36, and 38-40 are also rejected for these reasons.

12. Claims 28 and 30-31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 28 sets forth a computer readable medium comprising computer code encoded on the storage medium. However, the specification is silent to whether the medium is transitory or non-transitory. The United States Patent and Trademark Office (USPTO) is obliged to give claims their broadest reasonable interpretation consistent with the specification during proceedings before the USPTO. See *In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989) (during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow). The broadest reasonable interpretation of a claim drawn to a machine readable storage media (also called machine readable medium and other such

variations) typically covers forms of non-transitory tangible media and transitory propagating signals per se in view of the ordinary and customary meaning of computer readable media, particularly when the specification is absent an explicit definition or is silent. See MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal perse, the claim must be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter. See *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101.

13. Claims 30-31 are also rejected under 35 U.S.C. 101 because they are dependent on claim 28 and they fail to remedy the deficiency of claim 28.

Related Prior Art Not Cited

14. The Examiner's updated search has found the reference Latona (US 20050028188) which is relevant by teaches the comparison of effectiveness measures for two advertisements (see Figure 7), however does not teach the combination of claimed limitations of the instant invention.

Response to Arguments

15. Applicant's arguments filed 8/20/2018 have been fully considered but they are not persuasive for the reasons set forth below.

16. Applicant's Remarks (pages 16-22): Rejection under 35 USC 101
The remarks directed to the claims as rejected under 35 USC 101 have been considered, but not found persuasive. The Examiner has updated the rejection above in view of the claim amendments and in view of the Updated Subject Matter Eligibility

Guidance from 2019. The updated review concluded that the claims remain rejected under 35 USC 101 based on the following analysis:

Step 1: The claims recite a method (claim 1) and a system (claim 33) which are statutory category of an invention. *(see further rejection below for claim 28)*

Step 2A:

Prong 1: The claims recite correlating effectiveness score of advertisements in order to optimize the presentation of advertisements. The limitations falls within “Certain Methods Of Organizing Human Activity” for managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions) as well as commercial or legal interactions (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations).

Prong 2: The judicial exception is not integrated into a practical application because the only additional elements of a computing device and the actions being related to those on the internet for identifying media exposure, accessing internet actions performed, determining the effectiveness of a plurality of media contents, comparing the effectiveness measures and then optimizing the presentation of the media based on the comparison. The computing device is recited at a high-level of generality (i.e., as a generic processor performing a generic computer function of processing data) such that it amounts no more than mere instructions to apply the exception using a generic computer component – MPEP 2106.05(f). The computing device is merely adding insignificant extra-solution activity to the judicial exception by collecting interaction data, analyzing the data, and make a determination based on the analysis (i.e. data

gathering) - see MPEP 2106.05(g). The claimed machines are not particular, and the claim as a whole monopolizes the abstract idea of optimizing media presentation.

Step 2B: The claim does not include additional elements that are sufficient to amount to significantly more than the judicial exception. As discussed above with respect to integration of the abstract idea into a practical application, the additional element of the computing device is merely adding insignificant extra-solution activity to the judicial exception by collecting interaction data, analyzing the data, and make a determination based on the analysis amount to insignificant extra-solution activity. Mere instructions to apply an exception using a generic computer component, and adding insignificant extra-solution activity to the judicial exception cannot provide an inventive concept.

Therefore the claims are not patent eligible.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTORIA E. FRUNZI whose telephone number is (571)270-1031. The examiner can normally be reached on Monday- Friday 7-4 (EST).

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at <http://www.uspto.gov/interviewpractice>.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on 5712726702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/VICTORIA E FRUNZI/
Examiner, Art Unit 3688
2/15/2019