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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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12/124,027

05/20/2008

Stephen Corey Wren

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11/24/2009

STEPHEN WREN

6 Monarch Trace Court, #102

Chesterfield, MO 63017

EXAMINER

ZURITA, JAMES H

ART UNIT

PAPER NUMBER

3625

MAIL DATE

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PAPER

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.

Office Action Summary	Application No. 12/124,027	Applicant(s) WREN, STEPHEN COREY	
	Examiner JAMES ZURITA	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

On 08/12/2009, applicant amended claims 7, 15 and 23.

Claims 7-26 are pending and will be examined.

Response to Arguments

Applicant's arguments filed 08/12/2009 have been fully considered but they are not persuasive.

Applicant argues

As indicated in the Remarks section of Applicant's previous Amendment of April 13 of this year, this application and its above claims have a priority date no later than June 29, 1994 by way of parent U.S. Patent Application Serial No. 08/268,309. Therefore, the sole reference of Bernard, et al (U.S. Patent 5,918,213 filed December 22, 1995) is not prior art.

In response, the Examiner notes that central facilities #2...#n first appear in Fig. 1 as amended on 03/29/1996 in application 08/268309 and in application 08/650834, Fig. 1 as filed 05/20/1996. Again claims that refer to a distributed network receive a priority date of 03/29/1996. Contrary to applicant's assertions, Bernard is prior art.

Applicant amended claims 7, 15 and 23 on 08/12/2009. Applicant arguments concerning claims filed on 04/13/2009 are moot in view of his amendment:

wherein said computerized central communications facility of a different provider equipped with (claim 1)

...wherein said apparatus is operable to record a presentation stopping point for future use (claim 15)

... enabling said customer to access said first and at least one of said other databases of another provider for information relating to goods and/or services. (claim 23).

As to claim 23, applicant argues:

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Applicant submits that claim 23 is allowable as the reference does not support a method for selling and/or marketing goods and/or services where customers can access databases of one provider from the database of another provider and thereby browse databases of multiple providers, as required by claim 23. Claims 24-26 depend directly or indirectly from claim 23 and are allowable for at least the same reasons as claim 23."

Respectfully, these features are not claimed. For example, claim 23 does not refer to browse; claim 23 does not include the limitation "...where customers can access databases of one provider from the database of another provider..." Claim 23 reads:

23. (Currently Amended) A method for electronically selling and/or marketing goods and/or services between a customer at one or more remote locations and a plurality of providers of goods and/or services comprising:
providing a first database associated with a first provider of goods and/or services and containing information relating to goods and/or services, which can be accessed by a customer at one or more of said remote locations from at least one other database associated with another provider of goods and/or services containing information relating to goods and/or services,
enabling said customer to access said first and at least one of said other databases of another provider for information relating to goods and/or services.

Priority

The Examiner again notes that central facilities #2...#n first appear in Fig. 1 as amended on 03/29/1996 in application 08/268309 and in application 08/650834, Fig. 1 as filed 05/20/1996.

Claims that refer to a "...computerized central communications facility of a different provider ..." receive a priority date of 03/29/1996. The term is interpreted as referring to nodes in the Internet, which inherently includes apparatus for providing marketing and/or sales information relating to goods and/or services among computerized central communications facilities of different providers.

Claim Rejections - 35 USC § 101

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

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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.

Claims 23-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based on Supreme Court precedence see *Diamond v Diehr* 450 US 175,184 (1981); *Parker v. Flook*, 437 US 584,588,n. 9 (1978); *Gottschalk v Benson*, 409 US 63, 70 (1972); *Cochrane v Deener*, 94 US 780, 787-88 (1876) a 101 process must (1) be tied to another statutory class (such as an apparatus) or transform underlying subject matter (such as an article or materials) to a different state or thing. Since neither of these requirements is met by the claim the claim is rejected as being directed to non-statutory subject matter.

The Examiner notes that claims 7-22 use the term computerized. In claims 23-26, directed to a method, explicitly avoids the use of the term.

Claim Rejections - 35 USC § 112 – first paragraph

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

In claims 9-11, the limitation *...adapted to build...profile based on [said/multiple /single] customer's use...* appears based on the following paragraph:

To determine its corporate customer profile each provider of goods can use the system. Profiles of those customers who specifically request product information can be used by those providers to build general profiles of those customers who might have an interest or need in their goods. Thereafter those *provider profiles* can be used to help the system guide commercials to system users most likely to be interested in those goods. Commercials can then be shown to customers intermittently throughout the customer's session or at predetermined points such as when the customer is waiting for live assistance or in between queries. [US 6,055,514, col. 10, lines 44-54;

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PG-PUB US 2003/0036980 A1, paragraph 94, application 09/504374, page 18, lines 21-31, emphasis added].

Applicant appears to describe a recommendation to a *single* customer based on that particular customer's action during a session, and *not* on a history of other customers] entry. There is no support for recommendations based on a history of multiple customers. For purposes of the Examination, the limitation is interpreted as using history and statistics of customer use and using the profiling information to target or guide advertisements to customers most likely to be interested in particular types of goods.

In claims 8 and 21, the limitation ...display said...information involuntarily based on said customer's use of said apparatus... is not supported by the disclosures.

Applicant mentions involuntarily three times, but does not provide a description.

Claim Rejections - 35 USC § 112 – second paragraph

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7-26 contain the term ***and/or***. The term renders the claims indefinite, since it is not possible to determine the scope of the claim as requiring both items or only one of the items separated by the or. For purposes of this examination, examiner will give the term its broadest reasonable interpretation and consider that the particular condition is satisfied if one of the limitations is met.

Claims 7-26 contain the term goods and/or services, which renders the claims indefinite, since it is not possible to determine the scope of the claim as requiring both items or only one of the items separated by the or. For purposes of this examination, examiner will give the term its broadest reasonable interpretation and consider that the particular condition is satisfied if one of the limitations is met.

Claims 16-20 refer to ...said customer entertainment-based programming... which is not previously mentioned.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7-23 and 26, as best understood and as interpreted, are rejected under 35 U.S.C.102(e) as being anticipated by Bernard et al. (US 5,918,213), filed 22 December 1995, issued 29 January 1999.

As per claim 7, Bernard discloses the use of the Internet, a global network connecting millions of computers of buyers and sellers. The Internet inherently includes apparatus for providing marketing and/or sales information relating to goods and/or services comprising:

- a computerized central communications facility (e.g., Bernard, col 53, lines 2-16)
- a database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility Database(s) maintained at a node (see at least Fig. 12 and related text), containing information pertaining to

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goods and/or services purchasing history of previous customers (see, for example, at least Col. 51, lines 19-42);

- a communications device at said computerized central communications facility (see, for example, interfaces, as in Col. 51, lines 29-41);
- wherein said computerized central communications facility is operable to be linked to a plurality of other computerized central communications facilities and to a plurality of computerized remote communications facilities (e.g, Bernard and references to the Internet);
- wherein said database of marketing and/or sales information relating to goods and/or services is accessible to a customer at one or more of said computerized remote communications facilities; e.g, Bernard, col. 52, lines 60-67.
- wherein said communications device at said computerized central communications facility is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities; e.g., Bernard, col. 53, lines 2-16.
- wherein said computerized central communications facility is operable to provide at least a portion of said marketing and/or sales information relating to said goods and/or services to one or more of said computerized remote communications facilities upon request (e.g., Bernard, col. 15, lines 26-64);
- wherein at least one of said other computerized central communications facilities enables said customer at one or more of said computerized remote communications

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facilities to select and contact a computerized central communications facility of a different provider, (e.g., Bernard, col. 58, line 65-col. 59, line 17); and;

- wherein said computerized central communications facility of a different provider equipped with (e.g., Bernard, col. 53, lines 2-16):
- a database of marketing and/or sales information relating to goods and/or services accessible to said customer at one or more of said computerized remote communications facilities, Database(s) maintained at a node (see at least Fig. 12 and related text), containing information pertaining to goods and/or services purchasing history of previous customers (see, for example, at least Col. 51, lines 19-42)
- a communications device adapted to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities, (e.g., Bernard, col. 5, lines 7-15 and other references to interfaces);
- whereby said customer has access to information at multiple computerized central communications facilities of different providers (e.g., Bernard, col. 5, lines 28-40).

As per claim 8, Bernard discloses that displayed goods and/or services are displayed involuntarily. See, for example, references to displaying advertisements and promotions, as in Col. 51, lines 29-41, Col. 52, lines 46-54.

As per claim 9 Bernard discloses that customer use is used to build a provider or corporate profile. See, for example, references to targeting specific customers, as in Col. 6, lines 31-49, profiling; see also Col. 31, lines 35-40, Col. 52, lines 46-54.

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As per claim 10 Bernard discloses that a profile is built from a single customer's use. See, for example, references to profiling based on individual customers, as in Col. 31, lines 35-50.

As per claim 11 Bernard discloses that a profile is built from multiple customers' use. See, for example, references to profiling based on [multiple] customers in general, as in Col. 31, lines 35-50.

As per claims 12 and 13, Bernard discloses suggesting goods and/or services based on at least one of said customers' use of said apparatus. E.g., Bernard, at least Col. 31, lines 35-50.

As per claim 14, Bernard discloses that a customer at one or more of said computerized remote communications facilities can access or browse (e.g., Bernard, col. 4, lines 21-43) said database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility and at one or more of said other computerized central communications facilities (e.g., use of the Internet and browsing, as in Bernard, col. 3, lines 8-18).

Claim 15 is rejected on the same grounds as claim 7.

As per claim 16, Bernard discloses that n at least one of said other computerized central communications facilities is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities (E.g., references to fulfillment vendor 406)

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As per claim 17, Bernard discloses at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of a game. E.g., Bernard, col. 54, lines 7-18.

As per claim 18, Bernard discloses at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of music. E.g., Bernard, at least col. 4, lines 21-21.

As per claim 19, Bernard discloses at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of a movie. E.g., Bernard, at least Col. 3, lines 29-40.

As per claim 20, Bernard discloses at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming including a commercial of a sponsor. E.g., references to displaying advertisements and promotions, as in Bernard, Col. 51, lines 29-41, Col. 52, lines 46-54.

Claim 21 is rejected on the same grounds as claim 8.

As per claim 22, Bernard discloses that one or more of said computerized remote communications facilities is operable to access or browse (Bernard, Summary of Invention, col. 3, lines 8-18) said database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility and at one or more of said other computerized central communications facilities (see references to Internet, as in col. 3, lines 8-18).

Claim 23 is rejected on the same grounds as claim 7.

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As per claim 26, Bernard discloses that the customer can use said information to select and contact another of said providers (e.g., use of the Internet and browsing, as in Bernard, col. 3, lines 8-18).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard et al. (US 5,918,213), in view of Woolston (US 5,845,265).

As per claim 24, Bernard **does not** specifically disclose that the customer can submit a bid in an auction with one of said providers. Woolston discloses auctions in an environment of the Internet and WWW, as in col. 5, line 46-col. 6, line 67.

It would have been obvious to one of ordinary skill at the time the invention was made to combine Bernard and Woolston to disclose that the customer can submit a bid in an auction with one of said providers because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

Claims 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard et al. (US 5,918,213), in view of Belknap (US 5,586,264).

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As per claim 25, Bernard **does not** specifically disclose that a presentation stopping point can be recorded. This is disclosed by Belknap, as in col. 36, lines 9-19. It would have been obvious to one of ordinary skill at the time the invention was made to combine Bernard and Belknap to disclose that a presentation stopping point can be recorded because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES ZURITA whose telephone number is (571)272-6766. The examiner can normally be reached on 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571)272-6763. 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.

/James Zurita/
James Zurita
Primary Examiner
Art Unit 3625
22 November 2009