STATEMENT OF THE CASE


SUMMARY of DECISION

We AFFIRM.
THE INVENTION

Appellant claims a method for gathering consumer feedback to advertisements presented through interactive channels and altering marketing campaigns in response to consumer feedback. (Spec. 1:5-8).

Claim 1, reproduce below, is representative of the subject matter on appeal.

1. A method for obtaining feedback from consumers receiving an advertisement from an ad provided by an ad provider through an interactive channel, the method comprising the steps of:
   creating a feedback panel including at least one feedback response concerning said advertisement; and
   providing said feedback panel to said consumers, said feedback panel being activated by a consumer to provide said feedback response concerning said advertisement to said ad provider through said interactive channel.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

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<th>Examiner</th>
<th>Patent Number</th>
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The following rejections are before us for review.

The Examiner rejected claims 1-12 under 35 U.S.C. § 101 as failing to claim patent-eligible subject matter.

The Examiner rejected claims 1-4, 7, and 9-12 under 35 U.S.C. § 103(a) as being unpatentable over Connelly in view of Rogatinsky.

The Examiner rejected claims 5, 6 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Connelly in view of Rogatinsky, and further in view of Chang.

ISSUES

Has Appellant shown that the Examiner erred in rejecting claims 1-12 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Connelly in view of Rogatinsky on the grounds that a person with ordinary skill in the art would understand that: 1. Rogatinsky discloses obtaining feedback on print media by disclosing a. “preferably through a series of questions and answers via a global communications network” and b. that the print media on which feedback is based is advertisement; and 2. that Connelly discloses sending product descriptive data to clients and the clients respond with feedback data?

Has Appellant shown that the Examiner erred in rejecting claims 1-12 on appeal as being unpatentable under 35 U.S.C. § 101 on the grounds that a person with ordinary skill in the art would understand that the claimed
process of claim 1 recites patentable subject matter under § 101 in that it is tied to a particular machine or apparatus.

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘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.’”  *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). See also *KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the *Graham* factors continue to define the inquiry that controls.”)

The test to determine whether a claimed process recites patentable subject matter under § 101 is whether: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. *In re Bilski*, 545 F.3d 943, 961-62 (Fed. Cir. 2008) (en banc).
FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. The Specification describes that [t]he feedback panel can be as simple as “I’m not interested” or can provide a variety of pre-planned responses or open-ended answers. (Spec. 8:6-8).

2. The Specification describes customer satisfaction as a goal of the Appellant’s method e.g., “…collecting "negative" feedback from ad recipients … thereby more precisely gaug[es] consumer interest in an advertisement or product is desired by ad providers, distributors and businesses.” (Spec. 3:7-9).

3. Appellant’s Specification does not specifically define the term “activate”, nor does it utilize the term contrary to its customary meaning.

4. Appellant’s Specification does not specifically define the term “advertisement”, nor does it utilize the term contrary to its customary meaning.


6. The Specification describes interactive channel in the context of “…the Internet and World Wide Web, Interactive Television, and self service devices, such as Information Kiosks and Automated Teller Machines (ATMs).” (Spec. 7: 8-11).
7. Connelly discloses “the broadcast center server receives a request to provide product feedback including product description data from a content provider….” ¶[0028].

8. Connelly discloses that the product descriptive data is sent to clients and the clients responds with feedback data. ¶[0018]

9. Connelly discloses product description data such that if a product is a movie, feature, short, television, program, and the like, product description data may include fields and values like those illustrated in FIG. 2A. The fields may include a kind 200, title 202, episode, one or more categories 204, one or more stars 206, one or more directors 220, one or more writers 222, one or more producers 224, language 226, subtitles 228, color 230, runtime 232, one or more plot descriptors 234, one or more key scenes 236, music 250, and one or more related products 260. ¶[0019]

10. Connelly discloses that:

   clients are capable of responding to product description data with feedback data. In one embodiment, the feedback data may simply be a simple request for the product described in the description data. In this embodiment, the feedback data may include a product identifier of some kind, or product identifying data, paired with a request. In another embodiment, or in response to a request to provide more detailed feedback data, the broadcast center server may receive feedback data 270. In this embodiment, for each field, sub-field, etc. of the description data, the feedback data 270 includes a rating 272, and, in some embodiments, relevance data 274 and believability data 276. In
one embodiment, the relevance data 274 and believability data 276 may be represented as vectors, such that they range from -10 to +10. In this way the broadcast center server may determine not just whether a consumer at the client prefers a product, but may also deduce the particular reasons based on the feedback data associated with particular product attributes as delineated by the fields. In various embodiments, one, or both of the relevance and believability values may be used with the rating value. ¶[0024]

11. Rogatinsky discloses obtaining feedback on print media “preferably through a series of questions and answers via a global communications network.” ¶[0011]

12. The print media in Rogatinsky on which feedback is based is advertisement. ¶[0003]

13. The Examiner found that:

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Connelly's broadcast center server and Rogatinsky's media interaction technique because a marketer would want to ask more than one question about an ad to obtain a statistical analysis of a product. (Ans. 6).

ANALYSIS

We affirm the rejection of claims 1-12 made under 35 U.S.C. § 103(a), and reverse the rejection of claims 1-12 made under 35 U.S.C. § 101.
35 U.S.C. § 101 Rejection

We will not sustain the rejection of claims 1-12 under 35 U.S.C. § 101 because one of ordinary skill in the art would understand that the claimed “interactive channels” constitutes patent eligible subject matter under § 101 because the Specification unequivocally describes interactive channels as part of an overall patent eligible system of apparatuses which include “…the Internet and World Wide Web, Interactive Television, and self service devices, such as Information Kiosks and Automated Teller Machines (ATMs).” (FF 6)

35 U.S.C. § 103(a) Rejections

Appellant does not provide a substantive argument as to the separate patentability of claims 2-4, 7, 9-12 that depend from claim 1, which is the sole independent claim among those claims. Therefore, claims 2-4, 7, 9-12 fall with claim 1. See, 37 C.F.R. § 41.37(c)(1)(vii)(2004).

Appellant argues that Rogantinsky fails to disclose the limitation in claim 1 of: creating a feedback panel including at least one feedback response concerning said advertisement; and providing said feedback panel to said consumers, said feedback panel being activated by a consumer to provide said feedback response concerning said advertisement to said ad provider through said interactive channel. (Appeal Br. 4, 5).

In particular, Appellant argues that “Rogantinsky includes no teaching concerning the creation of a feedback panel concerning an advertisement, providing the feedback panel to a consumer, and the activation of the
feedback panel by the consumer to provide a feedback response to an ad provider.” (Appeal Br. 5) We disagree with Appellant for two reasons.

First, the Examiner made findings of fact regarding the prior art and applied them to each of the claims to present a prima facie case in support of the rejections. To rebut such a prima facie case, the burden of coming forth with evidence shifts to the Appellant. The Appellant has presented no such evidence of error in the Examiner’s findings, but instead allege error in a conclusory manner.

Second, Rogatinsky discloses obtaining feedback on print media “preferably through a series of questions and answers via a global communications network.” (FF 11). We find that the print media on which feedback is based is advertisement. (FF 12). Therefore, Rogatinsky provides a teaching of obtaining feedback on advertisements.

Appellant argues that “[i]t is not seen that a request from a client [in Connelly] to receive product feedback is equivalent to a customer activating a feedback panel to provide feedback to an ad provider.” (Appeal Br. 5). We disagree with Appellant because Connelly does not teach that the request comes from a client as Appellant alleges, but rather from a content provider (FF 7). The result of this request nevertheless constitutes a feedback panel being activated, e.g. responded to by a consumer to provide the requested feedback response concerning the advertisement as required by the claims. Specifically, Connelly discloses that the product descriptive data is thus sent to clients and the clients respond with feedback data (FF 8, 10).
Moreover, we find that this product descriptive data also constitutes advertisement because, according to Connelly, the product descriptive data once sent to the customer makes known to him/her, e.g., the kind, title, episode, one or more stars, one or more directors etc, of a movie, feature, short, television, program (FF 9). Such making known of this information would constitute an advertisement. (FF 4, 5). Thus, even without the teachings of Rogantinsky, Connelly itself meets the requirements of claim 1.

The rejection of claims 5, 6 and 8 under 35 U.S.C. § 103(a) using the additional reference to Chang is not argued. We thus sustain the rejection of these claims because Appellant has not advanced any arguments to rebut the rejection.

CONCLUSIONS OF LAW

We conclude the Appellant has shown that the Examiner erred in rejecting claims 1-12 under 35 U.S.C. 101 as failing to claim patent-eligible subject matter.

We conclude the Appellant has not shown that the Examiner erred in rejecting claims 1-4, 7, and 9-12 under 35 U.S.C. § 103(a) as being unpatentable over Connelly in view of Rogatinsky.

We conclude the Appellant has not shown that the Examiner erred in rejecting claims 5, 6 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Connelly in view of Rogatinsky, and further in view of Chang.
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Application 10/251,118

DECISION

The decision of the Examiner to reject claims 1-12 is AFFIRMED.

AFFIRMED

JRG

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