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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte C. DOUGLASS THOMAS

Appeal 2013-000971
Application 11/253,299¹
Technology Center 3600

Before HUBERT C. LORIN, PHILIP J. HOFFMANN, and
GEORGE R. HOSKINS, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

C. Douglass Thomas (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 20–46. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

¹ The Appellant identifies C. Douglass Thomas as the real party in interest. App. Br. 1.

THE INVENTION

Claim 20, reproduced below, is illustrative of the subject matter on appeal.

20. A method for producing an on-line survey through interaction with a remote server from a network browser operating on a client computer associated with a requestor of the on-line survey, the network browser and the remote server capable of communicating via a data network, said method comprising:

- (a) requesting initial survey remarks to be provided for the on-line survey;
- (b) receiving, at the remote server, the initial survey remarks from the survey requestor;
- (c) requesting identification of one or more participant groups from a plurality of available participant groups;
- (d) receiving, at the remote server, selection from the survey requestor of one or more participants groups from the plurality of available participant groups;
- (e) requesting at least one survey question;
- (f) receiving, at the remote server, at least one survey question from the survey requestor;
- (g) requesting an answer format for the at least one survey question;
- (h) receiving, at the remote server, the answer format from the survey requestor;
- (i) receiving content for at least one answer choice for the at least one survey question;
- (j) repeating (e) – (i) for one or more additional survey questions;
- (k) requesting subsequent survey remarks to be provided for the on-line survey;
- (l) receiving, at the remote server, the subsequent survey remarks from the survey requestor; and

- (m) producing, at the remote server, the on-line survey to include the initial survey remarks, the survey questions, the answer choices corresponding to the survey questions and the answer format utilizing the answer formats, and the subsequent survey remarks;
- (n) providing and storing the on-line survey in an electronic manner to an Internet-based survey manager that hosts the on-line survey; and
- (o) thereafter inviting a plurality of survey participants that are classified to be within the selected one or more participant groups to take the on-line survey by interaction with the Internet-based survey manager.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Manabe	US 5,339,239	Aug. 16, 1994
Peters	WO 9608779A1	Mar. 21, 1996

“Online Market-Research Venture Offers Freebies to Respondents,”
American Marketplace, v. 17, n. 1, ISSN: 0276-2900, Jan. 11, 1996.
[American Marketplace]

Dacko, Scott G., “Data collection should not be manual labor,”
Marketing News, v. 29, n. 18, ISSN: 0025-3790, Aug. 28, 1995.
[Dacko]

The following rejections are before us for review:

1. Claims 20–31 and 34–46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Peters, American Marketplace, and Dacko.
2. Claims 32 and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Peters, American Marketplace, Dacko, and Manabe.

ISSUES

Did the Examiner err in rejecting claims 20–31 and 34–46 under 35 U.S.C. § 103(a) as being unpatentable over Peters, American Marketplace, and Dacko, and, in rejecting claims 32 and 33 under 35 U.S.C. § 103(a) as being unpatentable over Peters, American Marketplace, Dacko, and Manabe?

FINDINGS OF FACT

We rely on the Examiner’s factual findings stated in the Answer. Additional findings of fact may appear in the Analysis below.

ANALYSIS

The rejection of claims 20–31 and 34–46 under 35 U.S.C. § 103(a) as being unpatentable over Peters, American Marketplace, and Dacko.

Claims 20, 31, and 34 are the independent claims. As to all these claims the Examiner takes the same position (*see* Answer 11–15); that is, Peters discloses the claimed subject matter but “does not explicitly disclose that the survey manager itself is Internet-based” (*id.* at 10), for which Dacko and American Marketplace are relied upon. According to the Examiner

Since [Dacko] and [American Marketplace] show a trend in the survey art to perform on-line research (e.g., Internet-based surveys), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention to modify Peters such that the survey manager itself is Internet-based (claim 20) in order to facilitate access to “people who have little inclination to participate in traditional phone and mail surveys, and in-depth interviews can be conducted across wide geographic regions without the time and expense of travel” (as seen in [para.] 9 of [American Marketplace]), not to mention that the same benefits would be gleaned

from a research firm (such as the Greenfield Online Research Center disclosed in [American Marketplace] or the survey creation service of Peters) since the research firm would have greater access to remotely located clientele through a remote server-client connected data network.

Answer 11.

The Appellant argues, in part, that the cited prior art does not disclose producing, at the remote server, the on-line survey to include the initial survey remarks, the survey questions, the answer choices corresponding to the survey questions and the answer format utilizing the answer formats, and the subsequent survey remarks.

App. Br. 7–10, Claims App. (claim 20). A similar argument is made against the rejection of the other independent claims 31 and 34 which include similar subject matter; that is, “producing an on-line survey through interaction between a remote server from a network browser operating on a client computer associated with a requestor of the on-line survey.” *See id.* at 17, 21, respectively.

With regard to claim 20, the Examiner found
page 9, line 28 through page 10, line 34; page 11, line 6 through page 12, line 30; page 34, line 17 through page 35, line 34 [of Peters discloses] -- The survey is created by a remote user using the survey author module. The created survey can then be sent to its target audience, which could involve posting it on a bulletin board.

Final Action 7. According to the Examiner, these Peters’s disclosures show producing the on-line survey to include the initial survey remarks, the survey questions, the answer choices corresponding to the survey questions and the answer format utilizing the answer formats, and the subsequent survey remarks.

Id.; Claims App. (claim 20). The Examiner takes the same position with respect to independent claims 31 and 34. *See* Final Action 7, 15.

We agree with the Appellant that the evidence does not support the Examiner's finding. Peters describes a survey document that may be presented or saved on a respondent user's system (page 9, line 22 – page 10, line 34); a survey authoring means for constructing a survey document structure via input by a survey author and a step of preparing “so that remote users of may specify at least one of the allowable answers, when processing the survey document on their computer(s)” (page 11, line 6 through page 12, line 30); and, a process whereby an “author (local user)” may send surveys to “respondents (remote users)” (page 34, line 17 through page 35, line 34). There is no disclosure of producing an on-line survey “at a remote server” (claim 20) as claimed. There is also no disclosure of “producing an on-line survey through interaction between a remote server from a network browser operating on a client computer associated with a requestor of the on-line survey.” Claims App. (claims 31 and 34). There is no mention of a “remote server” being employed in the production of an on-line survey. Peters discloses a survey which is produced on a computer and then sent to remote users; e.g., posted on a bulletin board. But Peters does not disclose employing a remote server as claimed.

We note the Examiner's reliance on Dacko and American Marketplace to “show a trend in the survey art to perform on-line research (e.g., Internet-based surveys).” Ans. 26. But the question is not whether it would have been obvious to perform or distribute online surveys over a network but whether it would have been obvious to one of ordinary skill in the art to “produc[e], at [a] remote server, [an] on-line survey” (claim 20) or “produc[e] an on-line survey through interaction between a remote server

from a network browser operating on a client computer associated with a requestor of the on-line survey” (claims 31 and 34), as claimed. A preponderance of the evidence does not support finding that the cited prior art would lead one of ordinary skill in the art to produce surveys at or through interaction involving a remote server as claimed.

Because a prima facie case of obviousness has not been made out in the first instance by a preponderance of the evidence, the rejection is not sustained.

The rejection of claims 32 and 33 under 35 U.S.C. § 103(a) as being unpatentable over Peters, American Marketplace, Dacko, and Manabe.

These claims depend from claim 20. The rejection is not sustained for the same reasons that the rejection of claim 20 is not sustained

CONCLUSIONS

The rejections of claims 20–31 and 34–46 under 35 U.S.C. § 103(a) as being unpatentable over Peters, American Marketplace, and Dacko, and, claims 32 and 33 under 35 U.S.C. § 103(a) as being unpatentable over Peters, American Marketplace, Dacko, and Manabe, are reversed.

DECISION

The decision of the Examiner to reject claims 20–46 is reversed.

REVERSED

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