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

DETAILED ACTION

Claims 22-41 have been examined.

Rejection, 35 U.S.C. 101, Non-Statutory (Directed to a Judicial Exception without Significantly More)

Claims 22-41 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

The claim falls within a statutory category of invention which is a process. The limitations that set forth the abstract idea are:

establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement;

including, within the second web page and based upon the reciprocal arrangement, a second functional identification element associated with the first entity; and including, within the first web page and based upon the reciprocal arrangement, a first functional identification element associated with the second entity, wherein the second functional identification element includes a link to the first web page, and the first functional identification element includes a link to the second web page.

These steps can be performed mentally, and are similar to the concepts identified as abstract idea by the courts (e.g. using categories and store information for transmission (Cyberfone) or comparing new and stored information and using rules to identify options in (Smartgene). Specifying the type of information being manipulated

(i.e. functional element) does not render the idea any less abstract. The claim elements in addition to the abstract idea are: A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

The computer is recited at a high level of generality and comprises only a processor and a memory to simply perform the generic computer functions of receiving, manipulating and transmitting information to a computer. Generic computer functions alone do not amount to significantly more than the abstract idea. Viewing the elements as a combination does not add anything further than the individual elements. The claim is not patent eligible.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 22-41 are rejected under pre-AIA 35 U.S.C. 102(e) as being anticipated by Bailey (USP 6,785,671).

22, 32, Bailey teaches:

A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement (see c1, l 59-67 "recommended items");

including, within the second web page and based upon the reciprocal arrangement, a second functional identification element associated with the first entity (see c3, l 10-25 "product purchase"); and

including, within the first web page and based upon the reciprocal arrangement, a first functional identification element associated with the second entity, wherein the second functional identification element includes a link to the first web page, and the first functional identification element includes a link to the second web page (see c 2, l60 – c 3, l10 "index of products from third parties").

23, Bailey teaches:

wherein the first web page is stored in a database; and the second web page is stored in the database (see c3, l10-25).

24, Bailey teaches:

receiving, from a third user, a request for the first web page (see c4, l 10-25);

dynamically generating, using a database, the first web page; and serving, to the third user, the dynamically-generated first web page (see 3, l 1—25 "composite web page").

25, Bailey teaches:

wherein the first web page includes one or more web pages (see c2, l 60- c3, l 20 "index product to purchase").

26, Bailey teaches:

within the first web page, a web asset provided by a third party separate from the computer hardware system (see c1, l 59 – l 67 "third party").

27, Bailey teaches:

causing, based upon the web asset being included within the first web page site, the third party to be compensated (see c4, l59 -67 "affiliated merchants to amazon website).

28, Bailey teaches:

the web asset is a functional application (see c1, l59-67 "products to purchase").

29, Bailey teaches:

providing, to the first user, at least one recommended web page, associated with the computer hardware system, into which the second functional identification element is to be included (1, l 59-67 "recommended items").

30, Bailey teaches:

wherein the second functional identification element includes an image (see fig 3).

31, Bailey teaches:

receiving, from the first user, the image (see c4, l 59-67 "affiliated merchant".

33, Bailey teaches:

wherein the first web page is stored in the database (see c4, l 59-67); and

the second web page is stored in the database (see c4, l 59-67).

34, Bailey teaches:

the computer hardware system is further configured to perform receiving, from a third user, a request for the first web page; dynamically generating, using the database, the first web page; and serving, to the third user, the dynamically-generated first web page (see c3, l 10-25 "composite web page")

35, Bailey teaches:

the first web page includes one or more web pages (see c3, l 10-25 "composite web page").

36, Bailey teaches:

wherein the computer hardware system is further configured to perform including, within the first web page, a web asset provided by a third party separate from the computer hardware system (see c1 , l 59-67 "third parties").

37, Bailey teaches:

the computer hardware system is further configured to perform causing, based upon the web asset being included within the first web page site, the third party to be compensated (see c 4, l 59-67 "affiliated merchant").

38, Bailey teaches:

the web asset is a functional application (see fig3 "hyperlink").

39, Bailey teaches:

wherein the computer hardware system is further configured to perform: providing, to the first user, at least one recommended web page, associated with the computer hardware system, into which the second functional identification element is to be included (see c1, l 59-67 "recommended items").

40, Bailey teaches:

the second functional identification element includes an image (see fig 3).

41, Bailey teaches:

wherein the computer hardware system is further configured to perform receiving, from the first user, the image (see fig 3).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas M. Hammond III can be reached on (571) 270-1829. The official Fax number 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 /DANIEL LASTRA/

Primary Examiner, Art Unit 3622 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).

/DANIEL LASTRA/
Primary Examiner, Art Unit 3622
3/5/16

Notice of References Cited	Application/Control No. 13/946,461	Applicant(s)/Patent Under Reexamination DISTEFANO, THOMAS L.	
	Examiner DANIEL LASTRA	Art Unit 3622	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-6,785,671 B1	08-2004	Bailey; David R.	G06F17/30864	705/26.81
	B	US-				
	C	US-				
	D	US-				
	E	US-				
	F	US-				
	G	US-				
	H	US-				
	I	US-				
	J	US-				
	K	US-				
	L	US-				
	M	US-				

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	CPC Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
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	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 763 of 1793

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13946461	DISTEFANO, THOMAS L.
	Examiner	Art Unit
	DANIEL LASTRA	3622

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	01/11/2016	03/05/2016							
	22	=	✓							
	23	=	✓							
	24	=	✓							
	25	=	✓							
	26	=	✓							
	27	=	✓							
	28	=	✓							
	29	=	✓							
	30	=	✓							
	31	=	✓							
	32	=	✓							
	33	=	✓							
	34	=	✓							
	35	=	✓							
	36	=	✓							
	37	=	✓							
	38	=	✓							
	39	=	✓							
	40	=	✓							
	41	=	✓							

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 764 of 1793

PTO/SB/08a (01-10)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT
(Not for submission under 37 CFR 1.99)

Application Number	13946461
Filing Date	2013-02-08
First Named Inventor	THOMAS L. DISTEFANO III
Art Unit	2172
Examiner Name	PESIN, BORIS
Attorney Docket Number	8201-0013

U.S.PATENTS Remove

Examiner Initial*	Cite No	Patent Number	Kind Code[1]	Issue Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	5560006	A	1996-09-24	LAYDEN et al.	
	2	5787254	A	1998-07-28	MADDALOZZO JR. et al.	
	3	5995099	A1	1999-11-30	HORSTMANN	
	4	6035334	A	2000-03-07	MARTIN et al.	
	5	6199111	B1	2001-03-06	HARA et al.	
	6	8589222	B1	2013-11-19	DISTEFANO III	
	7	8650076	B1	2014-02-11	DISTEFANO III	

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 765 of 1793

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13946461
	Filing Date	2013-02-08
	First Named Inventor	THOMAS L. DISTEFANO III
	Art Unit	2172
	Examiner Name	PESIN, BORIS
	Attorney Docket Number	8201-0013

Examiner Initial*	Cite No	Publication Number	Kind Code[1]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	20130311876	A1	2013-11-21	DISTEFANO III	

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Examiner Initial*	Cite No	Foreign Document Number[3]	Country Code[2] i	Kind Code[4]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear	T[5]
	1	0016210	WO	A1	2000-03-23	NEXCHANGE CORP.		☐
	2	9923591	WO	A1	1999-05-14	SAGE ENTERPRISES INC.		☐
	3	0021012	WO	A2	2000-04-13	ELECTRONIC COMMERCE & CATALOG SERVICES, INC.		☐
	4	0140968	WO	A2	2001-06-07	MOGHUL		☐
	5	H10301911	JP	A	1998-11-13	FUJITSU LTD.		☒
	6	H10162029	JP	A	1998-06-19	DAEWOO ELECTRON CO. LTD.		☒
	7	20000012595	KR	A	2000-03-06	WEBEASY CORP.		☒

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 766 of 1793

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13946461
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	Art Unit	2172
	Examiner Name	PESIN, BORIS
	Attorney Docket Number	8201-0013

NON-PATENT LITERATURE DOCUMENTS			Remove
Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T5
	1	LAZAR, J., "THE 10 BIGGEST BLUNDERS THAT BUSINESSES MAKE ON THE WEB," [online] Adapted from Interactive Age, May 22, 1995. Copyright 1995, Lazar Productions [retrieved 04/24/14] retrieved from the Internet: <http://www.jr.co.il/training/web01.txt>, 4 PG.	☐
	2	KENNEDY, D.M., "PRACTICE MANAGEMENT: SITE PLAN 12 STEPS TO PROMOTING YOUR WEBSITE," [online] In General Practice, Solo & Small Firm Division Magazine, Vol. 17, No. 6, Sep. 2000 [retrieved 04/24/14] retrieved from the Internet: <http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/sep2000kennedy.html>, 4 pg.	☐
	3	"SELLING ONLINE: MORE THAN HITTING A FEW KEYS," In ProQuest, Interactive Daily, Phillips Business Information Corporation © Sep 5, 1995.	☐
	4	PALMER, A. et al., "THE ROLE OF ELECTRONIC COMMERCE IN CREATING VIRTUAL TOURISM DESTINATION MARKETING ORGANISATIONS," [online] In Int'l. J. of Contemporary Hospitality Management, Vol. 12, No. 3, pp. 198-204, 2000.	☐
	5	IYER, S., "FACTORS DISTINGUISHING HIGH TRAFFIC ONLINE STORES FROM LOW TRAFFIC ON-LINE STORES," Thesis - Carleton University, Sprott School of Business, 2000, 94 pg.	☐
	6	SCHWABACH, A., "Intellectual Property: A Reference Handbook," ABC-CLIO, 2007, Pub. Apr. 26, 2007, 318 pg, [Abstract only].	☐
	7	KUMAR, N.S. et al., "Social Networking Site for Self Portfolio,"[online] In UREAT Int'l. J. of Research in Engineering & Advanced Technology, Vol. 1, No. 1, March 2013, retrieved from the Internet: <http://www.ijreat.org/Papers%202013/Volume1/IJREATV1I1055.pdf>, 4 pg.	☐
	8	"LiveJournal.com", [online] LiveJournal, Inc. © 1999, retrieved Jan. 27, 2014, retrieved from the Internet: <http://web.archive.org/web/20000604011251/http://www.livejournal.com/>, 15 pg.	☐
	9	"AsianAvenue.com", [online] Community Connect Inc. © 1997-2000, retrieved Jan. 27, 2014, retrieved from the internet: <https://web.archive.org/web/20000510055338/http://www.asianavenue.com/>, 11 pg.	☐

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 767 of 1793

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13946461
	Filing Date	2013-02-08
	First Named Inventor	THOMAS L. DISTEFANO III
	Art Unit	2172
	Examiner Name	PESIN, BORIS
	Attorney Docket Number	8201-0013

	10	"BlackPlanet.com," [online] BlackPlanet.com © 2000, retrieved Jan. 27, 2014, retrieved from the Internet: <https://web.archive.org/web/20000606010618/http://www.blackplanet.com/>, 10 pg.	☐

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EXAMINER SIGNATURE

Examiner Signature	/Daniel Lastra/ (03/10/2016)	Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1] See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. [2] Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). [3] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [4] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [5] Applicant is to place a check mark here if English language translation is attached.

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 768 of 1793

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
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	Filing Date	2013-02-08
	First Named Inventor	THOMAS L. DISTEFANO III
	Art Unit	2172
	Examiner Name	PESIN, BORIS
	Attorney Docket Number	8201-0013

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

☐ That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

☐ See attached certification statement.

☐ The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

☒ A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/SCOTT D. PAUL/	Date (YYYY-MM-DD)	2014-04-28
Name/Print	SCOTT D. PAUL	Registration Number	42984

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 769 of 1793

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The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 770 of 1793

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13946461	DISTEFANO, THOMAS L.
	Examiner	Art Unit
	DANIEL LASTRA	3622

CPC- SEARCHED		
Symbol	Date	Examiner
(G06F17/2247 OR G06F3/0481 OR G06F17/2235 OR G06Q30/02 OR G06Q30/0207 OR G06Q30/0256 OR G06Q30/0273 OR G06Q30/0276 OR G06Q30/0277 OR G06Q30/0641 OR G06Q30/08 OR A01G9/227 OR B60R22/19 OR E06B3/285 OR	1/10/16	dl

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
705	14.1	1/10/16	dl

SEARCH NOTES		
Search Notes	Date	Examiner
east	1/10/16	dl

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner
705/G06Q	14.1/30/00	1/10/16	DL

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 771 of 1793

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From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
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Mar 24, 2016 05:37:57 AM

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Application	Document	Mailroom Date	Attorney Docket No.
13946461	CTNF	03/24/2016	8201-0013
	892	03/24/2016	8201-0013
	1449	03/24/2016	8201-0013

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PATENT APPLICATION INFORMATION RETRIEVAL SYSTEM

Attorney Docket No.: 8201-0013 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Customer Number: 55246
Thomas DISTEFANO III	:	Confirmation Number: 9140
Application No.: 13/946,461	:	Group Art Unit: 3622
Filed: July 19, 2013	:	Examiner: D. Lastra

For: CLIENT SYSTEM DISPLAYING IDENTIFICATION ELEMENTS FOR WEB PAGE

AMENDMENT

Mail Stop Amendment
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The following Amendment and Remarks are submitted in response to the Office Action dated March 24, 2016.

AMENDMENTS TO THE CLAIMS

Claims 1-21 (Cancelled)

22. (Currently Amended) A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement;

including, within the second web page and based upon the reciprocal arrangement, a second link to the first web page and ~~functional identification element~~ associated with the first entity; and

including, within the first web page and based upon the reciprocal arrangement, a first link to the second web page and ~~functional identification element~~ associated with the second entity~~, wherein~~

~~the second functional identification element includes a link to the first web page, and~~

~~the first functional identification element includes a link to the second web page~~.

23. (Previously Presented) The method of claim 22, wherein

the first web page is stored in a database; and

the second web page is stored in the database.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 774 of 1793

24. (Previously Presented) The method of claim 22, further comprising

receiving, from a third user, a request for the first web page;

dynamically generating, using a database, the first web page; and

serving, to the third user, the dynamically-generated first web page.

25. (Previously Presented) The method of claim 22, wherein

the first web page includes one or more web pages.

26. (Previously Presented) The method of claim 22, further comprising

including, within the first web page, a web asset provided by a third party separate from the computer hardware system.

Claim 27 (Cancelled)

28. (Previously Presented) The method of claim 26, wherein

the web asset is a functional application.

29. (Previously Presented) The method of claim 22, further comprising

providing, to the first user, at least one recommended web page, associated with the computer hardware system, into which the second functional identification element is to be included.

30. (Currently Amended) The method of claim 22, wherein

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 775 of 1793

the second link is associated with a graphic ~~functional identification element includes an~~ image.

31. (Previously Presented) The method of claim 30, further comprising

receiving, from the first user, the image.

32. (Currently Amended) A webpage implementation server system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

a database storing information associated with the first and second web pages;

a computer hardware system configured to perform:

establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement;

including, within the second web page and based upon the reciprocal arrangement, a second link to the first web page and ~~functional identification element~~ associated with the first entity; and

including, within the first web page and based upon the reciprocal arrangement, a first link to the second web page and ~~functional identification element~~ associated with the second entity~~, wherein~~

~~the second functional identification element includes a link to the first web page, and~~

~~the first functional identification element includes a link to the second web page~~.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 776 of 1793

33. (Previously Presented) The server system of claim 32, wherein

the first web page is stored in the database; and

the second web page is stored in the database.

34. (Previously Presented) The server system of claim 32, wherein the computer hardware system is further configured to perform

receiving, from a third user, a request for the first web page;

dynamically generating, using the database, the first web page; and

serving, to the third user, the dynamically-generated first web page.

35. (Previously Presented) The server system of claim 32, wherein

the first web page includes one or more web pages.

36. (Previously Presented) The server system of claim 32, wherein the computer hardware system is further configured to perform

including, within the first web page, a web asset provided by a third party separate from the computer hardware system.

Claim 37 (Cancelled)

38. (Previously Presented) The server system of claim 36, wherein

the web asset is a functional application.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 777 of 1793

39. (Currently Amended) The server system of claim 32, wherein the computer hardware system is further configured to perform:

providing, to the first user, at least one recommended web page, associated with the computer hardware system, into which the second link ~~functional identification element~~ is to be included.

40. (Currently Amended) The server system of claim 32, wherein

the second link is associated with a graphic ~~functional identification element includes an~~ image.

41. (Previously Presented) The server system of claim 40, wherein the computer hardware system is further configured to perform

receiving, from the first user, the image.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 778 of 1793

REMARKS

At the time of the First Office Action dated March 24, 2016, claims 22-41 were pending and rejected in this application.

CLAIMS 22-41 ARE REJECTED UNDER 35 U.S.C. § 101

On pages 2 and 3 of the First Office Action, the Examiner asserted that the claimed invention, as recited in claims 22-41, fails to meet the requirements of 35 U.S.C. § 101. This rejection is respectfully traversed.

In addressing the Examiner's rejection, Applicant will refer to the guidelines issued by the Patent Office on December 16, 2014, entitled "2014 Interim Guidelines on Patent Subject Matter Eligibility," 79 Fed. Reg. 74618 (2014) (hereinafter the 2014 IEG), the "July 2015 Update: Subject Matter Eligibility" (hereinafter the 2015 Guidelines Update), and the memo entitled "Formulating a Subject Matter Eligibility Rejection ..." (hereinafter the 2016 Guidelines Update). The subsequently described 'steps' are discussed in the 2014 IEG.

Step 1

The first step in testing for subject matter eligibility is a determination whether the claim is directed to a process, machine, manufacture or composition of matter. See 35 U.S.C. § 101. Claims 22-26 and 28-31 are directed to a method (i.e., a process) and, thus, fall within the scope of 35 U.S.C. § 101. Claims 32-36 and 38-41 are directed to a computer hardware system (i.e., a

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 779 of 1793

machine) and also fall within the explicit scope of 35 U.S.C. § 101. Therefore, all of currently-pending claims 22-26, 28-36, and 38-41 meet the explicit requirements of 35 U.S.C. § 101.

Step 2A

The second step in testing for subject matter eligibility is a determination whether the claims are directed to one of the exceptions to statutory subject matter. See Bilski v. Kappos, 561 U.S. 593 (2010)("[t]he Court's precedents provide three specific exceptions to § 101's broad patent-eligibility principles: 'laws of nature, physical phenomena, and abstract ideas'" citing Diamond v. Chakrabarty, 447 U. S. 303, 308 (1980)). Referring to Alice Corp. v. CLS Bank International, the Supreme Court cautioned as follows:

> At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. *Mayo*, 566 U. S., at ___ (slip op., at 2). At some level, "all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Id.*, at ___ (slip op., at 2). Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. See *Diamond* v. *Diehr*, 450 U. S. 175, 187 (1981). "[A]pplication[s]" of such concepts "'to a new and useful end,'" we have said, remain eligible for patent protection. *Gottschalk* v. *Benson*, 409 U. S. 63, 67 (1972).
>
> Accordingly, in applying the §101 exception, we must distinguish between patents that claim the "'buildin[g] block[s]'" of human ingenuity and those that integrate the building blocks into something more, *Mayo*, 566 U. S., at ___ (slip op., at 20), thereby "transform[ing]" them into a patent-eligible invention, *id.*, at ___ (slip op., at 3).
>
> 573 U.S. ___ (slip op. at 6), 134 S. Ct. 2347 (2014).

Clearly, the claims are directed to neither "laws of nature" nor "physical phenomena." Thus, the Examiner can only allege, at most, that the claims are directed to an abstract idea. Referring to the 2014 IEG, the Patent Office has asserted that certain classes of abstract ideas identified by the courts include: "fundamental economic practices, certain methods of organizing human activities, an idea 'of itself,' and mathematical relationships/formula."

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 780 of 1793

The alleged "abstract idea"

Turning to page 3 of the First Office Action, with regard to the alleged "abstract idea," the Examiner asserted the following:

> The limitations that set forth the abstract idea are:
> establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement;
> including, within the second web page and based upon the reciprocal arrangement, a second functional identification element associated with the first entity; and including, within the first web page and based upon the reciprocal arrangement, a first functional identification element associated with the second entity, wherein the second functional identification element includes a link to the first web page, and the first functional identification element includes a link to the second web page.

Notably, the Examiner's alleged "abstract idea" is little more than a word-for-word reproduction of the language of claim 22. Applicant disagrees with the Examiner's finding for the reasons set forth below.

"Machine or Transformation"

With regard to the "machine or transformation" test, the Supreme Court, within Bilski v. Kappos, 561 U.S. 593 (2010), stated the following:

> Adopting the machine-or-transformation test as the sole test for what constitutes a "process" (as opposed to just an important and useful clue) violates these statutory interpretation principles.

Consequently, while the "machine or transformation" test is not the sole test for patent eligibility, it is an "important and useful clue." As admitted by the Examiner, the claimed invention is tied to a machine. Specifically, the claimed invention involves, at least, modifying/generating two different web pages using a computer hardware system. These limitations are explicitly tied to a machine and/or require the use of a machine to implement. Consequently, the claimed invention

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 781 of 1793

meets the machine or transformation test, which is an "important and useful clue" that the claimed invention, as whole, is directed to statutory subject matter.

Examiner's explanation as to why the claims are "directed to" an "abstract idea"

Reference is made to page 2 of the 2016 Guidelines Update, which describe the following requirements when making a rejection under 35 U.S.C. § 101:

> A subject matter eligibility rejection should point to the specific claim limitation(s) that recites *(i.e.,* sets forth or describes) the judicial exception. The rejection must identify the specific claim limitations and explain why those claim limitations **set forth** a judicial exception *(e.g.,* an abstract idea). Where the claim **describes**, but does not expressly set forth, the judicial exception, the rejection must also explain what subject matter those limitations describe, and why the described subject matter is a judicial exception.
> When the examiner has determined the claim recites an **abstract idea**, the rejection should identify the abstract idea as it is recited *(i.e.,* set forth or described) in the claim, and explain why it corresponds to a concept that the courts have identified[1] as an abstract idea. (emphasis in original)

Referring to pages 2 and 3 of the First Office Action, the Examiner presented the following explanation as to why claims are directed to an abstract idea:

> These steps can be performed mentally, and are similar to the concepts identified as abstract idea by the courts (e.g. using categories to organize and store information for transmission (Cyberfone) or comparing new and stored information and using rules to identify options in (SmartGene). Specifying the type of information being manipulated (i.e. functional element) does not render the idea any less abstract.

In short, the Examiner alleges that the alleged "abstract idea" can be performed "mentally" and are similar to the concepts within Cyberfone Systems, LLC v. CNN Interactive Group, Inc., 558 F. App'x. 988 (Fed. Cir. 2014) (nonprecedential) and SmartGene v. Advanced Biological Labs,

[1] See Enfish v. Microsoft, __ F.3d __ (Fed. Cir. 2016) ("both this court and the Supreme Court have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases") (slip op., at 9).

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 782 of 1793

555 F. App'x 950 (Fed. Cir. 2014) (nonprecedential). Applicant respectfully disagrees for the reasons discussed below.

Failure to follow the case law

As noted above, the Examiner has alleged that the claims are directed to an "abstract idea" comparable to those found in certain court decisions. In this regard, reference is made to pages 2 and 3 of the 2016 Guidelines Update, which is reproduced in part below:

> Citing to an appropriate court decision that supports the identification of the subject matter recited in the claim language as an abstract idea is a best practice that will advance prosecution. Examiners should be familiar with any cited decision relied upon in making or maintaining a rejection to ensure that the rejection is reasonably tied to the facts of the case and to avoid relying upon language taken out of context. Examiners should **not** go beyond those concepts that are similar to what the courts have identified as abstract ideas. (emphasis added)

As will be described in more detail below, the Examiner's analysis has not reasonably tied the claimed invention to the facts of the case decisions cited by the Examiner. As such, the Examiner has improperly gone beyond those concepts identified by the courts as abstract ideas.

Cyberfone Systems, LLC v. CNN Interactive Group, Inc.

As discussed above, the Examiner cited Cyberphone and referred to "using categories to organize and store information for transmission," which is pulled from page 5 of the 2015 Guidelines Update and refers Cyberfone Systems, LLC v. CNN Interactive Group, Inc., 558 F. App'x. 988, 993 (Fed. Cir. 2014). Notably, this decision has been labeled as nonprecedential. As described by the Federal Circuit, "the well-known concept of categorical data storage ... is an abstract idea that is not patent-eligible."

However, the claimed invention is not directed to the "well-known" concept of

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 783 of 1793

categorical data storage and the Examiner's implied comparison of the claimed invention to the claims at issue in Cyberfone is misplaced. As characterized by the Federal Circuit, the claims at issue within Cyberfone are as follows:

> Claim 1 recites steps of (1) "obtaining data transaction information entered on a telephone from a single transmission from said telephone;" (2) "forming a plurality of different exploded data transactions . . . formed based on said data transaction information from said single transmission, so that different data from the single data transmission is separated and sent to different destinations;" and (3) "sending said different exploded data transactions . . . to said different destinations, all based on said data transaction information entered in said single transmission." Slip op., at 7.

Consequently, the holding of Cyberfone, as characterized by the Federal Circuit, is as follows:

> Here, the well-known concept of categorical data storage, *i.e.*, the idea of collecting information in classified form, then separating and transmitting that information according to its classification, is an abstract idea that is not patent-eligible. Slip op., at 7.

In view of the Federal Circuit's holding, nothing about the claimed invention involves "categorical data storage." The claim at issue within Cyberfone is not comparable to the claimed invention, and the Examiner has not presented any evidence to support a different conclusion. Thus, the Examiner's analysis errs in attempting to force fit the nonprecedential holding of Cyberfone onto the facts of the present application. Applicant, therefore, respectfully submits that the Examiner has not identified an "abstract idea," as that term has been used by the Court, to which the claims are directed.

SmartGene v. Advanced Biological Labs

The Examiner's reference to "comparing new and stored information and using rules to identify options" is also misplaced. The language referenced by the Examiner is pulled directly

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 784 of 1793

from SmartGene v. Advanced Biological Labs, 555 F. App'x 950 (Fed. Cir. 2014) (nonprecedential), with the actual quote being "[w]hatever the boundaries of the 'abstract ideas' category, the claim at issue here involves a *mental process* excluded from section 101: the mental steps of comparing new and stored information and using rules to identify *medical options*" (emphasis added). Notably, the Examiner's analysis fails to recognize that the Federal Circuit also introduced the conditions of a "mental process" and the options being identified are "medical."

The Examiner's analysis also fails to appreciate the very specific limitation made by the Federal Circuit when they wrote:

> Our ruling is limited to the circumstances presented here, in which every step is a familiar part of the conscious process that doctors can and do perform in their heads. Slip op. at 9.

Unlike SmartGene in which every step could be performed by a doctor "in their heads," the claimed invention cannot be performed by the human mind. The claim recites including links within both a first web page and a second web page, which necessarily require the use of a computer. Thus, notwithstanding that SmartGene is nonprecedential, the claimed invention bears no semblance to the "abstract idea" identified within SmartGene. Because the Examiner has not identified a judicial exception consistent with the case law, the Examiner has failed to establish a prima face case under 35 U.S.C. § 101.

Step 2B

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 785 of 1793

Referring to the 2014 IEG, Step 2B involves determining whether the claim recites additional elements that amount to significantly more than the judicial exception. The 2014 IEG provides the framework for this analysis and states:

> In the rejection, identify the exception by referring to where it is recited (*i.e.,* set forth or described) in the claim and explain why it is considered an exception. Then, if the claim includes additional elements, identify the elements in the rejection and explain why they do not add significantly more to the exception. (emphasis added)

Reference is also made to the 2015 Guidelines Update, portions of which are reproduced below:

> For subject matter eligibility, the examiner's burden is met by clearly articulating the reason(s) why the claimed invention is not eligible, for example by providing a reasoned rationale that identifies the judicial exception recited in the claim and why it is considered an exception, and that identifies the additional elements in the claim (if any) and explains why they do not amount to significantly more than the exception. [footnote 15 omitted] This rationale may rely, where appropriate, on the knowledge generally available to those in the art, on the case law precedent, on applicant's own disclosure, or on evidence. (emphasis added)
>
> ...
>
> As such, a rejection should only be made if an examiner relying on his or her expertise in the art can readily conclude in the Step 2B inquiry that the additional elements do not amount to significantly more (*Step 2B: NO*). If the elements or functions are beyond those recognized in the art or by the courts as being well-understood, routine or conventional, then the elements or functions will in most cases amount to significantly more (*Step 2B: YES*).

Turning to the Examiner's analysis on page 3 of the First Office Action, the Examiner asserted the following:

> The claim elements in addition to the abstract idea are: A method , within and by a computer that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:
> The computer is recited to a high level of generality and comprises only a processor and a memory to simply performs generic functions of receiving, manipulating and transmitting information to a computer. Generic computer functions alone do not amount to significantly more than the abstract idea. Viewing the elements as a combination does not add anything further than the individual elements. The claim is not patent eligible.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 786 of 1793

Applicant respectfully submits that the Examiner's analysis fails to consider the claimed invention "as a whole." See Diamond v. Diehr, 450 U. S. 175, 188 (1981); see Parker v. Flook, 437 U. S. 584, 594 (1978) ("Our approach ... is . . . not at all inconsistent with the view that a patent claim must be considered as a whole"). Reference is made to DDR Holdings v. Hotels.com, 773 F.3rd 1245, 1257 (Fed Cir. 2014), in which the Federal Circuit characterized the difference between claims found to be patent eligible under 35 U.S.C. § 101 as follows:

> But these claims stand apart because they do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.

Reference is also made to Applicant's specification, which states the following:

> Although the use of such banner ads and links is very common, the setting up of such mechanisms is not always easy. In particular, other websites typically do not display banner ads and links for a particular website without contractual arrangements, including payment, which can be difficult for a novice web designer to arrange and expensive to arrange via a website development company. (emphasis added)

Creating cross-linked web pages is a technology necessarily in both computer technology and technology involving networked (e.g., via the internet) computers. Moreover, the claimed invention is directed to addressing this problem. Accordingly, the facts of the present application are more comparable to DDR Holdings than the case decisions cited by the Examiner.

Step 2B - Dependent claims

The Examiner's analysis is silent with regard to the dependent claims. Each claim stands or falls alone, and the dependent claims add additional elements that recite substantially more than the alleged abstract idea. The Examiner's analysis, however, makes no mention of the dependent claims or explains why the additional elements recited in the dependent claims do not

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 787 of 1793

add significantly more to the alleged exception. Therefore, the Examiner's analysis regarding the dependent claims does not meet the requirements described within the 2014 IEG or the 2015 Guidelines Update.

For the above-described reasons, Applicant respectfully solicits withdrawal of the imposed rejection of claims 22-26, 28-36, and 38-41 under 35 U.S.C. § 101.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 788 of 1793

CLAIMS 22-41 ARE REJECTED UNDER 35 U.S.C. § 102 AS BEING ANTICIPATED BY BAILEY ET AL., U.S. PATENT NO. 5,670,804 (HEREINAFTER BAILEY)

On pages 4-7 of the First Office Action, the Examiner asserted that Bailey discloses the invention corresponding to that claimed. This rejection is respectfully traversed.

Claim 22

Independent claim 22 recites, in part, the limitations of "establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement." Regarding these limitations, on page 4 of the First Office Action, the Examiner cited column 1, lines 59-67 of Bailey while asserting "recommended items." For ease of reference, column 1, lines 59-67 of Bailey is reproduced below:

> The user, however, may be unaware that the web site also sells products other than books that may be of interest to fans of Mark Twain. For example, a videos section of the same web site may contain video biographies of Mark Twain and video adaptations of many of his classic books, while a music section may include compact discs with songs inspired by his writings. Similarly, an auctions section of the same site may contain products offered for sale by third parties that may be of interest to the user, such as Mark Twain memorabilia. Although use of the web site's search engine may reveal some of these additional products, the user typically must review a long list of search results in order to identify the products or categories of interest.

There are multiple problems with the Examiner's analysis. First, the Examiner's cited passage is found in the "Background" portion of Bailey and is within a paragraph that describes a problem to be solved. Notably, this disclosure refers to different technology than that described by Bailey's disclosure. Under 35 U.S.C. § 102, not only must a prior art reference disclose all elements within a claim, the prior art reference must also disclose those elements "arranged as in the claim." Net MoneyIn, Inc. v. Verisign, Inc., 545 F.3d 1359, 1369 (Fed. Cir. 2008); Karsten

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 789 of 1793

Mfg. Corp. v. Cleveland Golf Co., 242 F.3d 1376, 1383 (Fed. Cir. 2001); Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 1548 (Fed. Cir. 1983). Since the passage relied upon by the Examiner is not part of Bailey's disclosure, it is not arranged with any of the other teachings within Bailey being relied upon the Examiner. Consequently, the Examiner has improperly relied upon these teachings in a rejection under 35 U.S.C. § 102.

Notwithstanding the points above, the Examiner's cited passage fails to identically disclose the claimed "establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement." While the Examiner's cited passage mentions a web page, the Examiner's cited passage does not identically disclose a second web page. Consequently, the Examiner's cited passage cannot teach "establishing a reciprocal arrangement between the first web page and the second web page," as claimed. Moreover, the Examiner's cited passage is completely silent as to the claimed "both the first and second users opting to participate in the reciprocal arrangement." Therefore, Bailey fails to identically disclose all of the limitations of claim 22 within the meaning of 35 U.S.C. § 102.

For the above-described reasons, the Examiner has not established that Bailey identically discloses the claimed invention, as recited in claims 22-26, 28-36, and 38-41, within the meaning of 35 U.S.C. § 102. Applicant, therefore, respectfully solicits withdrawal of the imposed rejection of claims 22-26, 28-36, and 38-41 under 35 U.S.C. § 102 for anticipation based upon Bailey.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 790 of 1793

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 503611, and please credit any excess fees to such deposit account.

Date: August 24, 2016

Respectfully submitted,

/Scott D. Paul/
Scott D. Paul
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CUSTOMER NUMBER 55246

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 791 of 1793

Electronic Patent Application Fee Transmittal	
Application Number:	13946461
Filing Date:	19-Jul-2013
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Filer:	Scott David Paul/Alaine Allison
Attorney Docket Number:	8201-0013
Filed as Small Entity	
Filing Fees for Utility under 35 USC 111(a)	

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension - 2 months with $0 paid	2252	1	300	300
Miscellaneous:				
		Total in USD ($)		**300**

Electronic Acknowledgement Receipt	
EFS ID:	26740381
Application Number:	13946461
International Application Number:	
Confirmation Number:	9140
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Customer Number:	55246
Filer:	Scott David Paul/Alaine Allison
Filer Authorized By:	Scott David Paul
Attorney Docket Number:	8201-0013
Receipt Date:	24-AUG-2016
Filing Date:	19-JUL-2013
Time Stamp:	18:27:04
Application Type:	Utility under 35 USC 111(a)

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Submitted with Payment	yes
Payment Type	DA
Payment was successfully received in RAM	$300
RAM confirmation Number	082516INTEFSW00005088503611
Deposit Account	503611
Authorized User	Alaine Allison
The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		8201-0013_AmendmenttoOfficeAction1_08-24-16.pdf	158189 ed45c32ccbbca3c949d9ee6f7dd5f48ef4900f98	yes	19
	Multipart Description/PDF files in .zip description				
	Document Description		Start	End	
	Amendment/Req. Reconsideration-After Non-Final Reject		1	1	
	Claims		2	6	
	Abstract		7	19	
Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	30733 1adc4fbd4edb710dd2d2c8be05afb0688c0dcf02	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	188922		

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If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/946,461	Filing Date 07/19/2013	☐ To be Mailed

ENTITY: ☐ LARGE ☒ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT **08/24/2016**

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	* 18	Minus	** 20	= 0	X $40 =	0
Independent (37 CFR 1.16(h))	* 2	Minus	***3	= 0	X $210 =	0
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	0

AMENDMENT

	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =	
Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =	
☐ Application Size Fee (37 CFR 1.16(s))						
☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
					TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
VANESSA HODGES

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Doc code: IDS
Doc description: Information Disclosure Statement (IDS) Filed

PTO/SB/08a (03-15)
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT
(Not for submission under 37 CFR 1.99)

Application Number	13946461
Filing Date	2013-07-19
First Named Inventor	THOMAS L. DISTEFANO III
Art Unit	3622
Examiner Name	LASTRA, DANIEL
Attorney Docket Number	8201-0013

U.S.PATENTS Remove

Examiner Initial*	Cite No	Patent Number	Kind Code[1]	Issue Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	7082407	B1	2006-07-25	BEZOS et al.	
	2	7353199	B1	2008-04-01	DISTEFANO	
	3	8768760	B1	2014-07-01	DISTEFANO	
	4	8781890	B2	2014-07-15	DISTEFANO	
	5	8996398	B2	2014-07-10	DISTEFANO	

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U.S.PATENT APPLICATION PUBLICATIONS Remove

Examiner Initial*	Cite No	Publication Number	Kind Code[1]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	20140195886	A1	2014-07-10	DISTEFANO	

If you wish to add additional U.S. Published Application citation information please click the Add button. Add

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13946461
	Filing Date	2013-07-19
	First Named Inventor	THOMAS L. DISTEFANO III
	Art Unit	3622
	Examiner Name	LASTRA, DANIEL
	Attorney Docket Number	8201-0013

Examiner Initial*	Cite No	Foreign Document Number[3]	Country Code[2]	Kind Code[4]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear	T[5]
	1							

If you wish to add additional Foreign Patent Document citation information please click the Add button Add

NON-PATENT LITERATURE DOCUMENTS Remove

Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]
	1		

If you wish to add additional non-patent literature document citation information please click the Add button Add

EXAMINER SIGNATURE

Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1] See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. [2] Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). [3] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [4] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [5] Applicant is to place a check mark here if English language translation is attached.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 799 of 1793

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13946461
	Filing Date	2013-07-19
	First Named Inventor	THOMAS L. DISTEFANO III
	Art Unit	3622
	Examiner Name	LASTRA, DANIEL
	Attorney Docket Number	8201-0013

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

See attached certification statement.

The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

☒ A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	SCOTT D. PAUL	Date (YYYY-MM-DD)	2016-09-01
Name/Print	SCOTT D. PAUL	Registration Number	42984

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 800 of 1793

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 801 of 1793

Electronic Acknowledgement Receipt	
EFS ID:	26812555
Application Number:	13946461
International Application Number:	
Confirmation Number:	9140
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Customer Number:	55246
Filer:	Scott David Paul/Alaine Allison
Filer Authorized By:	Scott David Paul
Attorney Docket Number:	8201-0013
Receipt Date:	01-SEP-2016
Filing Date:	19-JUL-2013
Time Stamp:	13:31:50
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Information Disclosure Statement (IDS) Form (SB08)	8201-0013_Supplemental_IDS_09-01-16.pdf	1035335 e9c7d8ddd57a095d7fd65841979536cafb18ab58	no	4
Warnings:					

Information:	
Total Files Size (in bytes):	1035335

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/946,461	07/19/2013	THOMAS L. DISTEFANO III	8201-0013	9140

55246 7590 02/02/2017

Cuenot, Forsythe & Kim
12161 KEN ADAMS WAY
SUITE 120
WELLINGTON, FL 33414

EXAMINER	
LASTRA, DANIEL	

ART UNIT	PAPER NUMBER
3622	

NOTIFICATION DATE	DELIVERY MODE
02/02/2017	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):

ptomail@iplawpro.com
tforsythe@iplawpro.com
kcuenot@iplawpro.com

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 804 of 1793

Office Action Summary	Application No. 13/946,461	Applicant(s) DISTEFANO, THOMAS L.	
	Examiner DANIEL LASTRA	Art Unit 3622	AIA (First Inventor to File) Status No

-- 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 MONTHS 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 *09/01/2016*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ 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*

5)☒ Claim(s) *22-26,28-36 and 38-41* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *22-26,28-36 and 38-41* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ 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).

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).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

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) ☒ Notice of References Cited (PTO-892)

2) ☒ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

4) ☐ Other: _____.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 805 of 1793

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

DETAILED ACTION

Claims 22-26,28-36,38-41 have been examined.

Response to Amendment

In response to Non Final 03/24/2016 the Applicant filed an Amendment 08/24/2016.

Rejection, 35 U.S.C. 101, Non-Statutory (Directed to a Judicial Exception without Significantly More)

Claims 22-26,28-36,38-41 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

The claim falls within a statutory category of invention which is a process. The limitations that set forth the abstract idea are:

establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement;

including, within the second web page and based upon the reciprocal arrangement, a second link to the first web page and associated with the first entity; and

including, within the first web page and based upon the reciprocal arrangement, a first link to the second web page and associated with the second entity.

These steps can be performed mentally, and are similar to the concepts identified as abstract idea by the courts (e.g. displaying ads in exchange to access to media (*Ultramercial*) similar to displaying reciprocal links in website. The claim elements in addition to the abstract idea are: A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

The computer is recited at a high level of generality and comprises only a processor and a memory to simply perform the generic computer functions of receiving, manipulating and transmitting information to a computer. Generic computer functions alone do not amount to significantly more than the abstract idea. Viewing the elements as a combination does not add anything further than the individual elements. The claim is not patent eligible. Furthermore, the dependent claims suffer from the same problem.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim(s) 22-26,28-36,38-41 is/are rejected under pre-AIA 35 U.S.C. 102(b) as being anticipated by Bezos (USP 6,029,141).

22, 32, Bezos teaches:

A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement (see c 1, 50 – c3, 40);

including, within the second web page and based upon the reciprocal arrangement, a second link to the first web page and associated with the first entity (see c 1, 50 – c3, 40); and

including, within the first web page and based upon the reciprocal arrangement, a first link to the second web page and associated with the second entity (see c 1, 50 – c3, 40).

23, Bezos teaches:

the first web page is stored in a database (see c 1, 50 – c3, 40); and

the second web page is stored in the database (see c 1, 50 – c3, 40).

24, Bezos teaches:

receiving, from a third user, a request for the first web page; dynamically generating, using a database, the first web page; and serving, to the third user, the dynamically-generated first web page (see c 1, 50 – c3, 40).

25, Bezos teaches:

wherein the first web page includes one or more web pages (see c 1, 50 – c3, 40).

26, Bezos teaches:

including, within the first web page, a web asset provided by a third party separate from the computer hardware system (see c 1, 50 – c3, 40).

28, Bezos teaches:

wherein the web asset is a functional application (see c 1, 50 – c3, 40).

29, Bezos teaches:

providing, to the first user, at least one recommended web page, associated with the computer hardware system, into which the second functional identification element is to be included (see c 1, 50 – c3, 40).

30, Bezos teaches:

the second link is associated with a graphic image (see c 1, 50 – c3, 40).

31, Bezos teaches:

from the first user, the image (see c 1, 50 – c3, 40).

33, Bezos teaches:

wherein the first web page is stored in the database (see c 1, 50 – c3, 40); and

the second web page is stored in the database (see c 1, 50 – c3, 40).

34, Bezos teaches:

wherein the computer hardware system is further configured to perform

receiving, from a third user, a request for the first web page; dynamically generating, using the database, the first web page; and serving, to the third user, the dynamically-generated first web page (see c 1, 50 – c3, 40).

35, Bezos teaches:

wherein the first web page includes one or more web pages (see c 1, 50 – c3, 40).

36, Bezos teaches:

wherein the computer hardware system is further configured to perform

including, within the first web page, a web asset provided by a third party separate from the computer hardware system (see c 1, 50 – c3, 40).

38, Bezos teaches:

wherein the web asset is a functional application (see c 1, 50 – c3, 40).

39, Bezos teaches:

wherein the computer hardware system is further configured to perform:

providing, to the first user, at least one recommended web page, associated with the computer hardware system, into which the second link ~~functional identification element~~ is to be included (see c 1, 50 – c3, 40).

40, Bezos teaches:

the second link is associated with a graphic ~~functional identification element includes an~~

image (see c 1, 50 – c3, 40).

41, Bezos teaches:

wherein the computer hardware system is further configured to perform receiving, from the first user, the image (see c 1, 50 – c3, 40).

Response to Arguments

The Applicant argues that Section 101 rejection should be withdrawn. The Examiner answers that

> These steps can be performed mentally, and are similar to the concepts identified as abstract idea by the courts (e.g. displaying ads in exchange to access to media (*Ultramercial*) similar to displaying reciprocal links in website. The claim elements in addition to the abstract idea are: A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

The computer is recited at a high level of generality and comprises only a processor and a memory to simply perform the generic computer functions of receiving, manipulating and transmitting information to a computer. Generic computer functions alone do not amount to significantly more than the abstract idea. Viewing the elements as a combination does not add anything further than the individual elements. The claim is not patent eligible. Furthermore, the dependent claims suffer from the same problem.

Applicant's argument are moot in view of the new ground of rejection.

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.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The official Fax number 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 /DANIEL LASTRA/

Primary Examiner, Art Unit 3622 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).

/DANIEL LASTRA/
Primary Examiner, Art Unit 3622
01/12/2017

Notice of References Cited	Application/Control No. 13/946,461	Applicant(s)/Patent Under Reexamination DISTEFANO, THOMAS L.	
	Examiner DANIEL LASTRA	Art Unit 3622	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-6,029,141 A	02-2000	Bezos; Jeffrey P.	G06Q20/0855	705/26.41
	B	US-				
	C	US-				
	D	US-				
	E	US-				
	F	US-				
	G	US-				
	H	US-				
	I	US-				
	J	US-				
	K	US-				
	L	US-				
	M	US-				

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	CPC Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 813 of 1793

Doc code: IDS
Doc description: Information Disclosure Statement (IDS) Filed

PTO/SB/08a (03-15)
Approved for use through 07/31/2016. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT
(Not for submission under 37 CFR 1.99)

Application Number	13946461
Filing Date	2013-07-19
First Named Inventor	THOMAS L. DISTEFANO III
Art Unit	3622
Examiner Name	LASTRA, DANIEL
Attorney Docket Number	8201-0013

U.S.PATENTS Remove

Examiner Initial*	Cite No	Patent Number	Kind Code[1]	Issue Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	7082407	B1	2006-07-25	BEZOS et al.	
	2	7353199	B1	2008-04-01	DISTEFANO	
	3	8768760	B1	2014-07-01	DISTEFANO	
	4	8781890	B2	2014-07-15	DISTEFANO	
	5	8996398	B2	2014-07-10	DISTEFANO	

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Examiner Initial*	Cite No	Publication Number	Kind Code[1]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	20140195886	A1	2014-07-10	DISTEFANO	

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13946461
	Filing Date	2013-07-19
	First Named Inventor	THOMAS L. DISTEFANO III
	Art Unit	3622
	Examiner Name	LASTRA, DANIEL
	Attorney Docket Number	8201-0013

Examiner Initial*	Cite No	Foreign Document Number[3]	Country Code[2]	Kind Code[4]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear	T[5]
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Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]
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Examiner Signature	/DANIEL LASTRA/	Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1] See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. [2] Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). [3] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [4] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [5] Applicant is to place a check mark here if English language translation is attached.

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 815 of 1793

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13946461
	Filing Date	2013-07-19
	First Named Inventor	THOMAS L. DISTEFANO III
	Art Unit	3622
	Examiner Name	LASTRA, DANIEL
	Attorney Docket Number	8201-0013

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

See attached certification statement.

The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

☒ A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	SCOTT D. PAUL	Date (YYYY-MM-DD)	2016-09-01
Name/Print	SCOTT D. PAUL	Registration Number	42984

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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The information provided by you in this form will be subject to the following routine uses:

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8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 817 of 1793

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13946461	DISTEFANO, THOMAS L.
	Examiner	Art Unit
	DANIEL LASTRA	3622

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	01/11/2016	03/05/2016							
	22	=	✓							
	23	=	✓							
	24	=	✓							
	25	=	✓							
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	36	=	✓							
	37	=	✓							
	38	=	✓							
	39	=	✓							
	40	=	✓							
	41	=	✓							

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 818 of 1793

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13946461	DISTEFANO, THOMAS L.
	Examiner	Art Unit
	DANIEL LASTRA	3622

CPC- SEARCHED		
Symbol	Date	Examiner
(G06F17/2247 OR G06F3/0481 OR G06F17/2235 OR G06Q30/02 OR G06Q30/0207 OR G06Q30/0256 OR G06Q30/0273 OR G06Q30/0276 OR G06Q30/0277 OR G06Q30/0641 OR G06Q30/08 OR A01G9/227 OR B60R22/19 OR E06B3/285 OR	1/10/16	dl

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
705	14.1	1/10/16	dl

SEARCH NOTES		
Search Notes	Date	Examiner
east	1/10/16	dl

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner
705/G06Q	14.1/30/00	1/10/16	DL

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 819 of 1793

To: ptomail@iplawpro.com,tforsythe@iplawpro.com,kcuenot@iplawpro.com
From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
Subject: Private PAIR Correspondence Notification for Customer Number 55246

Feb 02, 2017 04:03:24 AM

Dear PAIR Customer:

Cuenot, Forsythe & Kim
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SUITE 120
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Application	Document	Mailroom Date	Attorney Docket No.
13946461	CTFR	02/02/2017	8201-0013
	892	02/02/2017	8201-0013
	1449	02/02/2017	8201-0013

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NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Docket Number (Optional): 8201-0013

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on _____

Signature _____

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In re Application of: THOMAS L. DISTEFANO III

Application Number	Filed
13/946,461	2013-07-19

For: RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES

Art Unit	Examiner
3622	LASTRA, DANIEL

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 41.20(b)(1)) $800.00

☑ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: $400.00

☐ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☑ The Director has already been authorized to charge fees in this application to a Deposit Account.

☑ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 503611 .

☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record. Registration number 42984.

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34. _____

/SCOTT D. PAUL/
Signature

SCOTT D. PAUL
Typed or printed name

561-801-7700
Telephone number

JUNE 2, 2017
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 forms are submitted.

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Electronic Patent Application Fee Transmittal	
Application Number:	13946461
Filing Date:	19-Jul-2013
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Filer:	Scott David Paul/Alaine Allison
Attorney Docket Number:	8201-0013
Filed as Small Entity	
Filing Fees for Utility under 35 USC 111(a)	

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
NOTICE OF APPEAL	2401	1	400	400
Post-Allowance-and-Post-Issuance:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension-of-Time:				
Miscellaneous:				
		Total in USD ($)		**400**

Electronic Acknowledgement Receipt	
EFS ID:	29377213
Application Number:	13946461
International Application Number:	
Confirmation Number:	9140
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Customer Number:	55246
Filer:	Scott David Paul/Alaine Allison
Filer Authorized By:	Scott David Paul
Attorney Docket Number:	8201-0013
Receipt Date:	02-JUN-2017
Filing Date:	19-JUL-2013
Time Stamp:	10:30:10
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	DA
Payment was successfully received in RAM	$400
RAM confirmation Number	060217INTEFSW00008137503611
Deposit Account	
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Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Notice of Appeal Filed	8201-0013_NoticeofAppeal_06-02-17.pdf	128126 f1bc71fb10e14ae77f2d961ca1f41c1140b37904	no	1
Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	30189 c9556c98f645f70ebc5d9b286a77b9fc87a967b6	no	2
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New International Application Filed with the USPTO as a Receiving Office
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Electronic Patent Application Fee Transmittal	
Application Number:	13946461
Filing Date:	19-Jul-2013
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Filer:	Scott David Paul/Alaine Allison
Attorney Docket Number:	8201-0013
Filed as Small Entity	
Filing Fees for Utility under 35 USC 111(a)	

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension - 1 month with $0 paid	2251	1	100	100
Miscellaneous:				
		Total in USD ($)		**100**

Electronic Acknowledgement Receipt	
EFS ID:	29377245
Application Number:	13946461
International Application Number:	
Confirmation Number:	9140
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Customer Number:	55246
Filer:	Scott David Paul/Alaine Allison
Filer Authorized By:	Scott David Paul
Attorney Docket Number:	8201-0013
Receipt Date:	02-JUN-2017
Filing Date:	19-JUL-2013
Time Stamp:	10:32:39
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Fee Worksheet (SB06)	fee-info.pdf	30731 8a9b9b5638695851f40e982a804bc0b179abb9e3	no	2

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National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.
New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Doc code: IDS
Doc description: Information Disclosure Statement (IDS) Filed

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT (**Not for submission under 37 CFR 1.99)**		
	Application Number	13946461
	Filing Date	2013-07-19
	First Named Inventor	THOMAS L. DISTEFANO III
	Art Unit	3622
	Examiner Name	DANIEL LASTRA
	Attorney Docket Number	8201-0013

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 830 of 1793

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13946461
	Filing Date	2013-07-19
	First Named Inventor	THOMAS L. DISTEFANO III
	Art Unit	3622
	Examiner Name	DANIEL LASTRA
	Attorney Docket Number	8201-0013

	1	'Epinions.com Autos," [online] Epinions, Inc. © 1999 [retrieved Aug.14, 2017] retrieved from the Internet: <https://web.archive.org/web/19991127170707/http:/www.epinions.com:80/auto>, 2 pg.	
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	3	'Epinions.com - ealford's profile," [online] Epinions, Inc. © 1999-2003 [retrieved Aug.14, 2017] retrieved from the Internet: <https://web.archive.org/web/20030226171454/http://www.epinions.com:80/user-ealford>, 1 pg.	

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
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Page 831 of 1793

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13946461
	Filing Date	2013-07-19
	First Named Inventor	THOMAS L. DISTEFANO III
	Art Unit	3622
	Examiner Name	DANIEL LASTRA
	Attorney Docket Number	8201-0013

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☒ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

See attached certification statement.

The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

A certification statement is not submitted herewith.

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A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/SCOTT D. PAUL/	Date (YYYY-MM-DD)	2017-08-14
Name/Print	SCOTT D. PAUL	Registration Number	42984

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 832 of 1793

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TikTok Inc. EX1002
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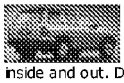
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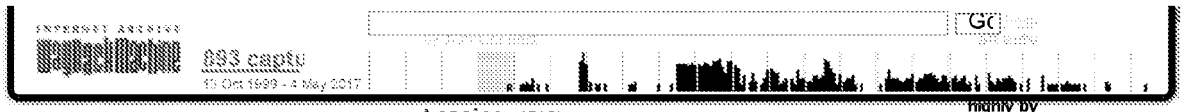
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We've all been through the trauma of buying a car. It's not only the second biggest purchase you'll ever make, it's also one of the most nerve-wracking and time consuming. ...
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TikTok Inc. EX1002
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IPR2025-01061
Page 835 of 1793

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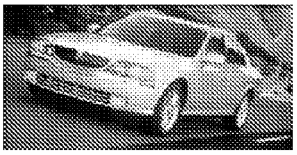
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After driving the Jag S-Type, which shares a chassis and powertrains, I have made two updates. These are noted at the beginning of the paragraphs ...

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by Aathif (Oct 24 '99)
Product rating: ★★★☆☆
This vehicle is a nice car, no doubt about it. Its styling and power are are above average, pretty darn good as a matter of fact. Now, beating ...

BMW Fighter — Useful
by ealford (Oct 13 '99)
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Recently I read an article on the new Lincoln, where they had referred to it as the "Import Fighter." I think it may have been Lincoln that ...

Professional Reviews Suggest a Link

Lincoln Crafts Unbelievable LS — Very Useful
by USA Today
The thunderous cough of a modified, carbureted Detroit V-8 swept through the tunnel of trees, an overture. ...

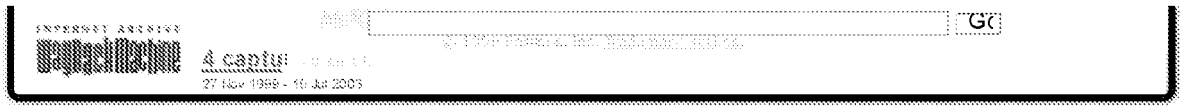
2000 Lincoln LS
by New Car Test Drive
Lincoln will take on the world's sport-luxury cars this spring with its new LS sedans. The all-new 2000 LS models will be the most advanced cars Lincoln has ever built. ...

Lincoln LS — Somewhat Useful
by Woman Motorist
Lincoln Reacts to Global Trends With New LS Series Lincoln's Move To Irvine California Is Intended To Shake Up The Company. How About A Compact Sports Sedan With A Five-Speed Manual? ...

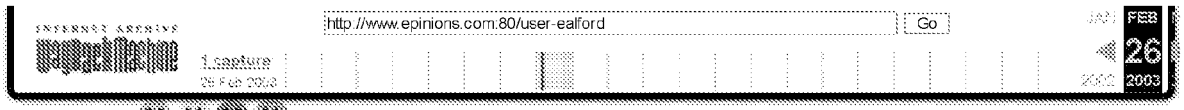
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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 836 of 1793



TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 837 of 1793



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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
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First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
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Attorney Docket No. 8201-0013 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	:	Customer Number: 55246
Thomas DISTEFANO III	:	Confirmation Number: 9140
Application No.: 13/946,461	:	Group Art Unit: 3622
Filed: July 19, 2013	:	Examiner: D. Lastra

For: RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
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Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed June 2, 2017, wherein Appellant appeals from the Examiner's rejection of claims 22-26, 28-36, and 38-41.

I. REAL PARTY IN INTEREST

This application is assigned to DiStefano Patent Trust III, LLC by assignment recorded on April 18, 2016, at Reel 038308, Frame 0794.

II. RELATED APPEALS AND INTERFERENCES

An appeal is concurrently being filed in related U.S. Patent Application No. 13/946,489. A Decision on Appeal and Decision on Request for Rehearing were respectively issued on June

15, 2009, and September 13, 2009, in parent U.S. Application No. 09/589,551. Appellant is unaware of any other related appeals and interferences.

III. STATUS OF CLAIMS

Claims 22-26, 28-36, and 38-41 are pending and three-times rejected in this Application. Claims 1-21, 27, and 37 have been cancelled. It is from the multiple rejections of claims 22-26, 28-36, and 38-41 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

The claims have not been amended subsequent to the imposition of the Second and Final Office Action dated February 2, 2017 (hereinafter the Second Office Action).

V. SUMMARY OF CLAIMED SUBJECT MATTER

Referring to Figure 1 and also to independent claim 22, a method, within and by a computer hardware system 180 that is configured to serve a first web page associated with a first user and a second web page associated with a second user is disclosed (paragraph spanning pages 51 and 52 of Appellant's disclosure). The computer hardware system 180 establishes a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement (see Figure 20 and pages 49-52 of Appellant's disclosure). The first web page includes, based upon the reciprocal arrangement, a first link to the second web page and associated with the second user, and the second web page includes, based upon the reciprocal arrangement, a second link to the first web page and associated with the first user (paragraph spanning pages 51 and 52 of Appellant's disclosure).

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 842 of 1793

Referring to Figure 1 and also to independent claim 32, a webpage implementation server system 180 is configured to serve a first web page associated with a first user and a second web page associated with a second user (paragraph spanning pages 51 and 52 of Appellant's disclosure). The server system 180 includes a database 160/170/190 storing information associated with the first and second web pages (paragraph spanning pages 13 and 14 of the Appellant's disclosure) and a computer hardware system 180 that establishes a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement (see Figure 20 and pages 49-52 of Appellant's disclosure). The first web page includes, based upon the reciprocal arrangement, a first link to the second web page and associated with the second user, and the second web page includes, based upon the reciprocal arrangement, a second link to the first web page and associated with the first user (paragraph spanning pages 51 and 52 of Appellant's disclosure).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 22-26, 28-36, and 38-41 were rejected under 35 U.S.C. § 101; and

2. Claims 22-26, 28-36, and 38-41 were rejected under 35 U.S.C. § 102 for anticipation based upon Bezos et al., U.S. Patent No. 6,029,141.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 843 of 1793

VII. ARGUMENT

PRINCIPLES OF LAW

Examiner's Burden

The Examiner has the initial burden to set forth the basis for any rejection so as to put Appellant on notice of the reasons why Appellant is not entitled to a patent on the claim scope that Appellant seeks – the so-called "*prima facie* case." In re Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Additionally, the "[t]he examiner's action will be complete as to all matters," 37 C.F.R. § 1.104(b), and "[t]he pertinence of each reference, if not apparent, must be clearly explained." 37 C.F.R. § 1.104(c). Reference is also made to 37 C.F.R. § 1.2, which states "[t]he action of the Patent and Trademark Office will be based exclusively on the written record in the Office."

If the Examiner does not produce a *prima face* case of unpatentability, then the rejection cannot be maintained, and Appellant is not obligated to respond. See In re Oetiker, supra ("If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent"). Only after a *prima face* case of unpatentability does the burden shifts to Appellant to rebut the *prima facie* case. See In re Kahn, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("[o]n appeal to the Board, an applicant can overcome a rejection by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness") (quoting In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 844 of 1793

"[T]he Board cannot simply reach conclusions based on its own understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings." In re Zurko, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). The failure of the Board to provide an administrative record showing the evidence by which findings of fact are based constitutes reversible error. In re Lee 277 F.3d 1338 (Fed. Cir. 2002). With regard to the burden placed on the Board in analyzing the rejections, the Federal Circuit held the following in Gechter v. Davidson, 1167 F.3d 1454, 1460 (Fed. Cir. 1997):

> In sum, we hold that the Board is required to set forth in its opinions specific findings of fact and conclusions of law adequate to form a basis for our review. In particular, we expect that the Board's anticipation analysis be conducted on a limitation by limitation basis, with specific fact findings for each contested limitation and satisfactory explanations for such findings. Claim construction must also be explicit, at least as to any construction disputed by parties to the interference (or an applicant or patentee in an ex parte proceeding).

In the Decision of Ex parte Frye, (Appeal No. 2009-006013) (Precedential), while referring to a rejection under 35 U.S.C. § 103, the Honorable Board stated:

> The panel then reviews the obviousness rejection for error based upon the issues identified by appellant, and in light of the arguments and evidence produced thereon. *See Oetiker*, 977 F.2d at 1445 ("In reviewing the examiner's decision on appeal, the Board must necessarily weigh all of the evidence and argument.") (emphasis added); *see also* 37 C.F.R. § 41.37(c)(1)(vii) (appeal brief must include "the contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on"). Specifically, the Board reviews the particular finding(s) contested by an appellant anew in light of all the evidence and argument on that issue.

Therefore, a complete *de novo* review is to be performed on all issues that are raised by Appellant without deference to the positions taken by the Examiner. Also, as stated within In re Nuvasive, __ F.3d __ (Fed. Cir. 2016), "it is not adequate to summarize and reject arguments without explaining why the PTAB accepts the prevailing argument."

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 845 of 1793

Anticipation

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single prior art reference. In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989), Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art. See In re Spada, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988). Under 35 U.S.C. § 102, not only must a prior art reference disclose all elements within a claim, the prior art reference must also disclose those elements "arranged as in the claim." Net MoneyIn, Inc. v. Verisign, Inc., 545 F.3d 1359, 1369 (Fed. Cir. 2008); Karsten Mfg. Corp. v. Cleveland Golf Co., 242 F.3d 1376, 1383 (Fed. Cir. 2001); Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 1548 (Fed. Cir. 1983).

"Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the claims. ... The second step in the analyses requires a comparison of the properly construed claim to the prior art." Medichem, S.A. v. Rolabo, S.L., 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted). During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification," In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000), and the broadest reasonable interpretation of the claims must also be consistent

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 846 of 1793

with the interpretation that those skilled in the art would reach. In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). Therefore, the Examiner must:

> (i) identify the individual elements of the claims and properly construe these individual elements, In re Crish, 393 F.3rd 1253, 1256 (Fed. Cir. 2004), Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567-68 (Fed. Cir. 1987) (In making a patentability determination, analysis must begin with the question, "what is the invention claimed?" since "[c]laim interpretation, ... will normally control the remainder of the decisional process");
>
> (ii) identify corresponding elements disclosed in the allegedly anticipating reference. Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984);
>
> (iii) and compare these allegedly corresponding elements to the individual elements of the claims, Id., while making factual findings that "each and every limitation is found either express or inherently in [that] single prior art reference." Crish at 1256.

THE REJECTION OF CLAIMS 22-26, 28-36, AND 38-41 UNDER 35 U.S.C. § 101

For convenience of the Honorable Board in addressing the rejections, claims 23-26, 28-36, and 38-41 stand or fall together with independent claim 22.

Claim 22

Referring to page 2 of the appealed Second Office Action, the Examiner's analysis begins by repeating all of the limitations of independent claim 22. The Examiner's only substantive analysis that addresses the language of the claims is found on pages 2 and 3 of the Second Office Action, in which the Examiner asserts the following:

> These steps can be performed mentally, and are similar to the concepts identified as abstract idea by the courts (e.g. displaying ads in exchange to access to media *(Ultramercial)* similar to displaying reciprocal links in website. The claim elements in addition to the abstract idea are: A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:
>
> The computer is recited at a high level of generality and comprises only a

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 847 of 1793

> processor and a memory to simply perform the generic computer functions of receiving, manipulating and transmitting information to a computer. Generic computer functions alone do not amount to significantly more than the abstract idea. Viewing the elements as a combination does not add anything further than the individual elements. The claim is not patent eligible. Furthermore, the dependent claims suffer from the same problem.

Step 1

The first step in testing for subject matter eligibility is a determination whether the claim is directed to a process, machine, manufacture or composition of matter. See 35 U.S.C. § 101. Claims 22-26 and 28-31 are directed to a method (i.e., a process) and, thus, fall within the scope of 35 U.S.C. § 101. Claims 32-36 and 38-41 are directed to a computer hardware system (i.e., a machine) and also fall within the explicit scope of 35 U.S.C. § 101. Therefore, all of currently-pending claims 22-26, 28-36, and 38-41 meet the explicit requirements of 35 U.S.C. § 101.

Step 2A

The second step in testing for subject matter eligibility is a determination whether the claims are directed to one of the exceptions to statutory subject matter. See Bilski v. Kappos, 561 U.S. 593 (2010)("[t]he Court's precedents provide three specific exceptions to § 101's broad patent-eligibility principles: 'laws of nature, physical phenomena, and abstract ideas'" citing Diamond v. Chakrabarty, 447 U. S. 303, 308 (1980)). Referring to Alice Corp. v. CLS Bank International, the Supreme Court cautioned as follows:

> At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. *Mayo*, 566 U. S., at ___ (slip op., at 2). At some level, "all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Id.*, at ___ (slip op., at 2). Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. See *Diamond* v. *Diehr*, 450 U. S. 175, 187 (1981). "[A]pplication[s]" of such concepts "'to a new and useful end,'" we have said, remain eligible for patent protection. *Gottschalk* v. *Benson*, 409 U. S. 63, 67 (1972).

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 848 of 1793

> Accordingly, in applying the §101 exception, we must distinguish between patents that claim the "'buildin[g] block[s]'" of human ingenuity and those that integrate the building blocks into something more, *Mayo*, 566 U. S., at ___ (slip op., at 20), thereby "transform[ing]" them into a patent-eligible invention, *id.*, at ___ (slip op., at 3).
> 573 U.S. ___ (slip op. at 6), 134 S. Ct. 2347 (2014).

Reference is made to page 2 of the Memorandum entitled "Formulating a Subject Matter Eligibility Rejection ..." dated May 4, 2016, which describes the following requirements when making a rejection under 35 U.S.C. § 101:

> A subject matter eligibility rejection should point to the specific claim limitation(s) that recites *(i.e.,* sets forth or describes) the judicial exception. The rejection must identify the specific claim limitations and explain why those claim limitations **set forth** a judicial exception *(e.g.,* an abstract idea). Where the claim **describes**, but does not expressly set forth, the judicial exception, the rejection must also explain what subject matter those limitations describe, and why the described subject matter is a judicial exception.
> When the examiner has determined the claim recites an **abstract idea**, the rejection should identify the abstract idea as it is recited *(i.e.,* set forth or described) in the claim, and explain why it corresponds to a concept that the courts have identified[1] as an abstract idea. (emphasis in original)

The Examiner's explanation as to why claims are directed to an abstract idea has already been reproduced above, but for ease of reference, the Examiner's analysis is as follows:

> These steps can be performed mentally, and are similar to the concepts identified as abstract idea by the courts (e.g. displaying ads in exchange to access to media *(Ultramercial)* similar to displaying reciprocal links in website.

In short, the Examiner alleges that the alleged "abstract idea" can be performed "mentally" and is similar to the concepts within Ultramercial, Inc. v. Hulu, LLC, 772 F. 3d 709 (Fed. Cir. 2014). Appellant respectfully disagrees for the reasons discussed below.

Claims cannot be performed mentally

[1] See Enfish v. Microsoft, __ F.3d __ (Fed. Cir. 2016) ("both this court and the Supreme Court have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases") (slip op., at 9).

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 849 of 1793

With regard to the "machine or transformation" test, the Supreme Court, within Bilski v. Kappos, 561 U.S. 593 (2010), stated the following:

> Adopting the machine-or-transformation test as the sole test for what constitutes a "process" (as opposed to just an important and useful clue) violates these statutory interpretation principles.

Consequently, while the "machine or transformation" test is not the sole test for patent eligibility, it is an "important and useful clue." The claimed invention involves including links (i.e., a specific functional computer data structure) within first and second web pages (i.e., also functional computer data structure). Moreover, the claimed invention contemplates a computer hardware system (i.e., a machine) that is configured to serve the first and second web pages. All of these limitations are explicitly tied to machines and/or require the use of machines to implement. Consequently, the claimed invention meets the machine or transformation test, which is an "important and useful clue" that the claimed invention, as whole, is directed to statutory subject matter. Along the same lines, by tying all of these limitations to a machine, the claimed invention as a whole cannot be performed mentally. Still further, the Examiner has not presented any evidence that anything reasonably comparable to the claimed invention could be performed mentally.

On page 3 of the Second Office Action, the Examiner cites Ultramercial, Inc. v. Hulu, LLC, 772 F.3d 709 (Fed. Cir. 2014).. However, the Examiner's reliance upon this case decision is misplaced. As stated by the Federal Circuit:

> The district court found that the abstract idea at the heart of the '545 patent was "that one can use [an] advertisement as an exchange or currency." (internal citation omitted). We agree. Id. at 714.

With regard to the "Internet" aspect of the claims, the Federal Circuit further stated the

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 850 of 1793

following:

> The claims' invocation of the Internet also adds no inventive concept. As we have held, the use of the Internet is not sufficient to save otherwise abstract claims from ineligibility under § 101. ... Narrowing the abstract idea of using advertising as a currency to the Internet is an "attempt[ ] to limit the use" of the abstract idea "to a particular technological environment," which is insufficient to save a claim. Id. at 716.

However, with regard to the "Internet" aspect of a claim, the Federal Circuit further addressed this issue within DDR Holdings v. Hotels.com, 773 F.3d 1245 (Fed Cir. 2014). Specifically, the Federal Circuit characterized the difference in claims found to be patent eligible under 35 U.S.C. § 101 as follows:

> But these claims stand apart because they do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks. Id. at 1257.

In this instance, the facts of the present invention are much more akin to the facts of DDR Holdings than they are to Ultramercial. The creation of reciprocal hyperlinks in web pages is not analogous to the "performance of some business practice known from the pre-Internet world," and the Examiner has not presented any evidence to support such a finding. Rather, the claimed invention addresses a problem specifically arising in the realm of computer networks (e.g., the Internet).

During the prosecution of U.S. Patent Application No. 13/963,050 (now issued as U.S. Reissue Patent No. RE45,971 on April 12, 2016[2]), the Examiner cited Horstmann, U.S. Patent

[2] This patent is a reissue of U.S. Application No. 09,589,551, upon which present Application claims priority, and which originally issued as U.S. Patent No. 7,996,259. Notably, referring to the Fourth Office Action dated March 19, 2015, the Examiner in the Reexamination Branch determined that the claimed invention was directed to statutory subject matter under 35 U.S.C. § 101.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 851 of 1793

No. 5,995,099 as teaching "[a] method [that] establishes page links between pages on the Internet" (see Abstract). Horstmann, in the context of two websites (one for a bike shop and one for a bookstore), characterized the problem of creating reciprocal links between websites in column 2, lines 51-57 as follows:

> Unfortunately, it is possible that either the bookstore and/or the bike shop will neglect to establish the agreed upon links. Further, the tasks of communicating between the bike shop and bookstore and manually adding links are time consuming. A more equitable and less time consuming method of establishing reciprocal links between pages is therefore desired.

As such, the prior art recognizes the technical problem addressed by the present application as it pertains to the creation of reciprocal links between websites.

Reference is also made to Electric Power Group, LLC v. ALSTOM SA, 830 F.3d 1350 (Fed. Cir. 2016). The Federal Circuit in Electric Power Group noted that there is a difference "between desired results (functions) and particular ways of achieving (performing) them." Id. at 1356. Importantly, the Court recognized that "patenting a particular solution 'would incentivize further innovation in the form of alternative methods for achieving the same result.'" Id. In this instance, Appellant has done more than claim the generation of reciprocal links between websites. Rather, Appellant has claimed a particular manner to accomplish this result that does not preclude alternative methods of obtaining the same result.

In the decision of McRo, Inc. v. Bandai Namco Games America, 837 F.3d 1299 (Fed. Cir. 2016), the Federal Circuit addressed a computer-implemented process of animating 3-D models of a character's face. While animation could be performed manually,[3] the type of

[3] Film animation dates back over 100 years, and other types of manual animation go back hundreds of

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 852 of 1793

animation at issue in McRo "was generally accomplished by an animator with the assistance of a computer." Id. at 1305. In McRo, the Federal Circuit addressed the concept of "preemption" as follows:

> The preemption concern arises when the claims are not directed to a specific invention and instead improperly monopolize "the basic tools of scientific and technological work." *Alice*, 134 S. Ct. at 2354 (quoting *Myriad*, 133 S. Ct. at 2116). The abstract idea exception has been applied to prevent patenting of claims that abstractly cover results where "it matters not by what process or machinery the result is accomplished." *Morse*, 56 U.S. at 113; *see also Mayo*, 132 S. Ct. at 1301. Id. at 1314.

The Federal Circuit, however, stated that "[t]he limitations in claim 1 prevent preemption of all processes for achieving automated lip-synchronization of 3-D characters." Id. at 1315. In acknowledging that "the absence of complete preemption does not demonstrate patent eligibility," the Federal Circuit found that "[t]he specific structure of the claimed rules would prevent broad preemption of all rules-based means of automating lip synchronization." Id. The Federal Circuit also found that "Defendants provided no evidence that the process previously used ... is the same as the process required by the claims." Id. at 1315.

These facts closely comport with the facts of the present application. As discussed above, the claimed invention does not preempt the generation of reciprocal links between websites. Moreover, the present invention is not the same as technological systems employed by the prior art. Accordingly, by providing an improvement to an existing technological process, the claimed invention is not directed to an abstract idea. See Id. at 1316 ("[t]he claim uses the limited rules in a process specifically designed to achieve an improved technological result in conventional industry practice").

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years. See https://en.wikipedia.org/wiki/History_of_animation.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 853 of 1793

THE REJECTION OF CLAIMS 22-26, 28-36, AND 38-41 UNDER 35 U.S.C. § 102 FOR ANTICIPATION BASED UPON BEZOS

For convenience of the Honorable Board in addressing the rejections, claims 23-26, 28-36, and 38-41 stand or fall together with independent claim 22.

At the outset, Appellant notes that the rejection of all the pending claims based upon Bezos was newly presented in the appealed Second Office Action. As such, the present appeal represents Appellant's first attempt at traversing the Examiner's rejection.

Claim 22

The Examiner's analysis as to all of the limitations recited in claim 22 and the Examiner's analysis as to all of the other claims is the following:

(see c 1, 50 – c3, 40)

The Examiner cites to no other passages in Bezos. The Examiner does not present any claim constructions. Instead, the Examiner repeats, word-for-word, all of the claim language in all of the claims and after that claim language merely writes "see c 1, 50 – c3, 40." Notably, the Examiner's cited passage is directed to the entire "SUMMARY OF THE INVENTION" portion of Bezos.

In the non-precedential Decision of Ex parte Pryor, Appeal No. 1997-2981 (January 13, 2000), the Board recognized the necessity for an Examiner to supply sufficient information to establish a prima facie case of anticipation. Specifically, the Board wrote:

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 854 of 1793

> At the outset, we note the examiner has been of little help in particularly explaining the rejections on appeal. A mere statement that claims stand rejected "as being clearly anticipated by" a particular reference, without any further rationale, such as pointing out corresponding elements between the instant claims and the applied reference, fails to clearly make out a prima facie case of anticipation. (emphasis in original)

A decade later, within In re Jung, 637 F.3rd 1356 (Fed. Cir. 2011),[4] the Federal Circuit discussed the *prima face* case and its relation to 35 U.S.C. § 132 as follows:

> In other words, the PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in "notify[ing] the applicant ... [by] stating the reasons for [its] rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application." 35 U.S.C. § 132. That section "is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection." Chester v. Miller, 906 F.2d 1574, 1578 (Fed. Cir. 1990).

In this application, the Examiner's mere reproduction of language from the applied prior art is not a substitute for an explicit analysis, which is required to establish a prima facie case of anticipation. The Examiner has neither construed the language of the claims nor specifically identified the specific teachings within Bezos that allegedly correspond to each of the claimed limitations. Thus, the pertinence of Bezos has not been clearly explained. See 37 C.F.R. § 1.104(c). Consequently, Appellant is being forced to guess as to the Examiner's reasoning for alleging that the cited passage identically discloses the claimed limitations at issue. To the extent that Appellant has incorrectly guessed as to the Examiner's reasoning, this is a direct result of a

[4] The issue within In re Jung revolved around whether or not the Examiner properly identified the claimed "first well-charge-well controller." On page 3 of Final Office Action, the Examiner addressed this reference using the following analysis: "a first well-charge-well controller (340) operably coupled with the first charge pump (see Col. 6, lines 56-67)" after previously indicating the first charge pump was associated with reference number 320. The Federal Circuit concluded that "the identification of where each limitation of the rejected claims is shown in the prior art reference by specific column and line number" met the burden of establishing a *prima facie* case.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 855 of 1793

prima facie case of anticipation not being made. As a result, the Examiner has not put Appellant on notice as to the reasons why Appellant is not entitled to a patent, and therefore, the Examiner has not established a *prima facie* case of anticipation.

Since the Examiner did not produce a *prima face* case of unpatentability, the rejection cannot be maintained and Appellant is not obligated to respond. See In re Oetiker, supra ("If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent"). This point aside, Appellant will address certain of the claim language with regard to teachings of Bezos.

The claimed invention involves, at least in part, a methodology within a computer hardware system that establishes "a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement." Based upon this reciprocal arrangement, "the first web page [includes] ... a first link to the second web page" and "the second web page [includes] ... a second link to the first web page."

Reference is made to Figures 1 and 5 of Bezos, which disclose the separate entities of a customer computer 108 (i.e., a client computer), an associate Web site 100, and a merchant Web site 106 (see column 6, lines 1-40 of Bezos). Bezos is directed to using a hyperlink (i.e., "referral link") as a referral mechanism for referring a customer to a merchant Web site 106. The associate Web site 100 provides the referral link which includes identifying information that that

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 856 of 1793

merchant Web site 106 uses to credit the associate Web site 100 if the customer purchases a product (see column 7, lines 6-45 of Bezos). This process is illustrated in Figure 5.

Referring to Figure 5, the customer computer 108 requests an HTML document from the associate Web site 100 (Event A). The associate Web site 100 then returns the HTML document with an embedded link (Event B). Upon clicking the link (Event C), a request is sent by the customer computer 108 to the merchant Web site 106. The merchant Web site 106 processes the request (Event E), and then sends a product detail page HTML document (e.g., a product catalog) back to the customer computer 108 (Event F). Depending upon whether the customer purchases a product from the merchant Web site 106, the associate Web site 100 will receive a referral credit from the merchant Web site 106.

As noted above, the claimed invention involves a first web page that includes a link to a second web page, and the second web page includes a link to the first web page. While Bezos contemplates two web pages and one web page including a link to the second web page, the second web page (i.e., the web page from the merchant Web site 106 that includes the product catalog) is not disclosed as having a link back to the first web page (i.e., the web page from the associate Web site 100). Accordingly, Bezos fails to identically disclose the limitations at issue.

Additionally, the claim requires that the "computer hardware system ... is configured to serve a first web page associated with a first user and a second web page associated with a second user." However, the two web pages described by Bezos are served by separate entities

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 857 of 1793

(i.e., the associate web site 100 and the merchant web site 106). Accordingly, Bezos further fails to identically disclose the limitations at issue.

Conclusion

Based upon the foregoing, Appellant respectfully submits that the Examiner's rejections under 35 U.S.C. §§ 101, 102 are not viable. Appellant, therefore, respectfully solicits the Honorable Board to reverse the Examiner's rejections under 35 U.S.C. §§ 101, 102.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 858 of 1793

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 503611, and please credit any excess fees to such deposit account.

Date: October 2, 2017

Respectfully submitted,

/Scott D. Paul/
Scott D. Paul
Registration No. 42,984
CUSTOMER NUMBER 55246

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 859 of 1793

VIII. CLAIMS APPENDIX

22. A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement;

including, within the second web page and based upon the reciprocal arrangement, a second link to the first web page and associated with the first entity; and

including, within the first web page and based upon the reciprocal arrangement, a first link to the second web page and associated with the second entity.

23. The method of claim 22, wherein

the first web page is stored in a database; and

the second web page is stored in the database.

24. The method of claim 22, further comprising

receiving, from a third user, a request for the first web page;

dynamically generating, using a database, the first web page; and

serving, to the third user, the dynamically-generated first web page.

25. The method of claim 22, wherein

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 860 of 1793

the first web page includes one or more web pages.

26. The method of claim 22, further comprising

including, within the first web page, a web asset provided by a third party separate from the computer hardware system.

28. The method of claim 26, wherein

the web asset is a functional application.

29. The method of claim 22, further comprising

providing, to the first user, at least one recommended web page, associated with the computer hardware system, into which the second functional identification element is to be included.

30. The method of claim 22, wherein

the second link is associated with a graphic image.

31. The method of claim 30, further comprising

receiving, from the first user, the image.

32. A webpage implementation server system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

a database storing information associated with the first and second web pages;

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 861 of 1793

a computer hardware system configured to perform:

establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement;

including, within the second web page and based upon the reciprocal arrangement, a second link to the first web page and associated with the first entity; and

including, within the first web page and based upon the reciprocal arrangement, a first link to the second web page and associated with the second entity.

33. The server system of claim 32, wherein

the first web page is stored in the database; and

the second web page is stored in the database.

34. The server system of claim 32, wherein the computer hardware system is further configured to perform

receiving, from a third user, a request for the first web page;

dynamically generating, using the database, the first web page; and

serving, to the third user, the dynamically-generated first web page.

35. The server system of claim 32, wherein

the first web page includes one or more web pages.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 862 of 1793

36. The server system of claim 32, wherein the computer hardware system is further configured to perform

including, within the first web page, a web asset provided by a third party separate from the computer hardware system.

38. The server system of claim 36, wherein

the web asset is a functional application.

39. The server system of claim 32, wherein the computer hardware system is further configured to perform:

providing, to the first user, at least one recommended web page, associated with the computer hardware system, into which the second link is to be included.

40. The server system of claim 32, wherein

the second link is associated with a graphic image.

41. The server system of claim 40, wherein the computer hardware system is further configured to perform

receiving, from the first user, the image.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 863 of 1793

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellant in this Appeal, and thus no evidence is attached hereto.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 864 of 1793

X. RELATED PROCEEDINGS APPENDIX

A Decision on Appeal and Decision on Request for Rehearing were respectively issued on Jun 15, 2009, and September 13, 2009, in parent U.S. Application No. 09/589,551, and are attached hereto. Since Appellant is unaware of any other related appeals and interferences, no other decision rendered by a court or the Board is attached hereto.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 865 of 1793

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/589,551	06/07/2000	Thomas L. DiStefano III	1115-007U	8542

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ART UNIT	PAPER NUMBER
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MAIL DATE	DELIVERY MODE
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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.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 866 of 1793

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS L. DISTEFANO, III

Appeal 2009-000339
Application 09/589,551
Technology Center 3600

Decided: [1] June 15, 2009

Before HUBERT C. LORIN, ANTON W. FETTING, and JOSEPH A. FISCHETTI, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

---

[1] The two month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Thomas L. Distefano, III (Appellant) seeks review under 35 U.S.C. § 134 of a non-final rejection of claims 1-21, the only claims pending in the application on appeal.

We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

We AFFIRM-IN-PART.

The Appellant invented a way of assisting a website designer in establishing an arrangement between a first website being designed by the website designer and a second website to market the first website at the second website upon the activation of the first website on the internet (Spec. 6:2-5).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added].

> 1. A method of assisting a website designer in establishing an arrangement between a first website being designed by the website designer and a second website in order to market the first website at the second website upon the activation of the first website on the internet, the method comprising:
>
> [1] during design of the first website, receiving
>
> information at a user interface indicating a type of an element for marketing
>
> that is to be displayed at the second website, and
>
> information specifying the second website at which the element is to be displayed;
>
> [2] saving the information at a first database that is coupled to the user interface;

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 868 of 1793

[3] obtaining the element for marketing of the type indicated; and

[4] causing the display of the element for marketing at the second website

when the first website is activated with respect to the internet,

wherein the element for marketing includes at least one of

a banner ad concerning the first website and

a link to the first website.

This appeal arises from the Examiner's Non-Final Rejection, mailed June 18, 2007. The Appellant filed an Appeal Brief in support of the appeal on November 19, 2007. An Examiner's Answer to the Appeal Brief was mailed on February 4, 2008. A Reply Brief was filed on April 4, 2008.

PRIOR ART

The Examiner relies upon the following prior art:

Wexler	US 5,960,409	Sep. 28, 1999
Hess	US 6,058,417	May 2, 2000
Moore	US 6,330,575 B1	Dec. 11, 2001
Mason	US 6,401,075 B1	Jun. 4, 2002

REJECTIONS

Claims 13, 16-18, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Moore.

Claims 1, 4-12, 19, and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mason and Moore.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 869 of 1793

Claims 2 and 3 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mason, Moore, and Wexler.

Claims 14 and 15 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mason, Moore, and Hess.

ISSUES

The issue of whether the Appellant has sustained its burden of showing that the Examiner erred in rejecting claims 1, 4-12, 19, and 21 under 35 U.S.C. § 103(a) as unpatentable over Mason and Moore turns on to whether the art describes, or shows that it was predictable, that (1) during design of the first website, information is received that is to be displayed at the second website and that specifies the second website at which the element is to be displayed, and (2) when the first website is activated with respect to the internet, the display of the element is caused, wherein the element includes a banner ad or a link to the first website. In addition, the issues as to claims 4-6 and 8-10 turn on whether the art describes the limitations added by those dependent claims.

The issues of whether the Appellant has sustained its burden of showing that the Examiner erred in rejecting claims 13, 16-18, and 20 under 35 U.S.C. § 103(a) as unpatentable over Moore, in rejecting claims 2 and 3 under 35 U.S.C. § 103(a) as unpatentable over Mason, Moore, and Wexler, and in rejecting claims 14 and 15 under 35 U.S.C. § 103(a) as unpatentable over Mason, Moore, and Hess turn on the resolution of the issues in the rejection of claim 1.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 870 of 1793

Facts Related to Appellant's Disclosure

01. Once the design of the new website by the registered user is completed and the new website is posted/activated, the system 100 causes the selected websites of other registered users (i.e., the websites selected during the design of the new website) to display a link and/or banner ad concerning the new website (Spec. 33:9-13).

Moore

02. Moore is directed to providing a scalable distributed Internet commerce system (Moore 1:11-13).

03. Moore describes a method for designing a Web page, to be hosted on a Web page server, and for publishing the Web page at a destination of the customer's choosing. There is also a method for designing a Web page for use in a distributed electronic commerce system having a Web page server and a second server where the Web page server hosts the Web page. The method creates a link to the second server; designs the Web page such that the link can be embedded into the Web page; and embeds the link into the Web page (Moore 3:23-43).

04. Moore describes how the customer goes to a Store Server and begins shopping. When the customer finds a product to buy, he selects that product and the Store Server then jumps to the Store Builder Server by using a Uniform Resource Locator ("URL"). The URL, called a price URL, contains all of the relevant information on the product, and all the information necessary to build a "Buy Page." (Moore 6:12-20.)

05. Moore Fig. 7 shows several regions with information displayed, such that each would be a display region.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 871 of 1793

06. Moore describes the practice of using audio in HTML documents (Moore 1:38-42).

Mason

07. Mason is directed to placing advertisements and/or other communications on multiple websites (Mason 1:5-8).

08. Mason describes obtaining Internet-type advertisements, modifying those advertisements to fit the designated advertising spaces allotted by different and unrelated online newspaper websites, automatically placing those advertisements, monitoring the success of the placed ads and modifying the ads and their placements to meet dynamic goals of an advertising campaign (Mason 2:5-12).

09. Mason facilitates the billing of an advertiser. For example, a national advertiser can purchase advertising space on an online newspaper website by the number of hits the ad receives or by the number of click-throughs (Mason 5:4-8).

10. In Mason, the advertiser can upload one or more original ads into a server which checks the configuration of the ad, and compares that configuration to specifications of online newspaper website URLs where the derivative advertisement links are going to be placed. Typically, the original advertisement must be modified, forming derivative advertisement links which are then displayed for final approval. If the reconfigured ad is approved, it is stored for placement (Mason 5:47-58).

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 872 of 1793

Facts Related To The Level Of Skill In The Art

11. Neither the Examiner nor the Appellant has addressed the level of ordinary skill in the pertinent arts of systems analysis and programming, web design, and web advertising design. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) ("[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error 'where the prior art itself reflects an appropriate level and a need for testimony is not shown'") (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985).

12. Those of ordinary skill in the art knew at the time of filing that posting an HTML document to a web site such that it was accessible from links to that web site activated that document within the site.

Facts Related To Secondary Considerations

13. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, pending claims are given their broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969); *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, (Fed. Cir. 2004).

Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 873 of 1793

Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily).

Although a patent applicant is entitled to be his or her own lexicographer of patent claim terms, in *ex parte* prosecution it must be within limits. *In re Corr*, 347 F.2d 578, 580 (CCPA 1965). The applicant must do so by placing such definitions in the specification with sufficient clarity to provide a person of ordinary skill in the art with clear and precise notice of the meaning that is to be construed. *See also In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (although an inventor is free to define the specific terms used to describe the invention, this must be done with reasonable clarity, deliberateness, and precision; where an inventor chooses to give terms uncommon meanings, the inventor must set out any uncommon definition in some manner within the patent disclosure so as to give one of ordinary skill in the art notice of the change).

Obviousness

A claimed invention is unpatentable if the differences between it 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." 35 U.S.C. § 103(a) (2000); *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

In *Graham*, the Court held that that the obviousness analysis is bottomed on several basic factual inquiries: "[(1)] the scope and content of the prior art are to be determined; [(2)] differences between the prior art and the claims at issue are to be ascertained; and [(3)] the level of ordinary skill in the pertinent art resolved." 383 U.S. at 17. *See also KSR*, 550 U.S. at 406. "The combination of familiar elements

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 874 of 1793

according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416.

"When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability." *Id.* at 417.

"For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill." *Id.*

"Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." *Id.* at 420.

Obviousness and Nonfunctional Descriptive Material

Nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004). Cf. *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 875 of 1793

ANALYSIS

Claims 1-3, 7, and 11-21

The Appellant argues claims 1, 7, 11, 12, 19, and 21 as a group[2]. In addition, the Appellant applies the arguments in support of claim 1 as the arguments to the rejections of claims 13-18 and 20. Accordingly, we treat claims 1, 7, and 11-21 as a group and select claim 1 as representative of the group.
37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Examiner found that Mason describes the limitations of claim 1 except for "during the design of the first website causing the display of the element for marketing at the second website when the first website is activated with respect to the Internet." The Examiner found that Moore described this limitation and that one of ordinary skill knew to combine this with Mason to avoid premature advertising expense before the advertising was launched (Ans. 3-4).

The Appellant argues that (1) Mason fails to describe activity during a website design (App. Br. 7); (2) neither reference describes a problem to which the Examiner proposed a solution as the motivation to combine the references (App. Br. 8); and (3) neither reference describes causing the display of the element for marketing at the second website when the first website is activated with respect to the internet, as claimed (App. Br. 8). Additionally, the Appellant contends that (4) the Examiner failed to clearly identify how the art describes the claim limitations (App. Br. 5-6); (5) the Examiner mischaracterized limitations [1] and [4] (Appeal

[2] The Appellant included claim 6 in this group (App. Br. 5), but claim 6 depends from claim 4 which is not included in the group. We therefore consider this inclusion of claim 6 to be a typographic error and treat claim 6 with claims 4 and 5 *infra*.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 876 of 1793

Br. 6-7); and (6) one skilled in the art would not consider the words posted and activated to be equivalent (App. Br. 9).

As to each of these arguments, the Examiner responded that (1) Moore was applied to describe activity during a website design (Ans. 16); (2) Mason described the practice of paying advertising fees based on ad click-throughs and one of ordinary skill knew the disadvantage of placing such an ad before an advertising campaign was ready (Ans. 16-17); and (3) that such display of ad elements for marketing at websites other than the site where the ad was designed was notoriously well known as evidenced by Moore's referral to Price URL's that users publish when the second web site is activated (Ans. 17).

As to the three subordinate contentions, the Examiner responded to (4) by laying out a more detailed analysis of the match between claim limitations and the references (Ans. 14-15); to (5) by finding that the Examiner's paraphrasing of limitations [1] and [4] were made in view of the support for those limitations in the Specification at 33:10-15 (Ans. 15-16); and to (6) by finding the equivalence of the words "posted" and "activated" based on Specification 33:10-15 (Ans. 18).

The Appellant responded to the Examiner's response to argument (2) by stating that the Examiner's position appeared to be based on inherency and that inherency cannot be based on probabilities (Reply Br. 3-4); and contention (5) that the Specification does not support the Examiner's paraphrase, but instead requires that once the design is completed and the website is posted/activated, then the link and/or banner ad is displayed (Reply Br. 5).

We disagree with the Appellants. There is no contention regarding the ubiquitous steps of saving and obtaining data in limitations [2] and [3]. The issues in the remaining limitations [1] and [4] come down to whether the art describes, or

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 877 of 1793

shows that it was predictable, that (1) during design of the first website, information is received that is to be displayed at the second website and that specifies the second website at which the element is to be displayed, and (2) when the first website is activated with respect to the internet, the display of the element is caused, wherein the element includes a banner ad or a link to the first website.

Limitation [1] requires that two items of information be received at a user interface. The location of the user interface is unspecified. The intent of the two items is that they indicate a marketing element type and specify a second site location. However, the verb "indicating" does not require that the information actually be displayed or used to identify the second site, only that the information be functionally capable of doing so in some context. The Examiner relied on Mason to describe this. Mason describes uploading ads into a server which checks the configuration of the ad, and compares that configuration to specifications of online newspaper website URLs where the derivative advertisement links are going to be placed (FF 10). Thus, Mason's information indicates an advertising marketing element type and specifies a second site location. This information is received at the user interface prior to final approval (FF 10) and is therefore during the design of the website, or at least that particular advertising piece of the second website. The design of any aspect of a web site is a component of the design of the web site itself and thus fits the limitation of occurring during design of the web site. We therefore find the Examiner's position that Mason describes limitation [1] supported by substantial evidence.

Limitation [4] requires causing the display of the element that includes either a banner ad concerning the first website or a link to the first website for marketing at the second website when the first website is activated with respect to the internet.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 878 of 1793

Limitation [4] does not specify the causation trigger but does require some coincidence of timing between the display and website activation.

The verb "is activated" is the passive voice of activate, and thus limitation [4] requires that the display occur when someone or something activates the web site. The Examiner found that Moore described a system for designing websites where a first website is activated with respect to the Internet when the first website is posted to a hosting server (Answer 4; FF 03). The Examiner construed the verb "activate" as equivalent to the verb "post" based on the use of the construct "posted/activated" in the Specification (Ans. 4; FF 01). From this construction, the Examiner found that Moore described causing the display of the element that includes a banner ad concerning the first website at the *first* website when the first website is activated with respect to the internet. The Appellant's contention (6) *supra* challenged this construction. Certainly activating is not equivalent to posting in general. However, it is notoriously well known that posting an HTML document on a web site, such that links activates that document within that site. Thus, in the limited context of Internet systems, posting is synonymous with activation (FF 12).

So the issue remaining is whether it was predictable to cause the display of the element that includes a banner ad concerning the first website at the *second* website when the first website is activated with respect to the internet. The distinction is that now coordination is required to have display of an ad occur at a second site when activation of the target of the ad occurs at a difference site. The Examiner found it was predictable because without such coordination, the risk of incurring advertising costs prior to the availability of the advertised target would cause the advertising campaign to coordinate those events. The Appellant

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 879 of 1793

responded with argument (2) *supra* that the references applied fail to show this problem and that inherency cannot be based on probabilities.

Claim 1 does not specify how the coordination occurs, only that it occurs. The Appellant does not make any arguments regarding the coordination mechanism. So the sole issue is whether it was predictable at the time of filing.

> The obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation, or by overemphasis on the importance of published articles and the explicit content of issued patents. The diversity of inventive pursuits and of modern technology counsels against limiting the analysis in this way. In many fields it may be that there is little discussion of obvious techniques or combinations, and it often may be the case that market demand, rather than scientific literature, will drive design trends.

KSR, 550 U.S. at 419. "[T]he analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.* 550 U.S. at 418. "[A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions." *id.* 550 U.S. at 417.

As the Examiner found, Mason describes the parameters of the problem in that advertising may be billed based on click-throughs (FF 09). Common sense, let alone knowledge of one of ordinary skill, informs one that with such an arrangement, the mechanism that incurs those costs should not be deployed until the advertisement would be effective, *viz.* at activation of the ad target. On the other side, with any new promotional campaign, delay beyond the earliest appropriate start time is counter to the purpose of such promotion. Thus, the time that one of ordinary skill in the promotional arts would display such an ad would

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 880 of 1793

be when the target of the ad is activated. As to the Appellant's argument regarding inherency, this rejection is one of obviousness rather than novelty.

Accordingly we find the Appellant's arguments unpersuasive.

Claims 4-6

Claim 4 depends from claim 1 and requires a reciprocal site. The Appellant argues the Examiner failed to show such reciprocity in the site described in the references (Reply Br. 9). We agree with the Appellant. The Examiner appears to have ignored this limitation in the analysis by construing the term "reciprocal" to mean simply mean a third party (Ans. 19). The Examiner refers to a definition of reciprocal in the Specification at 16:20-25, but we are unable to discern any definition at that section, which only refers to other, rather than reciprocal, sites. Claims 5 and 6 depend from claim 4 and the same argument applies to those claims as well.

Claims 8-10

Claims 8-10 depend from claim 1 and further require providing banner ads, display regions, and sonic effects. The Appellant argues these are missing from the applied references. The Examiner responds that Moore's price URL's are equivalent to banner ads and that Moore show the use of display regions and audio (Ans. 21-22). The Appellant responded that the Examiner failed to show that Moore's price URL's are equivalent to banner ads and that the Examiner failed to show all of the limitations of claims 9 and 10 (Reply Br. 9-10).

We disagree with the Appellant. A banner ad is simply a link in an HTML document. The contents of the ad are non-functional descriptive material and are accorded no patentable weight. *In re Ngai*, 367 F.3d at 1339. Moore shows such links (FF 04). Moore also shows display regions and sonic effects (FF 05 & 06).

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 881 of 1793

The general allegation that the Examiner has failed to show all of the limitations is not a specific argument.

CONCLUSIONS OF LAW

The Appellant has not sustained its burden of showing that the Examiner erred in rejecting claims 13, 16-18, and 20 under 35 U.S.C. § 103(a) as unpatentable over Moore.

The Appellant has not sustained its burden of showing that the Examiner erred in rejecting claims 1, 7-12, 19, and 21 under 35 U.S.C. § 103(a) as unpatentable over Mason and Moore.

The Appellant has sustained its burden of showing that the Examiner erred in rejecting claims 4-6 under 35 U.S.C. § 103(a) as unpatentable over Mason and Moore.

The Appellant has not sustained its burden of showing that the Examiner erred in rejecting claims 2 and 3 under 35 U.S.C. § 103(a) as unpatentable over Mason, Moore, and Wexler.

The Appellant has not sustained its burden of showing that the Examiner erred in rejecting claims 14 and 15 under 35 U.S.C. § 103(a) as unpatentable over Mason, Moore, and Hess.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 882 of 1793

DECISION

To summarize, our decision is as follows:

- The rejection of claims 13, 16-18, and 20 under 35 U.S.C. § 103(a) as unpatentable over Moore is sustained.
- The rejection of claims 1, 7-12, 19, and 21 under 35 U.S.C. § 103(a) as unpatentable over Mason and Moore is sustained.
- The rejection of claims 4-6 under 35 U.S.C. § 103(a) as unpatentable over Mason and Moore is not sustained.
- The rejection of claims 2 and 3 under 35 U.S.C. § 103(a) as unpatentable over Mason, Moore, and Wexler is sustained.
- The rejection of claims 14 and 15 under 35 U.S.C. § 103(a) as unpatentable over Mason, Moore, and Hess is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 883 of 1793

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29973 7590 09/13/2009

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TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 884 of 1793

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS L. DISTEFANO, III

Appeal 2009-000339
Application 09/589,551
Technology Center 3600

Decided: September 13, 2009

Before HUBERT C. LORIN, ANTON W. FETTING, and JOSEPH A. FISCHETTI, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 885 of 1793

STATEMENT OF THE CASE

The Appellants filed a REQUEST FOR REHEARING on August 17, 2009. The Examiner rejected claims 1-21 in a Non-Final Rejection, mailed June 18, 2007. We affirmed the rejections of claims 1-3 and 7-21 and reversed the rejections of claims 4-6 in our June 16, 2009 Decision. The Appellants seek reconsideration of the decision to affirm these rejections.

We DENY the REQUEST FOR REHEARING.

ISSUES

The issues pertinent to this request are whether the Appellants have sustained their burden of showing that we misapprehended the art or the claims and thus erred in sustaining the rejections of claims, or that we erred in any new grounds of rejection we entered. 37 C.F.R. 41.52(a)(1) and (3).

ANALYSIS

We found the following in our decision:

> The Appellant had not sustained its burden of showing that the Examiner erred in rejecting claims 13, 16-18, and 20 under 35 U.S.C. § 103(a) as unpatentable over Moore.
>
> The Appellant had not sustained its burden of showing that the Examiner erred in rejecting claims 1, 7-12, 19, and 21 under 35 U.S.C. § 103(a) as unpatentable over Mason and Moore.
>
> The Appellant had sustained its burden of showing that the Examiner erred in rejecting claims 4-6 under 35 U.S.C. § 103(a) as unpatentable over Mason and Moore.
>
> The Appellant had not sustained its burden of showing that the Examiner erred in rejecting claims 2 and 3 under 35 U.S.C. § 103(a) as unpatentable over Mason, Moore, and Wexler.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 886 of 1793

> The Appellant had not sustained its burden of showing that the Examiner erred in rejecting claims 14 and 15 under 35 U.S.C. § 103(a) as unpatentable over Mason, Moore, and Hess.

Decision 16.

Independent Claim 1

Independent claim 1 is directed to a method, whose first step occurs "during design of a first website." The Appellants argue that we misapprehended the Examiner's findings and changed the basic thrust of the rejection, essentially making a new ground which the Appellants now ask to argue. The Appellants in particular contend that the Examiner did not find that Mason described the "during design of the first web site" of limitation [1] and expressly found that Mason did not find it so. Thus the Appellants contend that our analysis presented a different thrust from that of the Examiner and was therefore a new ground. Request 4:19 – 6:11.

We agree that the Examiner did not apply Mason for this claim limitation and we will accept the Appellants' characterization of our analysis as a new ground in an abundance of caution to afford the Appellants the opportunity to argue our findings as to the design limitation. We found that

> Mason's information indicates an advertising marketing element type and specifies a second site location. This information is received at the user interface prior to final approval (FF 10) and is therefore during the design of the website, or at least that particular advertising piece of the second website. The design of any aspect of a web site is a component of the design of the web site itself and thus fits the limitation of occurring during design of the web site.

Decision 12:15-21.

The Appellants contend that our claim construction is not reasonable and eviscerates any definite meaning from the phrase "during the design of the first

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 887 of 1793

web site." Request 6: 9-11. To the contrary, our finding simply equates the process of design to the sum of its parts. The Appellants propose hypothetical design situations that would extend the design time frame back to 300 BC, based on the design of the triangle as a concept, in an advertisement incorporating triangles. This argument is misplaced because it hypothesizes our finding as implying a nonsensical and irrelevant design time frame prior to the beginning of a web site design while the real implication is that design may be an ongoing process that may and realistically often does extend indefinitely in the future, after the beginning of the web site design process.

Let us be clear as to what our finding was – that the design of any aspect of a web site, not of parts that might have been designed prior to the beginning of the web site design, is an aspect of the web site design. Thus, none of such aspects as we referred to can begin prior to the start of the concept of designing the web site. But they can continue indefinitely afterward.

The Appellant contends that the phrase "during the design of the first website" refers to the duration that starts when a designer makes a definitive step to design the website and ends when the design of the website has been completed. Request 7:13-15. We find little to quarrel with in this proffer, but point out that completion may never occur, since design may continue even after a web site is placed in action. To the extent the Appellants may have meant completion of an initial design, or of a particular design version, the claim does not recite that and in any event, would simply substitute the ambiguity of when an design version completes for the ambiguity of when the total design completes.

Thus, rather than our finding being unreasonable and eviscerating any definite meaning from the phrase "during the design of the first web site," our finding

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 888 of 1793

highlights the breadth of the scope of this temporal limitation. Simply pointing out how broad a limitation is does not eviscerate the limitation. Rather that very breadth might eviscerate the ability of that limitation to actually narrow the claim scope. The choice of the terms used in the claims is that of the Appellants. We simply analyzed the breadth of the terms and how they affected the scope of the claims.

As to how our finding applied to the rejection, Mason's description of changing an advertisement on a web site (Decision 6: FF 10) was evidence of a change in the design of the web site containing that advertisement, and thus occurred during the design of the web site. Thus, we find this argument unpersuasive as to error on our part.

Independent Claim 8

Independent claim 8 requires selecting a banner ad. We found that a banner ad is simply a link in an HTML document and that Moore described the link and that the contents of the ad attached to a banner ad link are non-functional descriptive material, citing to *In re Ngai*, 367 F.3d 1336,1339.(Fed.Cir. 2004). Decision 9:17-18 and15:22-25.

The Appellants argue that our citation to *In re Ngai* constituted a new ground which the Appellants now ask to argue. Request 8:7 – 9:5. We will accept the Appellants' characterization of this as a new ground in an abundance of caution to afford the Appellants the opportunity to argue our findings as to the non-functional descriptive material nature of the contents of a banner ad.

The Appellants argue that the claimed banner ad is a type of data structure that includes more than just "simply a link in an HTML document." *Id.* The Appellants

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 889 of 1793

argue that banner ads also include a graphical image file and a means to connect the link to a graphical image file, and the banner ad can also be animated, which requires a mechanism to do so or even be interactive with a user input (e.g., a mouse). The Appellants conclude that one skilled in the art would recognize the claimed "banner ad" is a particular type of data structure that includes more than just a link. *Id.*

To this argument, we find that the claim makes no reference to animation, interactivity, or user input with a mouse with respect to a banner ad. As to being a data structure, any non-functional descriptive material stored in a computer is a data structure. The issue is whether the data structure has operational functionality. The Appellants pick up on this by citing *In re Lowry*, 32 F. 3d 1579, 1583 (Fed. Cir. 1994). The Appellants contend that Lowry's data structures, which according to Lowry greatly facilitate data management by data processing systems, are processed by a machine and are not accessible other than through sophisticated software systems.

The Appellants reach the wrong conclusion from this. Lowry's data structure fundamentally altered the processing of the computer; their patentable weight arose not because they were processed by the machine, but because they affected the processing of the computer. Data structures that have no functional relationship with the claimed subject matter are, by definition, non-functional descriptive material. An advertisement, absent explicit incorporation of functional properties, even on a computer display, is non-functional descriptive material.

The Appellants argue we failed to give full weight to the meaning of a banner ad. Request 10:19-21. We equated a banner ad to a link attached to non-functional descriptive material. To the extent the link is functional, both we and the

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 890 of 1793

Examiner found that Moore's price URL's described the use of such links. The only issue was whether attaching an advertisement, as contrasted with any other descriptive matter such as in Moore, to that link should be afforded patentable weight. We found such did not, citing *In re Ngai*, 367 F.3d at 1339. To the extent the Appellants are arguing that we ignored the link component of a banner ad, our finding as to Moore makes that argument unpersuasive. To the extent the Appellants are arguing that a banner ad may have a functional component aside from its link, the claim does not recite such a functional component, and such a component is not inherent to banner ads per se. Thus, we find the arguments unpersuasive as to error on our part.

For the above reasons we are not convinced of reversible error in our decision. Accordingly, the Appellants' request for rehearing is denied.

DECISION

To summarize, our decision is as follows:

- We have considered the REQUEST FOR REHEARING
- We DENY the request that we reverse the Examiner as to claims 1-3 and 7-21.
    - The rejection of claims 13, 16-18, and 20 under 35 U.S.C. § 103(a) as unpatentable over Moore remains sustained.
    - The rejection of claims 1, 7-12, 19, and 21 under 35 U.S.C. § 103(a) as unpatentable over Mason and Moore remains sustained.
    - The rejection of claims 4-6 under 35 U.S.C. § 103(a) as unpatentable over Mason and Moore remains not sustained.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 891 of 1793

- The rejection of claims 2 and 3 under 35 U.S.C. § 103(a) as unpatentable over Mason, Moore, and Wexler remains sustained.
- The rejection of claims 14 and 15 under 35 U.S.C. § 103(a) as unpatentable over Mason, Moore, and Hess remains sustained.

DENIED

mev

CAREY, RODRIGUEZ, GREENBERG & PAUL LLP
ATTN: STEVEN M. GREENBERG, ESQ.
950 PENINSULA CORPORATE CIRCLE, SUITE 3020
BOCA RATON FL 33487

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 892 of 1793

PTO/AIA/22 (03-13)
Approved for use through 7/31/2016. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)	Docket Number (Optional) 8201-0013
Application Number 13/946,461	Filed 2013-07-19
For RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES	
Art Unit 3622	Examiner LASTRA, DANIEL

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above-identified application.

The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):

		Fee	Small Entity Fee	Micro Entity Fee	
☐	One month (37 CFR 1.17(a)(1))	$200	$100	$50	$
☑	Two months (37 CFR 1.17(a)(2))	$600	$300	$150	$ 300.00
☐	Three months (37 CFR 1.17(a)(3))	$1,400	$700	$350	$
☐	Four months (37 CFR 1.17(a)(4))	$2,200	$1,100	$550	$
☐	Five months (37 CFR 1.17(a)(5))	$3,000	$1,500	$750	$

☑ Applicant asserts small entity status. See 37 CFR 1.27.

☐ Applicant certifies micro entity status. See 37 CFR 1.29.
Form PTO/SB/15A or B or equivalent must either be enclosed or have been submitted previously.

☐ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☑ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 503611.

☑ Payment made via EFS-Web.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

☐ applicant.

☑ attorney or agent of record. Registration number 42984.

☐ attorney or agent acting under 37 CFR 1.34. Registration number _____.

/SCOTT D. PAUL/ — Signature

OCTOBER 2, 2017 — Date

SCOTT D. PAUL — Typed or printed name

561-801-7700 — Telephone Number

NOTE: This form must be signed in accordance with 37 CFR 1.33. See 37 CFR 1.4 for signature requirements and certifications. Submit multiple forms if more than one signature is required, see below*.

☑ * Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public, which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Electronic Patent Application Fee Transmittal	
Application Number:	13946461
Filing Date:	19-Jul-2013
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Filer:	Scott David Paul/Alaine Allison
Attorney Docket Number:	8201-0013
Filed as Small Entity	
Filing Fees for Utility under 35 USC 111(a)	

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension - 2 months with $0 paid	2252	1	300	300
Miscellaneous:				
		Total in USD ($)		**300**

Electronic Acknowledgement Receipt	
EFS ID:	30540930
Application Number:	13946461
International Application Number:	
Confirmation Number:	9140
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Customer Number:	55246
Filer:	Scott David Paul/Alaine Allison
Filer Authorized By:	Scott David Paul
Attorney Docket Number:	8201-0013
Receipt Date:	02-OCT-2017
Filing Date:	19-JUL-2013
Time Stamp:	16:29:34
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	DA
Payment was successfully received in RAM	$300
RAM confirmation Number	100317INTEFSW00003808503611
Deposit Account	
Authorized User	
The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Appeal Brief Filed	8201-0013_AppealBrief_10-02-17.pdf	1182788 4f23b7bdbe1c607b6d750576367ce8bc43ebd40e	no	52
Warnings:					
Information:					
2	Extension of Time	8201-0013_ExtensionofTime_10-02-17.pdf	133750 8d061b6dbfa5589cbe4b69aaaa9d8716573526d5	no	1
Warnings:					
Information:					
3	Fee Worksheet (SB06)	fee-info.pdf	30732 be2ee645f6956fbe8c047ca665f8332251bc2bf6b5	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	1347270		

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New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.
National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.
New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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55246 e 2017-10-30
Cuenot, Forsythe & Kim
12161 KEN ADAMS WAY
SUITE 120
WELLINGTON,FL 33414

Paper No. 20171026

Application No.:	13/946,461	**Date Mailed:**	2017-10-30 ELECTRONIC
First Named Inventor:	THOMAS L. DISTEFANO	Examiner:	UBER, NATHAN C
Attorney Docket No.:	8201-0013	Art Unit:	3622
Confirmation No.:	9140	Filing Date:	07/19/2013

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

Commissioner for Patents

PTO-90c (Rev.08-06)

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 13/946,461	Applicant(s) DISTEFANO, THOMAS L.	
	Examiner UBER, NATHAN C	Art Unit 3622	AIA Status No

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

The Appeal Brief filed on 02 October 2017 is defective for failure to comply with one or more provisions of 37 CFR 41.37(c).

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.

2. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the rejected independent claims, referring to the specification in the Record by page and line number or by paragraph number and to the drawings, if any, by reference characters; and/or (b) the brief fails to identify, for each rejected independent claim and for each dependent claim argued separately that contains a means plus function or step plus function recitation under 35 U.S.C. 112, sixth paragraph, the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification in the Record by page and line number or paragraph number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(iii)).

3. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(v)).

4. ☑ Other (including any explanation in support of the above items):

The Summary of Claimed Subject Matter references the specification by paragraph numbering. The specification, however, lacks paragraph numbering and is formatted by page and line numbers. It is requested that the Summary of Claimed Subject Matter be revised to reference the specification in the Record in the same manner as originally formatted. An entire new Appeal Brief is not necessary only the revised section..

/TIMOTHY COLE/ Technical Operations Review Specialist 571 272-0999

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 899 of 1793

To: ptomail@iplawpro.com,tforsythe@iplawpro.com,kcuenot@iplawpro.com
From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
Subject: Private PAIR Correspondence Notification for Customer Number 55246

Oct 30, 2017 03:50:32 AM

Dear PAIR Customer:

Cuenot, Forsythe & Kim
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WELLINGTON, FL 33414
UNITED STATES

The following USPTO patent application(s) associated with your Customer Number, 55246 , have new outgoing correspondence. This correspondence is now available for viewing in Private PAIR.

The official date of notification of the outgoing correspondence will be indicated on the form PTOL-90 accompanying the correspondence.

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Application	Document	Mailroom Date	Attorney Docket No.
13946461	APBD	10/30/2017	8201-0013

To view your correspondence online or update your email addresses, please visit us anytime at https://sportal.uspto.gov/secure/myportal/privatepair.

If you have any questions, please email the Electronic Business Center (EBC) at EBC@uspto.gov with 'e-Office Action' on the subject line or call 1-866-217-9197 during the following hours:

Monday - Friday 6:00 a.m. to 12:00 a.m.

Thank you for prompt attention to this notice,

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PATENT APPLICATION INFORMATION RETRIEVAL SYSTEM

Attorney Docket No. 8201-0013 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

In re Application of	:	Customer Number: 55246
Thomas DISTEFANO III	:	Confirmation Number: 9140
Application No.: 13/946,461	:	Group Art Unit: 3622
Filed: July 19, 2013	:	Examiner: N. Uber

For: RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The following remarks are submitted in response to the Notification of Non-Compliant Appeal Brief dated October 30, 2017.

REMARKS

Appellant has attached hereto a replacement SUMMARY OF CLAIMED SUBJECT MATTER.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 503611, and please credit any excess fees to such deposit account.

Date: October 31, 2017

Respectfully submitted,

/Scott D. Paul/
Scott D. Paul
Registration No. 42,984
CUSTOMER NUMBER 55246

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 902 of 1793

V. SUMMARY OF CLAIMED SUBJECT MATTER

Referring to Figure 1 and also to independent claim 22, a method, within and by a computer hardware system 180 that is configured to serve a first web page associated with a first user and a second web page associated with a second user is disclosed (page 51, line 14 through page 52, line 2 of Appellant's disclosure). The computer hardware system 180 establishes a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement (see Figure 20 and page 49, line 20 through page 52, line 20 of Appellant's disclosure). The first web page includes, based upon the reciprocal arrangement, a first link to the second web page and associated with the second user, and the second web page includes, based upon the reciprocal arrangement, a second link to the first web page and associated with the first user (page 51, line 14 through page 52, line 2 of Appellant's disclosure).

Referring to Figure 1 and also to independent claim 32, a webpage implementation server system 180 is configured to serve a first web page associated with a first user and a second web page associated with a second user (page 51, line 14 through page 52, line 2 of Appellant's disclosure). The server system 180 includes a database 160/170/190 storing information associated with the first and second web pages (page 13, line 9 through page 14, line 6 of the Appellant's disclosure) and a computer hardware system 180 that establishes a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement (see Figure 20 and page 49, line 20 through page 52, line 20 of Appellant's disclosure). The first web page includes, based upon the reciprocal arrangement, a first link to the second web page and associated with the second user, and the second web page includes, based upon the reciprocal arrangement, a second link to

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 903 of 1793

the first web page and associated with the first user (page 51, line 14 through page 52, line 2 of Appellant's disclosure).

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 904 of 1793

Electronic Acknowledgement Receipt	
EFS ID:	30811502
Application Number:	13946461
International Application Number:	
Confirmation Number:	9140
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Customer Number:	55246
Filer:	Scott David Paul/Alaine Allison
Filer Authorized By:	Scott David Paul
Attorney Docket Number:	8201-0013
Receipt Date:	31-OCT-2017
Filing Date:	19-JUL-2013
Time Stamp:	13:14:35
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Supplemental Appeal Brief	8201-0013_SupplementalAppealBrief_10-31-17.pdf	68046 687f11d0c0a1cb89136ad7d7ac6b8027f6150054	no	4

Warnings:

Information:	
Total Files Size (in bytes):	68046

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New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.
National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.
New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/946,461	07/19/2013	THOMAS L. DISTEFANO III	8201-0013	9140

55246 7590 12/21/2017

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EXAMINER	
KOLOSOWSKI-GAGER, KATHERINE	

ART UNIT	PAPER NUMBER
3622	

NOTIFICATION DATE	DELIVERY MODE
12/21/2017	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):

ptomail@iplawpro.com
tforsythe@iplawpro.com
kcuenot@iplawpro.com

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 907 of 1793

Office Action Summary	Application No. 13/946,461	Applicant(s) DISTEFANO, THOMAS L.	
	Examiner KATHERINE KOLOSOWSKI	Art Unit 3622	AIA (First Inventor to File) Status No

-- 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* MONTHS 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 *10/31/2017*.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ 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*

5)☒ Claim(s) *22-26,28-36 and 38-41* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *22-26,28-36 38-41* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ 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).

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).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

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) ☒ Notice of References Cited (PTO-892)

2) ☒ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

4) ☐ Other: _____.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 908 of 1793

DETAILED ACTION

1. This action is in reference to the communication filed on 10/31/2017.

2. Claims 22-26, 28-36, 38-41 are present and have been examined.

In view of the Appeal Brief filed on 10/31/2017, PROSECUTION IS HEREBY REOPENED. New Grounds of rejection set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/NATHAN C UBER/

Supervisory Patent Examiner, Art Unit 3622

Claim Rejections - 35 USC § 112

The following is a quotation of 35 U.S.C. 112(b):

> (b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 23, 33, 24, 34 rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention.

Claims 23/24, 33/34 recite wherein two separate webpages are stored "database", and wherein the pages are generated using the "database" However, from the claim language it is not clear if this is intended to be the same database where both pages are stored and later dynamically generated for the third user. Claim 23 uses antecedent language to clarifying that it is "a database", and that the same page is stored in said database, and claim 24 recites "a" database, thereby making the scope of the claim indefinite as it is not clear if it is the same database being used. Paragraph 044 of the specification further complicates the scope of the claim, by reciting multiple different databases to complete the store/generation. For example, third party user database 160 is clearly a separate database from web assets data base or programming databases, however, the claim language makes no such distinction. Correction is required.

Claims 29, 39 rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention. Claims 29, 39 recites the limitation ""the second functional identification element..." There is insufficient antecedent basis for this limitation in the claim, as there is no first identification element in the claims. This appears to be a grammatical error held over from

prior amendment to the independent claims, however, correction is required for clarity of the record.

Claim Rejections - 35 USC § 101

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.

Regarding claims 22-26, 28-36, 38- 41, the claims are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter, i.e. an abstract idea. The rationale for this determination is explained below:

Part 1, the claims are directed to a method and a system, which are statutory categories of invention.

Part 2A: With respect to claims 22-26, 28-36, 38- 41, the independent claims 22, 32 are directed in part to agreements between web pages to promote one another. The claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more. These elements are considered to be abstract ideas, because they are similar to creating a contractual relationship, which was found to be abstract idea by a controlling court in BuySafe as well as relaying address data (i.e. website information), which was found to be abstract idea by a controlling court in Return Mail, and collection, storage, and recognition of data which was found to be abstract idea by a controlling court in Smart Systems. For example, the "establishment of a reciprocal agreement between a first web page and a second web page..." is comparable to a contractual agreement as in BuySAFE, and including links between the pages (i.e. web addresses) is comparable to relaying address data

as in Return Mail. Because the claim elements are similar to features found to be abstract by the courts, the indicated claim features are also considered to be directed to an abstract idea.

As per Step 2B of the analysis, the independent claims additionally recite the elements such a "computer hardware system", and a first and second web page in claim 22, and a "web implementation server system", a database, a computer hardware system in claim 32... When considered individually, the only contribute generic recitations of technical elements to the claims. The claim(s) do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional computer elements, which are recited at a high level of generality, provide conventional computer functions that do not add meaningful limits to practicing the abstract idea. It is readily apparent that the claim itself is not directed to a specific improvement of any of the recited elements, rather the claim simply *requires* them to operate in a generic computing environment – for example, the web page is simply being "presented" with additional information, and the computer hardware system is only used to facilitate the transfer of information between the hardware elements, and the "database" is only used to store and retrieve information within the computing environment. Further, a controlling court has found that functions similar to those of Applicants claims of "receiving, processing, and storing data" (See Alice Corp., 134 S. Ct. at 2360. But see Example 4 (AI-4: global positioning system) and "receiving or transmitting data over a network, e.g., using the Internet to gather data" (See Ultramercial, 772 F.3d at 716-17; buySAFE, Inc. v. Google, Inc., 765 F.3d 1350, 1355 (Fed. Cir. 2014) to be well-understood, routine, and conventional functions when they are claimed in a merely generic manner (as found in the independent claims). Courts have held computer-implemented processes not to be significantly more than an abstract idea (and thus ineligible) where the claim as a whole amounts to nothing more than generic computer functions merely used to implement an abstract idea.

Thus, taken alone, the additional elements do not amount to significantly more than a judicial exception. Looking at the limitations as an ordered combination adds nothing that is not already present when looking at the elements taken individually. There is no indication that the combination of elements improves the functioning of a computer or improves any other technology. Their collective functions merely provide conventional computer implementation.

When the claims are considered as a whole, the additional elements above appear to merely *apply* the abstract concept to a technical environment in the most general sense, i.e. the generic sending and receiving of data between one or more computers. The most significant inventive elements of the claims are set forth in the elements identified above as the abstract idea. Generic computing device(s) and/or environment facilitating the abstract concept are insufficient to reach a determination of statutory subject matter eligibility.

Dependent claim(s) 23, 24, 33, 34 /are not directed to any additional abstract ideas, however, they do recite non-abstract elements including the database(s) previously discussed in the independent claims. However, the databases are only functioning to store and retrieve information, and as such they are not directed to significantly more.

Dependent claims 25, 35 are not directed to any additional abstract ideas, rather, they offer further description of the display/rendering of the web page, i.e. address information, as described above with respect to the independent claims. However, mere display or functional description of the contents of a display are not enough to amount to significantly more.

Dependent claims 26, 28, 36, 38 are not directed to any additional abstract ideas or non-abstract elements, however they do recite further clarification of a web asset as provided to the web pages. Providing data from a third party, and the descriptive nature of the data or asset as claimed, is not enough to amount to significantly more. Further, the claims state that the third party is providing the asset separate from the hardware system, but does not offer any non-

abstract elements (i.e. an additional computer hardware system, etc.) by which this is accomplished.

Dependent claims 29, 39 are not directed to any additional abstract ideas, however they do repeat recitation of the computer hardware system as discussed above. However, the system is only used to insert content and provide the web page to the user -i.e. as above, the computer hardware system is simply used to send and receive data and as such is insufficient to amount to significantly more.

Dependent claims 30, 31, 40, 41 are not directed to any additional abstract ideas, however, they do recite a graphic being associated with the link and being received from the user. While this offers context/clarification, the use of the graphic is simply to be included with the data presented with the web page, and further, there is nothing "significantly more" about the user's submission of the image itself. As such, this is insufficient to amount to significantly more.

Claim Rejections - 35 USC § 102

In the event the determination of the status of the application as subject to AIA 35 U.S.C. 102 and 103 (or as subject to pre-AIA 35 U.S.C. 102 and 103) is incorrect, any correction of the statutory basis for the rejection will not be considered a new ground of rejection if the prior art relied upon, and the rationale supporting the rejection, would be the same under either status.

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim(s) 22-26, 28-36, 38-41 is/are rejected under pre-AIA 35 U.S.C. 102(a)/(e) as being anticipated by Horstmann et al (US 5995099, filed on 6/10/1996).

- **In reference to claims 22, 32**

  Horstmann teaches:

  A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

  establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement (at least figures 1, 2, 3, and related text, including col 2, lines 55 through col 3, line 41: the bike shop owner and the book store owner form an agreement to display one another's advertisements on their respective pages);

  including, within the second web page and based upon the reciprocal arrangement, a second link to the first web page and (at least figures 1-3, and related text, including col 3, lines 15-41: once the bike store owner/website has made the agreement, the bookstore owner/website would then have their link included in relevant locations on the bike shop website);

including, within the first web page and based upon the reciprocal arrangement, a first link to the second web page and associated with the second entity (at least figures 1- 3, and related text, including col 2 line 55 through col 3, lines 15-41: bookstore website now shows the link to the bike store website, based on the bike shop's request and the agreement between the two).

- **In reference to claims 23, 33**

  Horstmann teaches:

  Wherein the first web page is stored in a database; and the second web page is stored in the database (at least col 2, lines 41-55: websites may be stored in separate or the same server, see also figure 5 and related text: common database stores the reciprocal agreements and/or the updated pages).

- **In reference to claims 24, 34**

  Horstmann teaches:

  receiving, from a third user, a request for the first web page (at least col 5 lines 25-34: viewers request the website with the newly updated links, see also figures 5, 3 and related text);

  dynamically generating, using a database, the first web page (at least col 5, lines 5-34: once approved, the links update as in figures 5, 3 and related text); and

  serving, to the third user, the dynamically-generated first web page (at least col 4 lines 6-20, col 5 lines 5-24, figures 3,5 and related text: webpage is rendered with the updated links; bike store owner and/or viewers see the rendered page including links).

- **In reference to claims 25, 35**

  Horstmann teaches:

  wherein the first web page includes one or more web pages (at least fig 1, 5,7 and related text, including col 5 lines 25-35, and col 6 lines 41-57: embodiments including "a number of links pages stored" to verify that each link links to an existing page within the website).

- **In reference to claims 26, 36**

  Horstmann teaches:

  including, within the first web page, a web asset provided by a third party separate from the computer hardware system (at least fig 4 and related text, including col 4 lines 35-43, and figure 5 & related text, including col 4 lines 43-.col 5 line 24: two embodiments of the "add link" feature both are provided by a separate provider, and the pages may interact with them – i.e. "if a bike shop owner is impressed with the "add link" feature of website A…", bike shop owner may add it to his page to make it easier for, for example, bookstore owner to interact).

- **In reference to claims 28, 38**

  Horstmann teaches:

  wherein the web asset is a functional application (see figure 4, 5, and related text, including col 4 line 43- col 5, line 24: "add link" feature/button is used to functionally modify the page itself).

- **In reference to claims 29, 39**

  Horstmann teaches:

  providing, to the first user, at least one recommended web page, associated with the computer hardware system, into which the second functional identification element is to be included (at least figures 4, 5, and related text, including col 4, line 43- col 5, line 24: add link is a functional element found on webpage A, and bike shop owner, may decide to include the feature on the bike shop page, or to add a link between the two pages himself, further, system recommends bookstore to bike store owner).

- **In reference to claims 30, 40**

  Horstmann teaches:

  Wherein the second link is associated with a graphic image (at least col 4, lines 60-65, fig 5 and related text: link includes the bike shop logo).

- **In reference to claims 31, 41**

  Horstmann teaches:

  receiving, from the first user, the image (at least col 4, lines 60-65, fig 5 and related text: link includes the bike shop logo; bike shop owner uploads/includes it in the link/editing page).

Response to Arguments

The remarks in the Appeal Brief filed on 10/2/2017, and the supplement filed on 10/31/2017, have been found largely persuasive and as such prosecution is reopened as noted above.

As per the rejection under 35 USC 101, the rejection above has been updated as to be current with USPTO Policy current through the mailing date of this action, and as such many of the remarks in the Brief are found to be moot. Current case law has been cited as well.

On page 8-0 of the brief, Applicant restates elements of USPTO policies regarding subject matter eligibility. On page 10 of the Brief, Applicant discusses the Bilski test of machine or transformation, however, as correctly noted by Applicant that is not the current test for subject matter eligibility. On page 11 of the brief, Applicant discusses DDR Holdings, however, Applicant mischaracterizes the test, as it requires that the problem being solved arises in computing technology. Applicant's remarks about the prior art reference do not imply that it is purely arising in a technological environment, rather, Applicant highlights the problem of one business not fulfilling a contractually obligated responsibility to the other by virtue of the agreement. The claim language simply transfers the issue of guaranteeing performance for a contract into a computing environment – a long standing problem in the pre internet area. For example, one business could agree to post flyers for another within the store, and then go back on the deal thereby creating the same issue.

Applicant's remarks regarding Electric Power group on page 12 are moot as the case is no longer cited.

Applicant's remarks regarding McRO are not found to be persuasive, as Applicant focuses largely on the issue of preemption, which is not the test for subject matter eligibility. Further, Applicant does not discuss the merits of the claims and how they automate a process previously only performable by a human.

Applicant's arguments regarding the prior art are found persuasive and such this action is issued.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHERINE KOLOSOWSKI-GAGER whose telephone number is (571)270-5920. The examiner can normally be reached on Monday - Friday.

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, Nathan Uber can be reached on 571-270-3923. 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.

/Katherine Kolosowski/
AU 3622

Notice of References Cited	Application/Control No. 13/946,461	Applicant(s)/Patent Under Reexamination DISTEFANO, THOMAS L.	
	Examiner KATHERINE KOLOSOWSKI	Art Unit 3622	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-5,995,099 A	11-1999	Horstmann; Jens U.	G06F17/30882	707/E17.013
	B	US-				
	C	US-				
	D	US-				
	E	US-				
	F	US-				
	G	US-				
	H	US-				
	I	US-				
	J	US-				
	K	US-				
	L	US-				
	M	US-				

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	CPC Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 921 of 1793

Doc code: IDS
Doc description: Information Disclosure Statement (IDS) Filed

PTO/SB/08a (03-15)
Approved for use through 07/31/2016. OMB 0651-0031
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	13946461
Filing Date	2013-07-19
First Named Inventor	THOMAS L. DISTEFANO III
Art Unit	3622
Examiner Name	DANIEL LASTRA
Attorney Docket Number	8201-0013

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Examiner Initial*	Cite No	Patent Number	Kind Code[1]	Issue Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	13946461
	Filing Date	2013-07-19
	First Named Inventor	THOMAS L. DISTEFANO III
	Art Unit	3622
	Examiner Name	DANIEL LASTRA
	Attorney Docket Number	8201-0013

/K.K/	1	"Epinions.com Autos," [online] Epinions, Inc. © 1999 [retrieved Aug.14, 2017] retrieved from the Internet: <https://web.archive.org/web/19991127170707/http:/www.epinions.com:80/auto>, 2 pg.	
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EXAMINER SIGNATURE

Examiner Signature	/KATHERINE KOLOSOWSKI-GAGER/	Date Considered	12/11/2017

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1] See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. [2] Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). [3] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [4] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [5] Applicant is to place a check mark here if English language translation is attached.

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /K.K/

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (**Not for submission under 37 CFR 1.99)**	Application Number	13946461
	Filing Date	2013-07-19
	First Named Inventor	THOMAS L. DISTEFANO III
	Art Unit	3622
	Examiner Name	DANIEL LASTRA
	Attorney Docket Number	8201-0013

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☒ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

See attached certification statement.

The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/SCOTT D. PAUL/	Date (YYYY-MM-DD)	2017-08-14
Name/Print	SCOTT D. PAUL	Registration Number	42984

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /K.K/

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

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8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /K.K/

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 925 of 1793

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13946461	DISTEFANO, THOMAS L.
	Examiner	Art Unit
	DANIEL LASTRA	3622

CPC- SEARCHED		
Symbol	Date	Examiner
(G06F17/2247 OR G06F3/0481 OR G06F17/2235 OR G06Q30/02 OR G06Q30/0207 OR G06Q30/0256 OR G06Q30/0273 OR G06Q30/0276 OR G06Q30/0277 OR G06Q30/0641 OR G06Q30/08 OR A01G9/227 OR B60R22/19 OR E06B3/285 OR	1/10/16	dl

CPC COMBINATION SETS - SEARCHED		
Symbol	Date	Examiner

US CLASSIFICATION SEARCHED			
Class	Subclass	Date	Examiner
705	14.1	1/10/16	dl

* See search history printout included with this form or the SEARCH NOTES box below to determine the scope of the search.

SEARCH NOTES		
Search Notes	Date	Examiner
east	1/10/16	dl
EAST	December 2017	KKG
Online	December 2017	KKG

INTERFERENCE SEARCH			
US Class/ CPC Symbol	US Subclass / CPC Group	Date	Examiner
705/G06Q	14.1/30/00	1/10/16	DL

/KATHERINE KOLOSOWSKI-GAGER/ Examiner.Art Unit 3622	

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 926 of 1793

EAST Search History

EAST Search History (Prior Art)

Ref #	Hits	Search Query	DBs	Default Operator	Plurals	Time Stamp
L1	1	"5995099".pn.	US-PGPUB; USPAT	OR	OFF	2017/12/11 09:57
L2	53	("20140195886" | "7082407" | "7353199" | "8768760" | "8781890" | "8996398" | "20130311876" | "5560006" | "5787254" | "5995099" | "6035334" | "6199111" | "8589222" | "8650076" | "20130066727" | "20130066728" | "20130066729" | "20130073397" | "20130151338" | "20130151354" | "20130151982" | "20130173401" | "5778367" | "5913212" | "5950200" | "5963951" | "5987440" | "6009410" | "6029141" | "6052122" | "6061681" | "6073105" | "6073138" | "6175831" | "6253216" | "6269369" | "6360222" | "6480885" | "6839680" | "8412570" | "8417567" | "8423399" | "8442860" | "20120185339" | "5937392" | "5960409" | "6058417" | "6330575" | "6401075" | "6601057" | "6629135" | "7996259" | "8335713").PN.	US-PGPUB; USPAT	OR	OFF	2017/12/11 10:32
S1	1	"20130305132"	US-PGPUB; USPAT	OR	OFF	2017/11/28 20:43

12/ 11/ 2017 10:33:15 AM
C:\ Users\ kkolosowski\ Documents\ EAST\ Workspaces\ 13946461.wsp

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 927 of 1793

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13946461	DISTEFANO, THOMAS L.
	Examiner	**Art Unit**
	DANIEL LASTRA	3622

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	01/11/2016	03/05/2016	12/11/2017						
	22	=	✓	✓						
	23	=	✓	✓						
	24	=	✓	✓						
	25	=	✓	✓						
	26	=	✓	✓						
	27	=	✓	-						
	28	=	✓	✓						
	29	=	✓	✓						
	30	=	✓	✓						
	31	=	✓	✓						
	32	=	✓	✓						
	33	=	✓	✓						
	34	=	✓	✓						
	35	=	✓	✓						
	36	=	✓	✓						
	37	=	✓	-						
	38	=	✓	✓						
	39	=	✓	✓						
	40	=	✓	✓						
	41	=	✓	✓						

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 928 of 1793

To: ptomail@iplawpro.com,tforsythe@iplawpro.com,kcuenot@iplawpro.com
From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
Subject: Private PAIR Correspondence Notification for Customer Number 55246

Dec 21, 2017 03:43:31 AM

Dear PAIR Customer:

Cuenot, Forsythe & Kim
12161 KEN ADAMS WAY
SUITE 120
WELLINGTON, FL 33414
UNITED STATES

The following USPTO patent application(s) associated with your Customer Number, 55246 , have new outgoing correspondence. This correspondence is now available for viewing in Private PAIR.

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Application	Document	Mailroom Date	Attorney Docket No.
13946461	CTNF	12/21/2017	8201-0013
	892	12/21/2017	8201-0013
	1449	12/21/2017	8201-0013

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PATENT APPLICATION INFORMATION RETRIEVAL SYSTEM

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USPTO Automated Interview Request (AIR)

Apr 5 2018

This paper requesting to schedule and/or conduct an interview is appropriate because:

This submission is requested to be accepted as an authorization for this interview to communicate via the internet. Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with the undersigned concerning scheduling of the interview via video conference, instant messaging, or electronic mail, and to conduct the interview in accordance with office practice including video conferencing.

Name(s):
SCOTT D. PAUL

S-signature:
/SCOTT PAUL/

Registration Number:
42984

U.S. Application Number:
13946461

Confirmation Number:
9140

E-mail Address:
ptomail@iplawpro.com

Phone Number:
5618017700

Proposed Time of Interview:
4-19-2018 10:00 AM ET

Prefered Interview Type:
In-person

I am the applicant or applicant's representative for this application.

uspto UNITED STATES PATENT AND TRADEMARK OFFICE
PALM-SILVER

Attorney Docket No.: 8201-0013 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Customer Number: 55246
Thomas DISTEFANO III	:	Confirmation Number: 9140
Application No.: 13/946,461	:	Group Art Unit: 3622
Filed: July 19, 2013	:	Examiner: K. Kolosowski-Gager

For: CLIENT SYSTEM DISPLAYING IDENTIFICATION ELEMENTS FOR WEB PAGE

AMENDMENT

Mail Stop Amendment
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The following Amendment and Remarks are submitted in response to the Office Action dated December 21, 2017.

AMENDMENTS TO THE CLAIMS

Claims 1-21 (Cancelled)

22. (Previously Presented) A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement;

including, within the second web page and based upon the reciprocal arrangement, a second link to the first web page and associated with the first entity; and

including, within the first web page and based upon the reciprocal arrangement, a first link to the second web page and associated with the second entity.

23. (Previously Presented) The method of claim 22, wherein

the first web page is stored in a database; and

the second web page is stored in the database.

24. (Previously Presented) The method of claim 22, further comprising

receiving, from a third user, a request for the first web page;

dynamically generating, using a database, the first web page; and

serving, to the third user, the dynamically-generated first web page.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 932 of 1793

25. (Previously Presented) The method of claim 22, wherein

the first web page includes one or more web pages.

26. (Previously Presented) The method of claim 22, further comprising

including, within the first web page, a web asset provided by a third party separate from the computer hardware system.

Claim 27 (Cancelled)

28. (Previously Presented) The method of claim 26, wherein

the web asset is a functional application.

29. (Currently Amended) The method of claim 22, further comprising

providing, to the first user, at least one recommended web page, associated with the computer hardware system, into which the second link ~~functional identification element~~ is to be included.

30. (Currently Amended) The method of claim 22, wherein

the second link is associated with a graphic image within the second web page.

31. (Previously Presented) The method of claim 30, further comprising

receiving, from the first user, the image.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 933 of 1793

32. (Currently Amended) A webpage implementation server system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

a database system storing information associated with the first and second web pages;

a computer hardware system configured to perform:

storing first input received from the first user into the database system;

storing second input received from the second user into the database system;

establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement;

generating, using the first input received from the first user and the reciprocal arrangement, the first web page; and

generating, using the second input received from the second and the reciprocal arrangement, the second web page, wherein

~~including, within~~ the second web page includes, [[and]] based upon the reciprocal arrangement, a second link to the first web page ~~and associated with the first entity~~; and

~~including, within~~ the first web page includes, [[and]] based upon the reciprocal arrangement, a first link to the second web page ~~and associated with the second entity~~.

33. (Currently Amended) The server system of claim 32, wherein

the first web page is stored in the database system; and

the second web page is stored in the database system.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 934 of 1793

34. (Currently Amended) The server system of claim 32, wherein the computer hardware system is further configured to perform

receiving, from a third user, a request for the first web page;

~~dynamically generating, using a database, the first web page;~~ and

serving, to the third user, the ~~dynamically-generated~~ first web page, wherein the first web page is dynamically generated based upon the request.

35. (Previously Presented) The server system of claim 32, wherein

the first web page includes one or more web pages.

36. (Previously Presented) The server system of claim 32, wherein the computer hardware system is further configured to perform

including, within the first web page, a web asset provided by a third party separate from the computer hardware system.

Claim 37 (Cancelled)

38. (Previously Presented) The server system of claim 36, wherein

the web asset is a functional application.

39. (Previously Presented) The server system of claim 32, wherein the computer hardware system is further configured to perform:

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 935 of 1793

providing, to the first user, at least one recommended web page, associated with the computer hardware system, into which the second link is to be included.

40. (Currently Amended) The server system of claim 32, wherein

the second link is associated with a graphic image within the second web page.

41. (Previously Presented) The server system of claim 40, wherein the computer hardware system is further configured to perform

receiving, from the first user, the image.

42. (New) The method of claim 22, wherein

the first and second users are both registered users with the computer hardware system.

43. (New) The server system of claim 32, wherein

the first and second users are both registered users with the computer hardware system.

44. (New) A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

storing first input received from the first user into a database system coupled to the computer hardware system;

storing second input received from the second user into the database system;

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 936 of 1793

establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement;

generating, using the first input received from the first user and based upon the reciprocal arrangement, the first web page; and

generating, using the second input received from the second user and based upon the reciprocal arrangement, the second web page, wherein

the second web page includes, based upon the reciprocal arrangement, a second link to the first web page; and

the first web page includes, based upon the reciprocal arrangement, a first link to the second web page.

45. (New) The method of claim 44, wherein

the first web page is stored in the database system; and

the second web page is stored in the database system.

46. (New) The method of claim 44, further comprising:

receiving, from a third user, a request for the first web page; and

serving, to the third user, the first web page, wherein

the first web page is dynamically generated based upon the request.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 937 of 1793

REMARKS

At the time of the Third Office Action dated December 21, 2017, claims 22-26, 28-36, and 38-41 were pending and rejected in this application.

CLAIMS 23-24, 29, 33-34, AND 39 ARE REJECTED UNDER THE SECOND PARAGRAPH OF 35 U.S.C. § 112

On pages 2-4 of the Third Office Action, the Examiner asserted that claims 23-24, 29, 33-34, and 39 are indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

Claims 23/24

Referring to page 3 of the Third Office Action, the Examiner asserted "from the claim language it is not clear if this is intended to be the same database where both pages are stored and later dynamically generated for the third user." Applicant respectfully disagrees. Neither claim 23 nor claim 24 depends from one another, and consequently the interpretation of "database" in one claim does not impact the interpretation of "database" in the other claim. As such, the Examiner is inappropriately reading the language of these separate claims together.

Claim 29

On pages 3 and 4 of the Third Office Action, with regard to claim 29, the Examiner asserted that there is insufficient antecedent basis for the term "the second functional identification element." In response, Applicant notes that claim 29 has been amended to recite

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 938 of 1793

"the second link" in place of "the second functional identification element." The term "the second link" finds antecedent basis in claim 22, upon which claim 29 depends.

Therefore, for the reasons stated above, Applicant respectfully solicits withdrawal of the imposed rejection of claims 23-24, 29, 33-34, and 39 under the second paragraph of 35 U.S.C. § 112.

CLAIMS 22-26, 28-36, AND 38-41 ARE REJECTED UNDER 35 U.S.C. § 101

On pages 4-7 of the Third Office Action, the Examiner asserted that the claimed invention, as recited in claims 22-26, 28-36, and 38-41, fails to meet the requirements of 35 U.S.C. § 101. This rejection is respectfully traversed.

Step 1

The first step in testing for subject matter eligibility is a determination whether the claim is directed to a process, machine, manufacture or composition of matter. See 35 U.S.C. § 101. Claims 22-26 and 28-31 are directed to a method (i.e., a process) and, thus, fall within the scope of 35 U.S.C. § 101. Claims 32-36 and 38-41 are directed to a computer hardware system (i.e., a machine) and also fall within the explicit scope of 35 U.S.C. § 101. Therefore, all of currently-pending claims 22-26, 28-36, and 38-41 meet the explicit requirements of 35 U.S.C. § 101.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 939 of 1793

Step 2A

The second step in testing for subject matter eligibility is a determination whether the claims are directed to one of the exceptions to statutory subject matter. See Bilski v. Kappos, 561 U.S. 593 (2010)("[t]he Court's precedents provide three specific exceptions to § 101's broad patent-eligibility principles: 'laws of nature, physical phenomena, and abstract ideas'" citing Diamond v. Chakrabarty, 447 U. S. 303, 308 (1980)). Referring to Alice Corp. v. CLS Bank International, the Supreme Court cautioned as follows:

> At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. *Mayo*, 566 U. S., at ___ (slip op., at 2). At some level, "all inventions . . . embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Id.*, at ___ (slip op., at 2). Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. See *Diamond* v. *Diehr*, 450 U. S. 175, 187 (1981). "[A]pplication[s]" of such concepts "'to a new and useful end,'" we have said, remain eligible for patent protection. *Gottschalk* v. *Benson*, 409 U. S. 63, 67 (1972).
>
> Accordingly, in applying the §101 exception, we must distinguish between patents that claim the "'buildin[g] block[s]'" of human ingenuity and those that integrate the building blocks into something more, *Mayo*, 566 U. S., at ___ (slip op., at 20), thereby "transform[ing]" them into a patent-eligible invention, *id.*, at ___ (slip op., at 3).
>
> 573 U.S. ___ (slip op. at 6), 134 S. Ct. 2347 (2014).

Clearly, the claims are directed to neither "laws of nature" nor "physical phenomena." Thus, the Examiner can only allege, at most, that the claims are directed to an abstract idea. Reference is also made to M.P.E.P. § 2106.04(a), which states "[a]lthough the Supreme Court has not delimited the precise contours of the abstract idea exception, it is clear from the body of judicial precedent that software and business methods are not excluded categories of subject matter" (emphasis added). Consequently, while the claimed invention may be implemented using software executing within a computer hardware system, this does not establish that the claimed invention is directed to patent ineligible subject matter.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 940 of 1793

Reference is made to M.P.E.P. § 2106.07(a), entitled "Formulating a Rejection For Lack of Subject Matter Eligibility," which states:

> For Step 2A, the rejection should identify the judicial exception by referring to **what is recited** (*i.e.*, set forth or described) in the claim and **explain why** it is considered an exception. For example, if the claim is directed to an **abstract idea**, the rejection should identify the abstract idea as it is recited (*i.e.*, set forth or described) in the claim and explain why it corresponds to a concept that the courts have identified as an abstract idea. Similarly, if the claim is directed to a **law of nature** or a **natural phenomenon**, the rejection should identify the law of nature or natural phenomenon as it is recited (*i.e.*, set forth or described) in the claim and explain using a reasoned rationale why it is considered a law of nature or natural phenomenon. (emphasis in original)

The alleged "abstract idea"

Turning to the paragraph spanning pages 4 and 5 of the Fourth Office Action, the Examiner identified the alleged judicial exception as follows:

> Part 2A: With respect to claims 22-26, 28-36, 38- 41, the independent claims 22, 32 are directed in part to agreements between web pages to promote one another. The claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more.

No finding of preemption

Albeit not the standalone test for determining eligibility, preemption is the concern underlying the judicial exceptions. Rapid Litig. Mgmt. v. CellzDirect, Inc., 827 F.3d 1042, 1052 (Fed. Cir. 2016). In this regard reference is made to M.P.E.P. § 2106.07(a), entitled "Evaluating Applicant's Response," which states:

> If applicant argues that the claim is specific and does not preempt all applications of the exception, the examiner should reconsider Step 2A of the eligibility analysis, *e.g.*, to determine whether the claim is directed to an improvement to the functioning of a computer or to any other technology or technical field. If an examiner still determines that the claim is directed to a judicial exception, the examiner should then reconsider in Step 2B whether the additional elements in combination (as well as individually) amount to an inventive concept, *e.g.*, because they are more than the non-conventional and non-generic arrangement of known, conventional elements. Such reconsideration is

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 941 of 1793

> appropriate because, although preemption is not a standalone test for eligibility, it remains the underlying concern that drives the two-part framework from *Alice Corp.* and *Mayo* (Steps 2A and 2B). (emphasis added)

In the decision of McRo, Inc. v. Bandai Namco Games America, 837 F.3d 1299 (Fed. Cir. 2016), the Federal Circuit addressed the concept of "preemption" as follows:

> The preemption concern arises when the claims are not directed to a specific invention and instead improperly monopolize "the basic tools of scientific and technological work." *Alice*, 134 S. Ct. at 2354 (quoting *Myriad*, 133 S. Ct. at 2116). The abstract idea exception has been applied to prevent patenting of claims that abstractly cover results where "it matters not by what process or machinery the result is accomplished." *Morse*, 56 U.S. at 113; *see also Mayo*, 132 S. Ct. at 1301. Id. at 1314.

The Federal Circuit also stated that "[t]he limitations in claim 1 prevent preemption of all processes for achieving automated lip-synchronization of 3-D characters." Id. at 1315. In acknowledging that "the absence of complete preemption does not demonstrate patent eligibility," the Federal Circuit found that "[t]he specific structure of the claimed rules would prevent broad preemption of all rules-based means of automating lip synchronization." Id. The Federal Circuit also found that "Defendants provided no evidence that the process previously used ... is the same as the process required by the claims." Id. at 1315.

The Examiner alleges that the claimed invention is directed to "agreements between web pages to promote one another." While this description of the claimed invention necessarily involves technology, this alleged abstract idea is not preempted by the claimed invention. For example, reference is made to U.S. Patent No. 6,629,135 (cited in an Information Disclosure Statement in the present application on July 19, 2013). In the Background of the Invention of this Patent is the following discussion:

> In these early days, the Web was mostly trafficked by programmers and "techies," and a commune-type "share and share alike" mindset prevailed. As a

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 942 of 1793

> result, people were happy to litter their sites with links, knowing that, odds were, others would do the same for them and the traffic gain/loss would probably balance out. So, despite the fact that by including and promoting a "links" page, website operators were effectively encouraging people to leave their website, link sharing developed into a standard practice. (emphasis added)

Moreover, as admitted by Applications in paragraph [0011] of the published version (i.e., 2013/0305132) of the present application, paragraph [0011] states "Although the use of ... links is very common, the setting up of such mechanisms is not always easy. In particular, other websites typically do not display ... links for a particular website without contractual arrangements ... which can be difficult for a novice web designer to arrange."[1] Thus, the claimed invention cannot preempt the "agreements between web pages to promote one another" since this practice was already known at the time. Additionally and as discussed in greater detail below, the Examiner's cited reference of Horstmann describes a technological solution "[t]o ensure reciprocity" of links between web pages. Accordingly, the claimed invention cannot preempt the concept of using a computer system to ensure reciprocity of links between web pages.

Reference is also made to Electric Power Group, LLC v. ALSTOM SA, 830 F.3d 1350 (Fed. Cir. 2016). The Federal Circuit in Electric Power Group noted that there is a difference "between desired results (functions) and particular ways of achieving (performing) them." Id. at 1356. Importantly, the Court recognized that "patenting a particular solution 'would incentivize further innovation in the form of alternative methods for achieving the same result.'" Id. In this instance, Applicant has done more than claim the generation of reciprocal links between websites. Rather and already discussed herein, Applicant has claimed a specific practical

[1] This passage also speaks to the computer technology sought to be improved by the present invention.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 943 of 1793

application to accomplish this result that *does not preempt alternative methods* of obtaining the same result. See BASCOM Global Internet v. AT&T Mobility, LLC, 827 F.3d 1341, 1352 (Fed. Cir. 2016) ("ordered combination of claim limitations that transform the abstract idea ... into a particular, practical application of that abstract idea); M.P.E.P. § 2106.05(f) ("limitations that confine the judicial exception to a particular, practical application of the judicial exception may amount to significantly more").

Claim directed to an improvement to computer technology

Reference is made to M.P.E.P. § 2105.04(a)(1)(II), which is entitled "If a claim recites an abstract idea, but the claim as a whole is directed to an improvement or otherwise clearly does not seek to tie up the abstract idea, then the claim is not directed to an abstract idea." Assuming, for sake of argument, that the Examiner has accurately established that the claimed invention "recites an abstract idea," that claimed invention is both directed to an improvement[2] and does not seek to tie the abstract idea. As already discussed above, Applicant has established that the claimed invention does not preempt the Examiner's alleged abstract idea. Accordingly, the claims do not seek to tie up the alleged abstract idea. Additionally, as discussed in greater detail below with regard to the rejection based upon Horstmann, the claimed invention provides improvements over the prior art. Consequently, *even if* the claimed invention recited an abstract idea, the claim is not directed to that abstract idea for the reasons discussed above.

[2] See footnote 1 above and the accompanying citation from Applicant's specification identifying the problem with computer technology to be addressed.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 944 of 1793

Improperly characterized claim invention

As stated above, the M.P.E.P. states that "the rejection should identify the judicial exception by referring to **what is recited** (*i.e.*, set forth or described) in the claim" (emphasis in original). However, the Examiner's initial description of "agreements between web pages to promote one another" is not recited in the claims and does not accurately reflect what the claimed invention is directed to. Specifically, the notion of "promot[ing] one another" is not recited within claim 22.

Overgeneralized claimed invention

The courts have long cautioned against the overgeneralization of a claimed invention because "if carried to its extreme, [it would make] all inventions unpatentable." In re TLI Commc'ns LLC Patent Litig., 823 F.3d 607, 611 (Fed. Cir. 2016) (quoting Diamond v. Diehr, 450 U.S. 175, 189 n.12 (1981)). Referring to Alice, the Federal Circuit stated that "describing the claims at such a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule." Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1337 (Fed. Cir. 2016). The Federal Circuit also noted that the analysis "must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful." Thales Visionix Inc. v. United States, 850 F.3d 1343, 1347 (Fed. Cir. 2017).

In this instance, the Examiner's assertion that the claimed invention is directed to "agreements between web pages to promote one another" is an overgeneralization of the claimed invention. As already discussed above, the prior art already describes the technological feature

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 945 of 1793

of reciprocal links. By encompassing the prior art with the Examiner's characterization of the claimed invention, the Examiner's characterization does not recognize the technical inventive features of the claimed invention. A proper analysis under 35 U.S.C. § 101 requires that the claimed invention "must be considered as a whole." Diamond v. Diehr, 450 U. S. 175, 188 (1981); see Parker v. Flook, 437 U. S. 584, 594 (1978) ("Our approach ... is ... not at all inconsistent with the view that a patent claim must be considered as a whole"). This approach, however, has not been followed by the Examiner.

Claims meet the "machine or transformation test" and cannot be performed mentally

With regard to the "machine or transformation" test, the Supreme Court stated, within Bilski v. Kappos, 561 U.S. 593 (2010), the following:

> Adopting the machine-or-transformation test as the sole test for what constitutes a "process" (as opposed to just an important and useful clue) violates these statutory interpretation principles.

Consequently, while the "machine or transformation" test is not the sole test for patent eligibility, it is an "important and useful clue." The claimed invention involves including links (i.e., a specific functional computer data structure) within first and second web pages (i.e., also functional computer data structures). Moreover, the claimed invention contemplates a specialized computer hardware system (i.e., a machine) that is configured to both generate and serve the first and second web pages. All of these limitations are explicitly tied to machines and/or require the use of machines to implement. Consequently, the claimed invention meets the machine or transformation test, which is an "important and useful clue" that the claimed invention, as whole, is directed to statutory subject matter. Along the same lines, by tying all of these limitations to a machine, the claimed invention as a whole cannot be performed mentally.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 946 of 1793

As discussed above, the claimed invention involves the use of a specialized computer hardware system. As discussed in M.P.E.P. § 2106.05(I)(A), "[a]pplying the judicial exception with, or by use of, a particular machine" can "qualify as 'significantly more' when recited in a claim with a judicial exception." The claimed invention does not simply recite a generic computer hardware system. Rather, the claimed invention is directed to a system that both generates web pages and serves web pages, which are not generic functions of a computer hardware system.

Failure to reasonably tie the facts of the present application to the cited case law

Reference is made to M.P.E.P. § 2106.07(a), which states the following:

> When the examiner has determined the claim recites an **abstract idea**, the rejection should identify the abstract idea as it is recited (*i.e.*, set forth or described) in the claim, and explain why it corresponds to a concept that the courts have identified as an abstract idea. ... Citing to an appropriate court decision that supports the identification of the subject matter recited in the claim language as an abstract idea is a best practice that will advance prosecution. Examiners should be familiar with any cited decision relied upon in making or maintaining a rejection to ensure that the rejection is reasonably tied to the facts of the case and to avoid relying upon language taken out of context. Examiners should not go beyond those concepts that are similar to what the courts have identified as abstract ideas, and should avoid relying upon or citing non-precedential decisions unless the facts of the application under examination uniquely match the facts at issue in the non-precedential decisions. (bolding in original, underline added)

On page 4 of the Third Office Action, the Examiner presented the following analysis:

> These elements are considered to be abstract ideas, because they are similar to creating a contractual relationship, which was found to be abstract idea by a controlling court in BuySafe as well as relaying address data (i.e. website information), which was found to be abstract idea by a controlling court in Return Mail, and collection, storage, and recognition of data which was found to be abstract idea by a controlling court in Smart Systems. For example, the "establishment of a reciprocal agreement between a first web page and a second web page..." is comparable to a contractual agreement as in BuySAFE, and including links between the pages (i.e. web addresses) is comparable to relaying

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 947 of 1793

> address data as in Return Mail. Because the claim elements are similar to features found to be abstract by the courts, the indicated claim features are also considered to be directed to an abstract idea.

The Examiner alleges that the alleged "abstract idea" is similar to the concepts within buySafe, Inc. v. Google, Inc., 765 F.3d 1350 (Fed. Cir. 2014); and Return Mail, Inc. v. U.S. Postal Service, 868 F.3d 1350 (Fed. Cir. 2017). Smart Sys. Innovations, LLC v. Chi. Transit Auth., __ F.3d __ (Fed. Cir. 2017). Applicant respectfully disagrees with the Examiner's cited case law for the reasons discussed below.

buySafe, Inc. v. Google, Inc.

The Examiner's reliance upon buySafe, Inc. v. Google, Inc., 765 F.3d 1350 (Fed. Cir. 2014), is misplaced. As stated by the Federal Circuit:

> The claims in this case do not push or even test the boundaries of the Supreme Court precedents under section 101. The claims are squarely about creating a contractual relationship—a "transaction performance guaranty"—that is beyond question of ancient lineage. *See* Willis D. Morgan, *The History and Economics of Suretyship*, 12 Cornell L.Q. 153 (1927). Id. at 1354-55.

The Federal Circuit also characterized this as a "long-familiar commercial transaction[]." Id. at 1355. As reproduced above, the Federal Circuit also presented evidence of the "ancient lineage" of the alleged "contractual relationship." Claim 1 of U.S. Patent No. 7,644,019 (hereinafter the '019 Patent), recites the following limitations:

> A method, comprising:
> receiving, by at least one computer application program running on a computer of a safe transaction service provider, a request from a first party for obtaining a transaction performance guaranty service with respect to an online commercial transaction following closing of the online commercial transaction;
> processing, by at least one computer application program running on the safe transaction service provider computer, the request by underwriting the first party in order to provide the transaction performance guaranty service to the first party, wherein

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 948 of 1793

> the computer of the safe transaction service provider offers, via a computer network, the transaction performance guaranty service that binds a transaction performance guaranty to the online commercial transaction involving the first party to guarantee the performance of the first party following closing of the online commercial transaction. (emphasis added)

As recognized by the Federal Circuit, "[t]he computer functionality is generic — indeed, quite limited: a computer receives a request for a guarantee and transmits an offer of guarantee in return." Id. at 1355.

The Examiner's analysis regarding buySafe is to assert "the 'establishment of a reciprocal agreement between a first web page and a second web page...' is comparable to a contractual agreement as in BuySAFE" (page 4 of the Third Office Action) and "claim language simply transfers the issue of guaranteeing performance for a contract into a computing environment – a long standing problem in the pre internet area" (page 12 of the Third Office Action). These assertions both misrepresent the salient facts of buySafe and fail to reasonably tie the facts of the present application to the facts of buySafe.

As discussed above, the Federal Circuit presented evidence of the "ancient lineage" of a "transaction performance guaranty." However, no such evidence has been presented by the Examiner regarding the present claims. Moreover, even *assuming arguendo* that the claimed invention was directed to generating reciprocal links without anything more, this is an operation necessarily rooted in technology and not *some fundamental economic practice long prevalent in our system of commerce*.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 949 of 1793

underwriting a transaction performance guaranty service

The claim at issue in buySafe merely recited "receiving … a request from a first party for obtaining a transaction performance guaranty service" and "processing … the request by underwriting the first party." In short, the only operations being claimed are receiving a request, over a computer, for a transaction performance guaranty (again, a business method of ancient lineage) and underwriting the first party with a transaction performance guaranty.

Reference is made to column 4, lines 7-24 of the '019 Patent, which contains a description as to what constitute a "transaction performance guaranty":

> The transaction performance guaranty may be provided in a variety of different forms. FIG. 2 illustrates different exemplary forms in which a transaction performance guaranty 210 may be provided, according to an embodiment of the inventions. It may be offered in the form of a surety bond 220, a specialized bank guaranty 230, . . . , a specialized insurance policy 240, or in a form of a safe transaction guaranty 250. The safe transaction service provider 130 may provide various forms of a performance guaranty. It may also provide other forms of guaranty based on its agreement with other institutions. The safe transaction service provider 130 may provide its own guaranty in the form of, for instance, the surety bond 220 and the safe transaction guaranty 250. The safe transaction service provider 130 may also provide a performance guaranty in forms supported by other institutions such as the specialized bank guaranty 230 supported by a bank or the specialized insurance policy 240 (or surety bond) supported by an insurance company. (emphasis added)

A surety bond 220,[3] specialized bank guaranty 230[4] or specialized insurance policy 240 are essentially different ways of describing a contractual arrangement in which one party (i.e., the surety, or bank, or insurer) will pay another party based upon the occurrence of some insured-against event. The claims of the '019 Patent recite "processing … the request by underwriting the first party in order to provide the transaction performance guaranty service to

[3] See https://en.wikipedia.org/wiki/Surety_bond.

[4] See https://www.investopedia.com/terms/b/bankguarantee.asp ("A performance bond serves as collateral for the buyer's costs incurred if services or goods are not provided as agreed in the contract.").

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 950 of 1793

the first party." To "underwrite" is to "[s]ign and accept liability under (an insurance policy), thus guaranteeing payment in case loss or damage occurs."[5] In essence, it describes the acts of a company (e.g., an insurance company) in underwriting an insurance contract whereby the "first party" is paid by the underwriting company upon the failure of an online transaction (i.e., the occurrence of the insured-against event). Therefore, the claim at issue in buySafe can be simplified as such:

> 1) receive a request from a first party for performance insurance (i.e., a transaction performance guaranty) for an online transaction, and
> 2) underwrite the performance insurance.

Accordingly, the claims of buySafe involve little more than performing "long-familiar commercial transaction[]" *over the internet* and *regarding an internet transaction*.

In comparison, the claims of the present application are directed to a set of operations that describe the creation and serving of web pages including reciprocal links. By way of example, there is a huge difference between creating a contractual relationship (i.e., by underwriting an insurance policy) tied to the performance of "building a new school" versus the actual operations involved in "building a new school." The same scope of difference also exists between the facts of the present application and the salient facts of buySafe. The claimed invention does not purport to underwrite an insurance contract to be paid out upon the failure of reciprocal hyperlinks to be generated. Rather the claimed invention involves set of operations involved in performing technology-based operations that directly result in the creation of reciprocal hyperlinks.

[5] See https://en.oxforddictionaries.com/definition/underwrite.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 951 of 1793

The Examiner's assertion that "the 'establishment of a reciprocal agreement between a first web page and a second web page...' is comparable to a contractual agreement as in BuySAFE" misrepresents how the Federal Circuit's used the concept of "contractual relationship" in the decision. The Federal Circuit cited Bilski as referring to "an abstract idea in certain arrangements involving contractual relations, which are intangible entities." Id. 1353. The Federal Circuit also referred to a specific contractual relationship and found that this was "beyond question of ancient lineage." Id. at 1355. As already argued above, the Examiner has not presented any evidence of the "ancient lineage" of the alleged "contractual relationship." Also, the language of the Court is "certain arrangements involving contractual relations," which implies that there is a difference in arrangements such that some involve contractual relations and others do not. In this instance, the claims of the present application do not purport to create a contractual relationship.

The Examiner's other assertion that the "claim language simply transfers the issue of guaranteeing performance for a contract into a computing environment – a long standing problem in the pre internet area" also fails to reflect that the claim of buySafe does not purport to "guaranty" the performance of anything. Instead, buySafe creates the contractual "guaranty" (i.e., an insurance policy) that will be paid out if the online transaction is not performed. As discussed above, the claims of the present application are directed to specific operations that describe the creation and serving of web pages including reciprocal links, which does not involve creating anything comparable to the performance guaranty service of buySafe. Accordingly, the Examiner has not reasonably tied the facts of present application to buySafe.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 952 of 1793

Return Mail, Inc. v. U.S. Postal Service

The Examiner's reliance upon Return Mail, Inc. v. U.S. Postal Service, 868 F.3d 1350 (Fed. Cir. 2017), is also misplaced. The Federal Circuit agreed with the Board that the claims "are directed to the abstract idea of 'relaying mailing address data.'" Id. at 1368. The Federal Circuit further noted the following:

> Encoding and decoding mail recipient information — including whether the sender wants a corrected address — are processes that can, and have been, performed in the human mind. The claims here simply recite that existing business practice with the benefit of generic computing technology. That is insufficient to make the claims any less abstract under step 1. Id. (emphasis added).

Accordingly, the key facts present in this case is that the claims were directed to an a *pre-existing business practice* that can and has been *performed in the human mind*.[6]

As discussed above, the claimed invention is directed to the creation and serving of web pages, which is inherently a technical operation that requires a specialized computer system that can both create and serve web pages. The claimed invention also includes a mechanism by which reciprocal links (i.e., hyperlinks) are created in web pages. Notably, this is neither some practice known from the pre-Internet world nor something that can be accomplished in the human mind. Rather, this is a technical operation that is necessarily performed by a specialized computer system.

The Examiner's sole analysis regarding Return Mail was to assert "relaying address data (i.e. website information), which was found to be abstract idea by a controlling court in Return

[6] In fact, U.S. Patent No. 6,826,548, which was the patent at issue in Return Mail, recognized that the invention was directed to an improvement to a manual process (e.g., "an improved method of processing returned mail is now provided that addresses the shortcomings of historical manual updating methods').

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 953 of 1793

Mail" and "including links between the pages (i.e. web addresses) is comparable to relaying address data as in Return Mail." First, links between pages (i.e., hyperlinks) are not comparable to the address data of Return Mail. Claim 42, which the Federal Circuit used as a representative claim, recites "receiving from a sender a plurality of mail items, each including i) a written addressee, and ii) *encoded data indicating whether the sender wants a corrected address to be provided for the addressee*." Id. at 1367 (italics in original). Accordingly, what the Federal Circuit deemed to be the "address data" is the physical mailing address of an addressee (i.e., the physical address to which physical mail item is sent). A link is not a physical mailing address of an addressee, and consequently, the Examiner's finding of "similar[ity]" is not grounded on the facts.

For the reasons discussed above, the Examiner has not reasonably tied the facts of present application to Return Mail. Accordingly, the Examiner has improperly gone beyond those concepts that are similar to what the Courts identified as the abstract idea within Return Mail.

Ultramercial, Inc. v. Hulu, LLC

On page 5 of the Third Office Action, the Examiner makes passing reference to Ultramercial, Inc. v. Hulu, LLC, 772 F. 3d 709 (Fed. Cir. 2014). Notwithstanding that the Examiner did not present any analysis regarding Ultramercial, the Examiner's reliance upon this case decision is misplaced. As stated by the Federal Circuit:

> The district court found that the abstract idea at the heart of the '545 patent was "that one can use [an] advertisement as an exchange or currency." (internal citation omitted). We agree. Id. at 714.

With regard to the "Internet" aspect of the claims, the Federal Circuit further stated the

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 954 of 1793

following:

> The claims' invocation of the Internet also adds no inventive concept. As we have held, the use of the Internet is not sufficient to save otherwise abstract claims from ineligibility under § 101. ... Narrowing the abstract idea of using advertising as a currency to the Internet is an "attempt[ ] to limit the use" of the abstract idea "to a particular technological environment," which is insufficient to save a claim. Id. at 716.

However, with regard to the "Internet" aspect of a claim, the Federal Circuit further addressed this issue within DDR Holdings v. Hotels.com, 773 F.3d 1245, 1257 (Fed Cir. 2014). Specifically, the Federal Circuit characterized the difference in claims found to be patent eligible under 35 U.S.C. § 101 as follows:

> But these claims stand apart because they do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.

In this instance, the present invention is much more akin to the facts of DDR Holdings than it is to Ultramercial. The creation of reciprocal hyperlinks in web pages is not analogous to the "performance of some business practice known from the pre-Internet world," and the Examiner has not presented any evidence to support such a finding. Rather, the claimed invention addresses a problem specifically arising in the realm of computer networks (e.g., the Internet).

Examiner's additional comments in "Response to Arguments"

Referring to the second full paragraph on page 12 of the Third Office Action, the Examiner asserted the following:

> On page 8-0 of the brief, Applicant restates elements of USPTO policies regarding subject matter eligibility. On page 10 of the Brief, Applicant discusses the Bilski test of machine or transformation, however, as correctly noted by Applicant that is

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 955 of 1793

> not the current test for subject matter eligibility. On page 11 of the brief, Applicant discusses DDR Holdings, however, Applicant mischaracterizes the test, as it requires that the problem being solved arises in computing technology. Applicant's remarks about the prior art reference do not imply that it is purely arising in a technological environment, rather, Applicant highlights the problem of one business not fulfilling a contractually obligated responsibility to the other by virtue of the agreement. The claim language simply transfers the issue of guaranteeing performance for a contract into a computing environment – a long standing problem in the pre internet area. For example, one business could agree to post flyers for another within the store, and then go back on the deal thereby creating the same issue.

Referring to the first underlined portion of the above-reproduced passage, the Examiner's assertion fails to appreciate that the Supreme Court stated that the "machine or transformation" test is an "important and useful clue." Consequently, the current version M.P.E.P. § 2106 *et seq.* contains a discussion of the usefulness of the "machine or transformation" test with regard to patent subject matter eligibility.

Referring to the second underlined portion of the above-reproduced passage, the Examiner asserts that "Applicant mischaracterizes the test" of DDR Holdings. However, the test, as articulated by the Examiner, is identical to the test as articulated by Applicant on page 11, lines 14-23 of the Appeal Brief.

Referring to the third and fourth underlined portion of the above-reproduced passage, the Examiner asserts "Applicant highlights the problem of one business not fulfilling a contractually obligated responsibility to the other by virtue of the agreement" and "claim language simply transfers the issue of guaranteeing performance for a contract into a computing environment – a long standing problem in the pre internet area." As already discussed above, the claims at issue within buySafe are directed to the creation of a specialized type of insurance policy (i.e., a

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 956 of 1793

transaction performance guaranty). The claimed invention does not purport to create any type of insurance policy. Instead, the claimed invention is directed to performing certain operations that are necessarily performed on a computer in order to create web pages and reciprocal links on those web pages. The claims of buySafe bear no resemblance to the claimed invention.

Referring to the penultimate full-paragraph on page 12 of the Third Office Action, the Examiner further asserted the following:

> Applicant's remarks regarding McRo are not found to be persuasive, as Applicant focuses largely on the issue of preemption, which is not the test for subject matter eligibility. Further, Applicant does not discuss the merits of the claims and how they automate a process previously only performable by a human.

As already discussed above, the Patent Office acknowledges that "preemption is the concern underlying the judicial exceptions" and "questions of preemption are inherent in and resolved by the two-part framework from ... the *Alice/Mayo* test" (see M.P.E.P. § 2106.04). According, considerations as to whether the claims preempt the alleged abstract idea is an important part of the analysis for subject matter eligibility under 35 U.S.C. § 101. The Examiner's comments as to "Applicant does not discuss the merits of the claims and how they automate a process previously only performable by a human" misrepresents the holding of McRo, which was not merely limited to the automating of a process previously only performable by a human. In this regard, reference is made to M.P.E.P. § 2106.04(a)(I), which states:

> The *McRo* court indicated that the incorporation of the particular claimed rules in computer animation "improved [the] existing technological process", rather than merely used the computer a "tool to automate conventional activity". 837 F.3d at 1314, 120 USPQ2d at 1102.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 957 of 1793

Therefore, the relevant inquiry is whether the claimed invention improves upon an existing technological process. As discussed below with regard to the cited prior art, the claimed invention does represent an improvement.

Referring to the last underlined portion of the Examiner's analysis, the Examiner asserts "one business could agree to post flyers for another within the store, and then go back on the deal thereby creating the same issue." In so doing, the Examiner appears to be comparing the claimed invention to the "performance of some business practice known from the pre-Internet world" (i.e., a brick and mortar approach). There are a number critical distinctions between how such a brick and mortar approach would work and how the prior art (e.g., Horstmann) or the claimed inventions operates.

Assuming, for sake of example, that the "brick and mortar" stores are a bridal gown store and a cake bakery and each want to advertise in the other's store. This would simply require that the bridal gown store give the cake bakery a stack of business cards and vice versa. An alternative approach,[7] would be a third party (e.g., a marketer) that keeps track of the reciprocal arrangements and would affix advertisements (e.g., flyers) on the walls of the separate establishments. Both approaches, however, suffer from the same problem in ensuring that the business cards (or flyers) remain available in the respective establishments. For example, once the flyer for the bakery is affixed to a wall of the bridal gown shop, anybody could immediately remove the flyer. While someone could be assigned to audit these establishments from time to time to ensure that the business cards/flyers were present, this approach is time consuming (and

[7] Applicant is unaware of any factual basis to support the pre-existence of such an approach.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 958 of 1793

hence costly) and not entirely effective. For example, an audit only ensures that the business cards/flyers were present at the time the audit was made and not any other time.

Additionally, the characterization of "one business could agree to post flyers for another within the store" does not accurately reflect the technical characteristics of the claimed invention. A link (i.e., hyperlink) is not merely an advertisement.[8] Rather, it is a functional computer element that removes the user from the location of one website and takes them to the other website. Translating this to a brick and mortar context would require a magical[9] transporter that would physical transport a person, after interacting with the flyer for the bake shop, from the bridal shop to the bake shop.

The claimed invention also contemplates that the computer hardware system both generate and/or modify the web pages to include the hyperlink as well as to serve these web sites. In the context of a brick and mortar establishment, this would involve a third party essentially creating the store from scratch along with the link to the other store. Thus, when a user requests the store, the store would be magically presented to the user wherever the user was located. This would allow the third party to constantly modify the store and the link should any changes be made (e.g., one user has opted out of the arrangement and hence the flyer is removed or the name and/or a location of the other store can be changed and this change can be immediately reflected in the flyer). Additionally, since the third party is essentially keeping track of the relationship as well as generating/serving the store, there is no need to perform a verification of the flyer. Needless to say, this accurate recreation of the claimed invention in a

[8] A link is not required to be an advertisement.
[9] A famous quote from author and futurist Arthur C Clarke is "[a]ny sufficiently advanced technology is indistinguishable from magic."

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 959 of 1793

brick and mortar context is unlikely to ever occur. Rather and as stated by the Federal Circuit within DDR Holdings:

> But these claims stand apart because they do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.

For the above-described reasons, Applicant respectfully solicits withdrawal of the imposed rejection of claims 22-26, 28-36, and 38-41 under 35 U.S.C. § 101.

CLAIMS 22-26, 28-36, AND 38-41 ARE REJECTED UNDER 35 U.S.C. § 102 AS BEING ANTICIPATED BY HORSTMANN, U.S. PATENT NO. 5,995,099

On pages 8-11 of the Third Office Action, the Examiner asserted that Horstmann discloses the invention corresponding to that claimed. This rejection is respectfully traversed.

Horstmann

At the outset, Applicant notes that Horstmann was first cited in an Information Disclosure Statement dated April 28, 2014. Accordingly, this reference has already been considered upon the issuance of the First Office Action dated March 24, 2016, and the Second Office Action dated February 2, 2017. Horstmann was also cited in a rejection dated March 19, 2015, during the prosecution of U.S. Patent Application No. 13/963,050, which has subsequently issued as U.S. Patent No. RE45,971 (hereinafter the '971 Patent).[10]

[10] Applicant overcame a rejection based upon Horstmann in the '971 Patent as implicitly acknowledged on pages 11 and 12 of the Appeal Brief filed in the present application on October 2, 2017.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 960 of 1793

Claim 22

The methodology described by Horstmann is quite different from the claimed invention. While it purports to be "[a] method [that] establishes links between pages on the Internet" (see Abstract), it does so in a manner different than that claimed. As further described within the Abstract of Horstmann:

> To ensure reciprocity, the method also includes prompting the owner of the second site for a link back to a page of the first site and later checking the second site for the link back.

Referring to pages 8 and 9 of the Third Office Action, the Examiner cites column 2, line 55 through column 3, lines 15-41. For ease of reference column 3, lines 27-42 are reproduced below:

> After a period of time (typically a few days), verification software, typically located on the links server, verifies (step 5) that the bike-shop owner reciprocated by providing a link back 5 to page C as requested on form 4. Because the bike-shop owner indicated on form 4 that the back link would be provided on page B, the verification software searches page B for link back 5 (the third link information) to page C. If link back 5 does not exist, then the verification software removes link 6 (fourth link information) from the bookstore's page A to the bike shop's page D. Alternatively, the software may issue a reminder to the bike shop (via e-mail, for example) to add link back 5 to the bookstore. Once link back 5 (third link information) is verified to exist on the bike shop's page B, the method terminates. In this way, the inventive method provides for the creation of reciprocal page links. (emphasis added)

As discussed above, verification software is used to search page B for a link back 5 to page C. If the link back 5 does not exist, the verification software issues a "reminder to the bike shop … to add link back 5 to the bookstore." A similar methodology is also disclosed in column 4, lines 15-24 of Horstmann with reference to Figure 3.

The claimed invention, as recited in claim 22, includes "establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 961 of 1793

second users opting to participate in the reciprocal arrangement." The claims subsequently recite that the reciprocal links are included in the respective first and second web pages *based upon the reciprocal arrangement*. However, this is not what is disclosed by Horstmann. As discussed in column 2, line 55 through column 3, line 26, the process described by Horstmann is essentially as follows:

> 1) the bike shop owner clicks on "add link" link on the bookstore's page;
> 2) the bike shop owner is presented with a form that solicits link information from the bike shop owner;
> 3) using the information from the bike shop owner, a link from bookstore's page to a page associated with the bike shop owner is automatically created without input from the bike shop owner; and
> 4) the verification process already described above is performed.

As can be seen, the creation of the link from the bookstore's page to the bike shop's page is not based upon a reciprocal arrangement since the page of the bike shop owner is not required to do include anything. This is why Horstmann requires the use of a verification process to determine whether the bike shop page includes a link back to the bookstore's page.

Additionally, the user associated with the bookstore's page does not opt to participate in the reciprocal arrangement, as claimed. Rather, the user associated with the bookstore's page opts into a scheme (i.e., Horstmann's system) that allows anybody to place a link on the bookstore's page so long as the form associated with the "add link" link has been completed. As claimed, the reciprocal arrangement is between the first web page and the second web page. However, when the user associated with the bookstore opts into Horstmann's system, the identity of the other web page is unknown. Accordingly, the user associated with the bookstore's page cannot opt into "a reciprocal arrangement between the first web page and the second web page," since the identity of other web page is unknown at this time.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 962 of 1793

Referring to page 9 of the Third Office Action, the Examiner asserted "bookstore website now shows the link to the bike store website, based on the bike shop's request and the agreement between the two." However, this statement is not accurate. As discussed above, the bookstore's website shows the link based upon the bike shop's request. However, the bookstore's owner has not opted to participate in this particular reciprocal arrangement. Instead, the link is automatically generated with no input from the owner of the bookstore. Moreover, the bike shop owner has not necessarily opted into the reciprocal arrangement since a link from the bike store page to the bookstore page does not necessarily exist. For this reason, Horstmann contemplates the use of a verification process.

Aside from the differences discussed above, the claimed invention represents an improvement over Horstmann's system. As discussed above, using the information from the bike shop owner, a link from bookstore's page to the bike shop's page is *automatically created without input* from the bookstore's owner. Accordingly, the bookstore's page could be automatically linked to any page on the internet. There is a large number of pages on the internet that the owner of the bookstore's page may not want to be associated with. However, the Horstmann system allows any link to be initially created on the bookstore's page.

Moreover, the system of Horstmann is subject to abuse since user's associated with other web pages (e.g., a competitor of the bookstore) could insert links into the bookstore's without any intention of creating a link back. While the verification process of Horstmann would send a reminder email to and eventually cause the link for the bookstore's page to the other page to be

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 963 of 1793

deleted, there will be a substantial amount of time during which this link could siphon off potential customers from the bookstore's page. Both of these issues are not a problem with the claimed invention since the reciprocal arrangement is not established until (i.e., "based upon") "both the first and second users opting to participate in the reciprocal arrangement."

Another advantage of the claimed invention over the system of Horstmann is that there is no need for the verification process of Horstmann. According to the claimed invention, the establishment of the reciprocal arrangement and the creation of the reciprocal links are performed by the same entity. As such, there is no need for a verification process.

For the above-described reasons, Horstmann fails to identically discloses the claimed invention, as recited in claims 22-26, 28-36, and 38-41, within the meaning of 35 U.S.C. § 102. Applicant, therefore, respectfully solicits withdrawal of the imposed rejection of claims 22-26, 28-36, and 38-41 under 35 U.S.C. § 102 for anticipation based upon Horstmann.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 964 of 1793

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 503611, and please credit any excess fees to such deposit account.

Date: April 20, 2018

Respectfully submitted,

/Scott D. Paul/
Scott D. Paul
Registration No. 42,984
CUSTOMER NUMBER 55246

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 965 of 1793

Electronic Patent Application Fee Transmittal	
Application Number:	13946461
Filing Date:	19-Jul-2013
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Filer:	Scott David Paul/Alaine Allison
Attorney Docket Number:	8201-0013

Filed as Small Entity

Filing Fees for Utility under 35 USC 111(a)

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
CLAIMS IN EXCESS OF 20	2202	3	50	150
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension-of-Time:				
Extension - 1 month with $0 paid	2251	1	100	100
Miscellaneous:				
		Total in USD ($)		**250**

Electronic Acknowledgement Receipt	
EFS ID:	32396934
Application Number:	13946461
International Application Number:	
Confirmation Number:	9140
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Customer Number:	55246
Filer:	Scott David Paul/Alaine Allison
Filer Authorized By:	Scott David Paul
Attorney Docket Number:	8201-0013
Receipt Date:	20-APR-2018
Filing Date:	19-JUL-2013
Time Stamp:	12:52:23
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	DA
Payment was successfully received in RAM	$250
RAM confirmation Number	042018INTEFSW00011000503611
Deposit Account	
Authorized User	
The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		8201-0013_AmendmenttoOfficeAction3_04-20-18.pdf	188343 7aaeb30dbb1175189a10e053ae50995d5ddd2564	yes	35
	Multipart Description/PDF files in .zip description				
	Document Description		Start	End	
	Amendment/Req. Reconsideration-After Non-Final Reject		1	1	
	Claims		2	7	
	Applicant Arguments/Remarks Made in an Amendment		8	35	
Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	32421 d1b6cd137fa5fa14ccb4fd232932aa973e1c1904	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	220764		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/06 (09-11)
Approved for use through 1/31/2014. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 13/946,461	Filing Date 07/19/2013	☐ To be Mailed

ENTITY: ☐ LARGE ☒ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT	04/20/2018	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 23	Minus	** 20	= 3	X $50 =	150
	Independent (37 CFR 1.16(h))	* 3	Minus	***3	= 0	X $230 =	0
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	**150**

AMENDMENT		(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =	
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".

*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
CORALIA BETANCOURT

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/946,461	07/19/2013	THOMAS L. DISTEFANO III	8201-0013	9140

55246 7590 06/05/2018

Cuenot, Forsythe & Kim
12161 KEN ADAMS WAY
SUITE 120
WELLINGTON, FLORIDA 33414
UNITED STATES OF AMERICA

EXAMINER
KOLOSOWSKI-GAGER, KATHERINE

ART UNIT	PAPER NUMBER
3622	

NOTIFICATION DATE	DELIVERY MODE
06/05/2018	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):

kevin.cuenot@iplawpro.com
ptomail@iplawpro.com
terry.forsythe@iplawpro.com

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 972 of 1793

Applicant-Initiated Interview Summary	**Application No.** 13/946,461	**Applicant(s)** DISTEFANO, THOMAS L.	
	Examiner KATHERINE KOLOSOWSKI-GAGER	**Art Unit** 3622	**AIA Status** No

All participants (applicant, applicants representative, PTO personnel):

(1) KATHERINE KOLOSOWSKI-GAGER. (3) _____.

(2) Scott Paul, Applicant's Representative. (4) _____.

Date of Interview: 16 May 2018.

Type: ☑ Telephonic ☐ Video Conference
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☐ No.
If Yes, brief description: _____.

Issues Discussed ☑101 ☐112 ☐102 ☑103 ☐Others
(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: 1.

Identification of prior art discussed: _____.

Substance of Interview
(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

Applicant had already filed a response to the case at the time of the interview. Applicant and Examiner discussed the response, no agreement was reached..

Applicant recordation instructions: The formal written reply to the last Office action must include the substance of the interview. (See MPEP section 713.04). If a reply to the last Office action has already been filed, applicant is given a non-extendable period of the longer of one month or thirty days from this interview date, or the mailing date of this interview summary form, whichever is later, to file a statement of the substance of the interview

Examiner recordation instructions: Examiners must summarize the substance of any interview of record. A complete and proper recordation of the substance of an interview should include the items listed in MPEP 713.04 for complete and proper recordation including the identification of the general thrust of each argument or issue discussed, a general indication of any other pertinent matters discussed regarding patentability and the general results or outcome of the interview, to include an indication as to whether or not agreement was reached on the issues raised.

☐ Attachment

/KATHERINE KOLOSOWSKI-GAGER/ Examiner, Art Unit 3622	

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 973 of 1793

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) 1.133 Interviews
Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.
All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiners responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicants correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:
- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:
1) A brief description of the nature of any exhibit shown or any demonstration conducted,-
2) an identification of the claims discussed,
3) an identification of the specific prior art discussed,
4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
5) a brief identification of the general thrust of the principal arguments presented to the examiner,
   (The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
6) a general indication of any other pertinent matters discussed, and
7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicants record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiners version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, Interview Record OK on the paper recording the substance of the interview along with the date and the examiners initials.

To: ptomail@iplawpro.com,terry.forsythe@iplawpro.com,kevin.cuenot@iplawpro.com
From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
Subject: Private PAIR Correspondence Notification for Customer Number 55246

Jun 05, 2018 04:00:52 AM

Dear PAIR Customer:

Cuenot, Forsythe & Kim
12161 KEN ADAMS WAY
SUITE 120
WELLINGTON, FL 33414
UNITED STATES

The following USPTO patent application(s) associated with your Customer Number, 55246 , have new outgoing correspondence. This correspondence is now available for viewing in Private PAIR.

The official date of notification of the outgoing correspondence will be indicated on the form PTOL-90 accompanying the correspondence.

Disclaimer:
The list of documents shown below is provided as a courtesy and is not part of the official file wrapper. The content of the images shown in PAIR is the official record.

Application	Document	Mailroom Date	Attorney Docket No.
13946461	INTV.SUM.APP	06/05/2018	8201-0013

To view your correspondence online or update your email addresses, please visit us anytime at https://sportal.uspto.gov/secure/myportal/privatepair.

If you have any questions, please email the Electronic Business Center (EBC) at EBC@uspto.gov with 'e-Office Action' on the subject line or call 1-866-217-9197 during the following hours:

Monday - Friday 6:00 a.m. to 12:00 a.m.

Thank you for prompt attention to this notice,

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION INFORMATION RETRIEVAL SYSTEM

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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/946,461	07/19/2013	THOMAS L. DISTEFANO III	8201-0013	9140

55246 7590 08/10/2018

Cuenot, Forsythe & Kim
12161 KEN ADAMS WAY
SUITE 120
WELLINGTON, FLORIDA 33414
UNITED STATES OF AMERICA

EXAMINER
KOLOSOWSKI-GAGER, KATHERINE

ART UNIT	PAPER NUMBER
3622	

NOTIFICATION DATE	DELIVERY MODE
08/10/2018	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):

kevin.cuenot@iplawpro.com
ptomail@iplawpro.com
terry.forsythe@iplawpro.com

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 976 of 1793

Office Action Summary	**Application No.** 13/946,461	**Applicant(s)** DISTEFANO, THOMAS L.	
	Examiner KATHERINE KOLOSOWSKI-GAGER	**Art Unit** 3622	**AIA Status** No

-- 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 4 MONTHS 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 20 APRIl 2018.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☑ This action is **FINAL.** 2b)☐ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ 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*

5) ☑ Claim(s) 22-26,28-36 and 38-46 is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6) ☐ Claim(s) _____ is/are allowed.

7) ☑ Claim(s) 22-26,28-36 and 38-46 is/are rejected.

8) ☐ Claim(s) _____ is/are objected to.

9) ☐ Claim(s) _____ are subject to restriction and/or election requirement

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to **PPHfeedback@uspto.gov.**

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ 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).

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).

Certified copies:

a)☐ All b)☐ Some** c)☐ None of the:

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) ☐ Notice of References Cited (PTO-892)

2) ☐ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date _____.

4) ☐ Other: _____.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 977 of 1793

Notice of Pre-AIA or AIA Status

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

DETAILED ACTION

1. This action is in reference to the communication filed on 20 APRIL 2018

2. Claims 22-26, 28-36, 38-41 were pending, with claims 42-46 being added. As such claims 22-26, 38-36, 38-46 are present and have been examined.

Claim Rejections - 35 USC § 101

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.

Regarding claims 22-26, 28-36, 38-46, the claims are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter, i.e. an abstract idea. The rationale for this determination is explained below:

Part 1, the claims are directed to a method and a system, which are statutory categories of invention.

Part 2A: With respect to claims 22-26, 28-36, 38- 46, the independent claims 22, 32, 46 are directed in part to reciprocal agreements between web pages The claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more. These elements are considered to be abstract ideas, because they are similar to creating a contractual relationship, which was found to be abstract idea by a controlling court in BuySafe as well as relaying address data (i.e. website information), which was found to be abstract idea by a controlling

court in Return Mail, and collection, storage, and recognition of data which was found to be abstract idea by a controlling court in Smart Systems. For example, the "establishment of a reciprocal agreement between a first web page and a second web page..." is comparable to a contractual agreement as in BuySAFE, and including links between the pages (i.e. web addresses) is comparable to relaying address data as in Return Mail. Because the claim elements are similar to features found to be abstract by the courts, the indicated claim features are also considered to be directed to an abstract idea.

As per Step 2B of the analysis, the independent claims additionally recite the elements such a "computer hardware system", and a first and second web page in claim 22, and a "web implementation server system", a database, a computer hardware system in claim 32, 46... When considered individually, the only contribute generic recitations of technical elements to the claims. The claim(s) do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional computer elements, which are recited at a high level of generality, provide conventional computer functions that do not add meaningful limits to practicing the abstract idea. It is readily apparent that the claim itself is not directed to a specific improvement of any of the recited elements, rather the claim simply *requires* them to operate in a generic computing environment – for example, the web page is simply being "presented" with additional information, and the computer hardware system is only used to facilitate the transfer of information between the hardware elements, and the "database" is only used to store and retrieve information within the computing environment. Further, a controlling court has found that functions similar to those of Applicants claims of "receiving, processing, and storing data" (See Alice Corp., 134 S. Ct. at 2360. But see Example 4 (AI-4: global positioning system) and "receiving or transmitting data over a network, e.g., using the Internet to gather data" (See Ultramercial, 772 F.3d at 716-17; buySAFE, Inc. v. Google, Inc., 765 F.3d 1350, 1355 (Fed. Cir. 2014) to be well-understood, routine, and conventional functions when they are claimed in a merely generic manner (as found in the independent claims). Courts have held computer-implemented

processes not to be significantly more than an abstract idea (and thus ineligible) where the claim as a whole amounts to nothing more than generic computer functions merely used to implement an abstract idea.

Thus, taken alone, the additional elements do not amount to significantly more than a judicial exception. Looking at the limitations as an ordered combination adds nothing that is not already present when looking at the elements taken individually. There is no indication that the combination of elements improves the functioning of a computer or improves any other technology. Their collective functions merely provide conventional computer implementation.

When the claims are considered as a whole, the additional elements above appear to merely *apply* the abstract concept to a technical environment in the most general sense, i.e. the generic sending and receiving of data between one or more computers. The most significant inventive elements of the claims are set forth in the elements identified above as the abstract idea. Generic computing device(s) and/or environment facilitating the abstract concept are insufficient to reach a determination of statutory subject matter eligibility.

Dependent claim(s) 23, 24, 33, 34, 45, 46 /are not directed to any additional abstract ideas, however, they do recite non-abstract elements including the database(s) previously discussed in the independent claims. However, the databases are only functioning to store and retrieve information, and as such they are not directed to significantly more.

Dependent claims 25, 35 are not directed to any additional abstract ideas, rather, they offer further description of the display/rendering of the web page, i.e. address information, as described above with respect to the independent claims. However, mere display or functional description of the contents of a display are not enough to amount to significantly more.

Dependent claims 26, 28, 36, 38 are not directed to any additional abstract ideas or non-abstract elements, however they do recite further clarification of a web asset as provided to the web

pages. Providing data from a third party, and the descriptive nature of the data or asset as claimed, is not enough to amount to significantly more. Further, the claims state that the third party is providing the asset separate from the hardware system, but does not offer any non-abstract elements (i.e. an additional computer hardware system, etc.) by which this is accomplished.

Dependent claims 29, 39 are not directed to any additional abstract ideas, however they do repeat recitation of the computer hardware system as discussed above. However, the system is only used to insert content and provide the web page to the user -i.e. as above, the computer hardware system is simply used to send and receive data and as such is insufficient to amount to significantly more.

Dependent claims 30, 31, 40, 41 are not directed to any additional abstract ideas, however, they do recite a graphic being associated with the link and being received from the user. While this offers context/clarification, the use of the graphic is simply to be included with the data presented with the web page, and further, there is nothing "significantly more" about the user's submission of the image itself. As such, this is insufficient to amount to significantly more.

Dependent claims 42, 43 are not directed to any additional abstract ideas, rather, they offer description of authentication on the part of the users, however, the addition of authentication or verification is not enough to amount to significantly more.

Claim Rejections - 35 USC § 102

In the event the determination of the status of the application as subject to AIA 35 U.S.C. 102 and 103 (or as subject to pre-AIA 35 U.S.C. 102 and 103) is incorrect, any correction of the statutory basis for the rejection will not be considered a new ground of rejection if the prior art relied upon, and the rationale supporting the rejection, would be the same under either status.

The following is a quotation of the appropriate paragraphs of pre-AIA 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim(s) 22-26, 28-36, 38-46 is/are rejected under pre-AIA 35 U.S.C. 102(a)/ (e) as being anticipated by Horstmann et al (US 5995099, filed on 6/10/1996).

- **In reference to claim 22,**

  Horstmann teaches:

  A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

  establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement (at least figures 1, 2, 3, and related text, including col 2, lines 55 through col 3, line 41: the bike shop owner and the book store owner form an agreement to display one another's advertisements on their respective pages);

including, within the second web page and based upon the reciprocal arrangement, a second link to the first web page and (at least figures 1-3, and related text, including col 3, lines 15-41: once the bike store owner/website has made the agreement, the bookstore owner/website would then have their link included in relevant locations on the bike shop website);

including, within the first web page and based upon the reciprocal arrangement, a first link to the second web page and associated with the second entity (at least figures 1- 3, and related text, including col 2 line 55 through col 3, lines 15-41: bookstore website now shows the link to the bike store website, based on the bike shop's request and the agreement between the two).

- **In reference to claims 23, 33**

  Horstmann teaches:

  Wherein the first web page is stored in a database; and the second web page is stored in the database (at least col 2, lines 41-55: websites may be stored in separate or the same server, see also figure 5 and related text: common database stores the reciprocal agreements and/or the updated pages).

- **In reference to claim 24 , 46**

  Horstmann teaches:

  receiving, from a third user, a request for the first web page (at least col 5 lines 25-34: viewers request the website with the newly updated links, see also figures 5, 3 and related text);

dynamically generating, using a database, the first web page (at least col 5, lines 5-34: once approved, the links update as in figures 5, 3 and related text); and

serving, to the third user, the dynamically-generated first web page (at least col 4 lines 6-20, col 5 lines 5-24, figures 3,5 and related text: webpage is rendered with the updated links; bike store owner and/or viewers see the rendered page including links).

- **In reference to claims 25, 35**

  Horstmann teaches:

  wherein the first web page includes one or more web pages (at least fig 1, 5, 7 and related text, including col 5 lines 25-35, and col 6 lines 41-57: embodiments including "a number of links pages stored" to verify that each link links to an existing page within the website).

- **In reference to claims 26, 36**

  Horstmann teaches:

  including, within the first web page, a web asset provided by a third party separate from the computer hardware system (at least fig 4 and related text, including col 4 lines 35-43, and figure 5 & related text, including col 4 lines 43-.col 5 line 24: two embodiments of the "add link" feature both are provided by a separate provider, and the pages may interact with them – i.e. "if a bike shop owner is impressed with the "add link" feature of website A...", bike shop owner may add it to his page to make it easier for, for example, bookstore owner to interact).

- **In reference to claims 28, 38**

  Horstmann teaches:

wherein the web asset is a functional application (see figure 4, 5, and related text, including col 4 line 43- col 5, line 24: "add link" feature/button is used to functionally modify the page itself).

- **In reference to claims 29, 39**

  Horstmann teaches:

  providing, to the first user, at least one recommended web page, associated with the computer hardware system, into which the second functional identification element is to be included (at least figures 4, 5, and related text, including col 4, line 43- col 5, line 24: add link is a functional element found on webpage A, and bike shop owner, may decide to include the feature on the bike shop page, or to add a link between the two pages himself, further, system recommends bookstore to bike store owner).

- **In reference to claims 30, 40**

  Horstmann teaches:

  Wherein the second link is associated with a graphic image *within the second web page* (at least col 4, lines 60-65, fig 5 and related text: link includes the bike shop logo).

- **In reference to claims 31, 41**

  Horstmann teaches:

  receiving, from the first user, the image (at least col 4, lines 60-65, fig 5 and related text: link includes the bike shop logo; bike shop owner uploads/includes it in the link/editing page).

- **In reference to claim 32, 44**

  Horstmann teaches:

A database system storing information associated with the first ad second web pages (at least fig 5 and related text, see also col 2 lines 52-54; websites can exist on the same server, at col 3 lines 15-20 "The links server includes software that presents and processes forms, and could be the

same server that maintains the bookstore's pages or some other server."), comprising:

Storing first input received from the first user into the database system (at least col 4 line 45- col 5 line 33: bike shop owner inputs links, which are stored in "links server", see also col 6 line 5-12)

storing second input received from the second user into the database system (at least col 4 line 45 to col 5 line 59, the bookstore owner, second input, may modify the links page which is again then stored in links server) ,

establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement (at least figures 1, 2, 3, and related text, including col 2, lines 55 through col 3, line 41: the bike shop owner and the book store owner form an agreement to display one another's advertisements on their respective pages);

generating, using the first input received from the first user and the reciprocal agreement, the first web page (at least fig 1-3 and related text, including col 2 line 55 to col 4 line 24; Page B, bike site, is now displayed with the link to the book store); and

generating, using the second input received from the second and the reciprocal arrangement, the second web page (at least fig 1-3 and related text, including col 2 line 55 to col 3 line 25: Page A, book site, is now displayed with the link to the bike store), wherein

the second web page *includes,* and based upon the reciprocal arrangement, a second link to the first web page and (at least figures 1-3, and related text, including col 3, lines 15-41:

once the bike store owner/website has made the agreement, the bookstore owner/website would then have their link included in relevant locations on the bike shop website);

the first web page *includes,* and based upon the reciprocal arrangement, a first link to the second web page (at least figures 1- 3, and related text, including col 2 line 55 through col 3, lines 15-41: bookstore website now shows the link to the bike store website, based on the bike shop's request and the agreement between the two).

- **In reference to claim 34 , 46**

Horstmann teaches:

receiving, from a third user, a request for the first web page (at least col 5 lines 25-34: viewers request the website with the newly updated links, see also figures 5, 3 and related text);

and

serving, to the third user, the dynamically-generated first web page, *wherein the first web page is dynamically generated based upon the request* (at least col 4 lines 6-20, col 5 lines 5-24, figures 3, 5 and related text: webpage is rendered with the updated links; bike store owner and/or viewers see the rendered page including links; *at col 3, lines 20-25: the page is "redisplayed").*

- **In reference to claims 42, 43**

Horstmann teaches:

The first and second users are both registered users with the computer hardware system (at least col 4, line 61 to col 5, line 5, fig 6, 7, and related text; both users must enter a password to access the links, i.e. they have registered with the service).

- **In reference to claims 45**

The first web page stored in the database system at least fig 5 and related text, see also col 2 lines 52-54; websites can exist on the same server, at col 3 lines 15-20 "The links server includes software that presents and processes forms, and could be the same server that maintains the bookstore's pages or some other server."*; and*

*The second web page is stored in the database system (*at least fig 5 and related text, see also col 2 lines 52-54; websites can exist on the same server, at col 3 lines 15-20 "The links server includes software that presents and processes forms, and could be the same server that maintains the bookstore's pages or some other server.")

Response to Arguments

Applicant's remarks, filed on 20 APRIL 2018 have been fully considered but are not found fully persuasive.

Applicant's amendments and/or clarifications regarding the rejections under 35 USC 112 have been found persuasive and as such the rejections are withdrawn.

Applicant begins with a discussion of the rejection under 35 USC 101 on page 9, with remarks beginning in earnest on page 10.

On page 10, 11 of the remarks Applicant summarizes various portions of USPTO Policy regarding Subject Matter Eligibility. On page 11, Applicant argues that there is no preemption found; however, as further noted by Applicant, preemption itself is not the sole test of subject matter eligibility. Applicant submits the pending claims do not "tie up" or "prevent" all such agreements between web pages, and thus are statutory under a streamlined analysis. Examiner respectfully disagrees. Though the Supreme

Court has described the concern driving the judicial exceptions as preemption, the courts do not use preemption as a stand-alone test for eligibility. See July 2015 Update: Subject Matter Eligibility.

Instead, questions of preemption are inherent in the two-part framework from Alice Corp. and Mayo. Examiner notes that "(w)hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." **Ariosa** v. DNA Diagnostics Center, Inc., __F.3d__, Nos. 2014-1139, 2014-1144, Fed. Cir. 2015 (slip op. at 14). Moreover, the use of "tie up" refers to the results of Steps 2A and 2B of the two-part framework, and is not meant to imply that the streamlined analysis is either a preemption test or a means of avoiding the results that would occur if a claim were to undergo the full eligibility analysis. In fact, the results of the streamlined analysis will always be the same as the full analysis, in that a claim that qualifies as eligible after step 2A or 2B of the full analysis would also be eligible if streamlined analysis were applied to the claim.

On page 12, Applicant discusses applicability of the recent decision in McRO , and goes on to discuss historical practices of link sharing as found in the relevant prior art; arguing that the practice of link sharing itself was common at the time. Again, preemption itself is not a standalone test. The analysis itself still finds that the claims are directed to an abstract idea.

On page 13, Applicant references Electric Power Group and BASCOM, arguing that the claims represent a practical application to accomplish the result, however Examiner is not persuaded as this again is not the sole requirement for subject matter eligibility, and the claims in EPG were found ineligible themselves. Further, in BASCOM the claims required an unconventional element – however this was *after* the claims were found to contain an abstract idea.

Applicant further argues on page 14 that the claims are directed to an improvement to computer technology. Examiner respectfully disagrees and does not find any improvement to the technology associated with the pending claims. Applicant further does not specifically point out any alleged improvement.

Applicant next submits, on page 15, that the Examiner has improperly or overgeneralized the claimed invention. Examiner respectfully disagrees. Examiner specifically identified the portions of the claimed limitations that are analogous to and directed to the cited abstract ideas in the rejection above.

Applicant again discusses the machine or transformation test, on page 16, however Applicant is again reminded that this is not the current test for Subject Matter Eligibility; the current test is laid out in the analysis above. Further, Applicant alleges that the claimed invention involves the use of a specialized hardware system, however as noted above in the rejection Examiner respectfully disagrees.

On page 17, Applicant again argues that the rejection fails to reasonably tie the facts to the cited case law. Examiner respectfully disagrees – as noted above, Examiner has specifically quoted limitations from the claims when comparing them to the abstract ideas identified.

ON page 18, Applicant begins a discussion of the cited cases. Applicant is, as a preliminary matter, reminded that it is not required that the facts of the cases identified align identically with the case examples cited.

Applicant discusses buySafe, citing various portions of the decision, however Examiner respectfully disagrees – the limitations as they stand specifically recite "establishing a reciprocal arrangement" between a first and second party, and then specifically require that "based on the reciprocal arrangement" both parties are bound to perform. This is analogous with the contract formed between two parties as in buySafe. A contract at its most basic form requires an offer, and acceptance, and an intent to be bound. These elements are found in independent claim 22, as well as newly amended/added claims 32, 46: the reciprocal arrangement between the two parties is "established" by the "first and second users opting to participate" – i.e. offer, accept, and clear intent. The claim further includes the performance of the contract, in that based on the arrangement, the display occurs.

Contrary to Applicant's assertions, the operation is not itself necessarily rooted in technology. While the claims are a technical solution, reciprocal arrangements are, as noted by Applicant, a problem

with an "ancient lineage." That the subject matter of buySafe does not exactly match the pending claims is not required, contrary to Applicants remarks through page 22 are further found to be not persuasive.

On page 23, Applicant discusses Return Mail, specifically alleging that the claims are technical in nature. While this is true, this is not the requirement to which the case law was cited. Again, Applicant is reminded that the facts of the case need not line up perfectly for the case law to be applicable. Examiner cited tot this case for purposes of relaying address data – that the addresses in question are not identical is not required. Web links *inherently* are tied to an address, which in the pending claims, is relayed between the two users in order to create the updated page.

Applicant's remarks regarding Ultramercial are used to segue into a DDR related analysis; Examiner again respectfully disagrees, and again finds that while the solution is technical in nature, the problem it seeks to solve – that of reciprocal arrangements between individuals, is long standing. That the particular claimed application is a computing environment including web pages does not automatically confer Subject Matter Eligibility.

As per Applicant's remarks regarding McRO on page 27, applicant has correctly stated the holding in McRO; however, again, there is no improvement found.

Applicant summarizes additional remarks on pages 26-27, with the majority of these remarks having already been addressed above.

Applicant's analogy to the bridal store/bakery agreement, on page 28, appear to support Examiner's position. The agreement between the two businesses exists – i.e. a "reciprocal arrangement," and the respective flyers or the like are "included" with the presentation of the store, based on the reciprocal arrangement. Applicant's discussion of the "audit" is misplaced, because the claims at hand do not require that the links appear any longer than a flyer might stay in a bakery. Continuing with Applicant's bakery/bridal analogy, while a hyperlink is not identical to a flyer, the bridal store could instead agree to have a portfolio or informational pamphlet of the bakery's work on hand,

which is more analogous to a link to the website. Contrary to Applicant's interpretation of the internet, a link itself does not magically transport the viewer to the physical location of the business, rather, it directs the viewer to a presence of the business, through which additional information may be retrieved. For example, Examiner has routinely browsed websites of over-water bungalows in Fiji, and has yet to require sunscreen.

Applicant next turns to the prior art rejections, beginning on page 30. On pages 31-32, Applicant argues that the manner in which the arrangement is made is distinct from the prior art cited. However, claim 22 specifically only requires: "establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement." Per the cited portions of Hortsmann, "A method establishes *reciprocal page links between pages on the Internet*. According to the method, individual sites (collections of pages) include dedicated links pages that contain lists of links, primarily to other sites." Col 3 further discloses that the bike shop owner and the bookstore owner agreed to the reciprocal arrangement, and that the system automatically checks for the reciprocity. Further, if the system does not find the required reciprocal link, the system removes the reciprocal link of the compliant party – i.e. if the bookstore does not post the required reciprocal link, the like on the bike shop page is removed.

Applicant is attempting to argue limitations or aspects of the invention that are simply not present in the claims. All that is required is an agreement between the two parties – clearly present in Horstmann. That the reference uses software to execute some of the verification does not mean there is no "reciprocal agreement" between the two.

Applicant argues that Horstmann allows any link to be initially created, however, this is untrue; the owner of the website may modify the list of links at any time.

Applicant again argues the reciprocal arrangement, however, as discussed above this is not persuasive as there is clearly an agreement between the bookstore owner and the bike shop owner in

Horstmann. Applicant's claims simply require an agreement of any sort. That Horstmann goes above and beyond the creation of the agreement to include verification of performance is irrelevant.

Conclusion

THIS ACTION IS MADE FINAL. 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 mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHERINE KOLOSOWSKI-GAGER whose telephone number is (571)270-5920. The examiner can normally be reached on Monday - Friday.

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, Nathan Uber can be reached on 571-270-3923. 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.

/K.K/
Examiner, Art Unit 3622

/PATRICIA H MUNSON/
Primary Examiner, Art Unit 3622

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	13/946,461	DISTEFANO, THOMAS L.
	Examiner	**Art Unit**
	KATHERINE KOLOSOWSKI-GAGER	3622

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

CLAIMS

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	01/11/2016	03/05/2016	12/11/2017	07/24/2018					
	22	=	✓	✓	✓					
	23	=	✓	✓	✓					
	24	=	✓	✓	✓					
	25	=	✓	✓	✓					
	26	=	✓	✓	✓					
	27	=	✓	-	-					
	28	=	✓	✓	✓					
	29	=	✓	✓	✓					
	30	=	✓	✓	✓					
	31	=	✓	✓	✓					
	32	=	✓	✓	✓					
	33	=	✓	✓	✓					
	34	=	✓	✓	✓					
	35	=	✓	✓	✓					
	36	=	✓	✓	✓					
	37	=	✓	-	-					
	38	=	✓	✓	✓					
	39	=	✓	✓	✓					
	40	=	✓	✓	✓					
	41	=	✓	✓	✓					
	42				✓					
	43				✓					
	44				✓					
	45				✓					
	46				✓					

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 995 of 1793

To: ptomail@iplawpro.com,terry.forsythe@iplawpro.com,kevin.cuenot@iplawpro.com
From: PAIR_eOfficeAction@uspto.gov
Cc: PAIR_eOfficeAction@uspto.gov
Subject: Private PAIR Correspondence Notification for Customer Number 55246

Aug 10, 2018 03:48:14 AM

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Application	Document	Mailroom Date	Attorney Docket No.
13946461	CTFR	08/10/2018	8201-0013

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UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION INFORMATION RETRIEVAL SYSTEM

Attorney Docket No.: 8201-0013 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Customer Number: 55246
Thomas DISTEFANO III	:	Confirmation Number: 9140
Application No.: 13/946,461	:	Group Art Unit: 3622
Filed: July 19, 2013	:	Examiner: K. Kolosowski-Gager

For: RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES

NOTICE OF APPEAL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the Office Action dated August 10, 2018.

Appellants have already paid the fee for the Notice of Appeal filed June 2, 2017, pursuant to M.P.E.P. § 1204.01, "[t]he previous paid notice of appeal fee and appeal brief fee can be applied to the new appeal."

X The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 503611.

Date: February 11, 2019

Respectfully submitted,

/Scott D. Paul/
Scott D. Paul
Registration No. 42,984
CUSTOMER NUMBER 55246

PTO/AIA/22 (03-13)
Approved for use through 7/31/2016. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)	Docket Number (Optional) 8201-0013
Application Number 13/946,461	Filed 2013-07-19
For RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES	
Art Unit 3622	Examiner Katherine Kolosowski-Gager

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above-identified application.

The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):

		Fee	Small Entity Fee	Micro Entity Fee	
☐	One month (37 CFR 1.17(a)(1))	$200	$100	$50	$
☐	Two months (37 CFR 1.17(a)(2))	$600	$300	$150	$
☑	Three months (37 CFR 1.17(a)(3))	$1,400	$700	$350	$ 700.00
☐	Four months (37 CFR 1.17(a)(4))	$2,200	$1,100	$550	$
☐	Five months (37 CFR 1.17(a)(5))	$3,000	$1,500	$750	$

☑ Applicant asserts small entity status. See 37 CFR 1.27.

☐ Applicant certifies micro entity status. See 37 CFR 1.29.
Form PTO/SB/15A or B or equivalent must either be enclosed or have been submitted previously.

☐ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☑ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 503611.

☑ Payment made via EFS-Web.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

☐ applicant.

☑ attorney or agent of record. Registration number 42984.

☐ attorney or agent acting under 37 CFR 1.34. Registration number _____.

/SCOTT D. PAUL/ — Signature

FEBRUARY 11, 2019 — Date

SCOTT D. PAUL — Typed or printed name

561-801-7700, EXT. 1206 — Telephone Number

NOTE: This form must be signed in accordance with 37 CFR 1.33. See 37 CFR 1.4 for signature requirements and certifications. Submit multiple forms if more than one signature is required, see below*.

☑ * Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public, which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Electronic Patent Application Fee Transmittal	
Application Number:	13946461
Filing Date:	19-Jul-2013
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Filer:	Scott David Paul/Alaine Allison
Attorney Docket Number:	8201-0013
Filed as Small Entity	
Filing Fees for Utility under 35 USC 111(a)	

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension - 3 months with $0 paid	2253	1	700	700
Miscellaneous:				
		Total in USD ($)		**700**

Electronic Acknowledgement Receipt	
EFS ID:	35113372
Application Number:	13946461
International Application Number:	
Confirmation Number:	9140
Title of Invention:	RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES
First Named Inventor/Applicant Name:	THOMAS L. DISTEFANO
Customer Number:	55246
Filer:	Scott David Paul/Alaine Allison
Filer Authorized By:	Scott David Paul
Attorney Docket Number:	8201-0013
Receipt Date:	11-FEB-2019
Filing Date:	19-JUL-2013
Time Stamp:	14:36:59
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	DA
Payment was successfully received in RAM	$700
RAM confirmation Number	021219INTEFSW00000908503611
Deposit Account	
Authorized User	
The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Notice of Appeal Filed	8201-0013_NoticeofAppeal_02-11-19.pdf	65224 18242b132b2c176405def38e51384a7ca803fba6	no	1
Warnings:					
Information:					
2	Extension of Time	8201-0013_ExtensionofTime_02-11-19.pdf	133826 58adf6dfcca6276b66aa9f2df824c6714c703599	no	1
Warnings:					
Information:					
3	Fee Worksheet (SB06)	fee-info.pdf	30800 bca9bd9c65a9e23170dff733de3eb5edb2f611a4	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	229850		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.
National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.
New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Attorney Docket No. 8201-0013 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	:	Customer Number: 55246
Thomas DISTEFANO III	:	Confirmation Number: 9140
Application No.: 13/946,461	:	Group Art Unit: 3622
Filed: July 19, 2013	:	Examiner: K. Kolosowski-Gager

For: RECIPROCAL INSERTION OF IDENTIFICATION ELEMENTS FOR WEB PAGES

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed February 11, 2019, wherein Appellant appeals from the Examiner's rejection of claims 22-26, 28-36, and 38-46.

I. REAL PARTY IN INTEREST

This application is assigned to DiStefano Patent Trust III, LLC by assignment recorded on April 18, 2016, at Reel 038308, Frame 0794.

II. RELATED APPEALS AND INTERFERENCES

An appeal is concurrently being filed in related U.S. Application No. 13/946,489. A Decision on Appeal and Decision on Request for Rehearing were respectively issued on June 15,

2009, and September 13, 2009, in parent U.S. Application No. 09/589,551. A Memorandum Opinion was issued by the United States District Court for the District of Delaware on September 28, 2018, with regard to related U.S. Patent No. 8,768,760. That decision in currently under appeal before the Federal Circuit (Appeal No. 19-1210). A Decision Denying Institution of *Inter Partes* Review was issued by the Patent Trial and Appeal Board on June 5, 2019, with regard to related U.S. Patent No. 8,768,760. Appellant is unaware of any other related appeals and interferences.

III. STATUS OF CLAIMS

Claims 22-26, 28-36, and 38-46 are pending and finally rejected in this Application. Claims 1-21, 27, and 37 have been cancelled. It is from the final rejection of claims 22-26, 28-36, and 38-46 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

The claims have not been amended subsequent to the imposition of the Fourth and Final Office Action dated August 10, 2018 (hereinafter the Fourth Office Action).

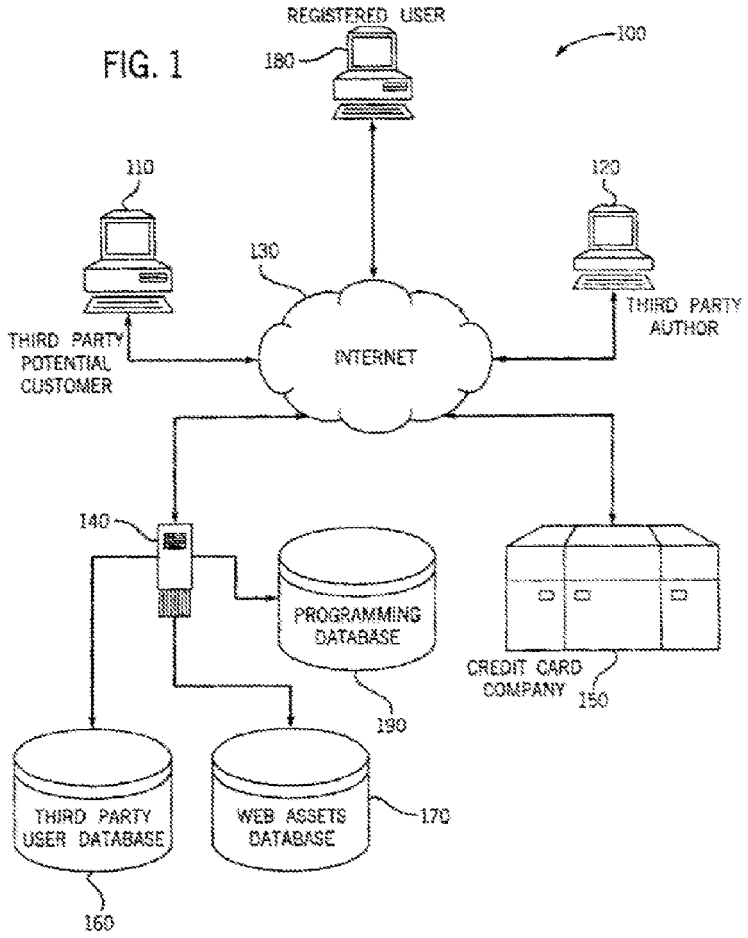
V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 22

Referring to Figure 1 and also to independent claim 22, a method, within and by a computer hardware system 180 that is configured to serve a first web page associated with a first user and a second web page associated with a second user is disclosed (page 51, line 14 through page 52, line 2 of Appellant's disclosure). A high-level drawing of the server system is illustrated in Figure 1, which is reproduced below:

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1004 of 1793

FIG. 1

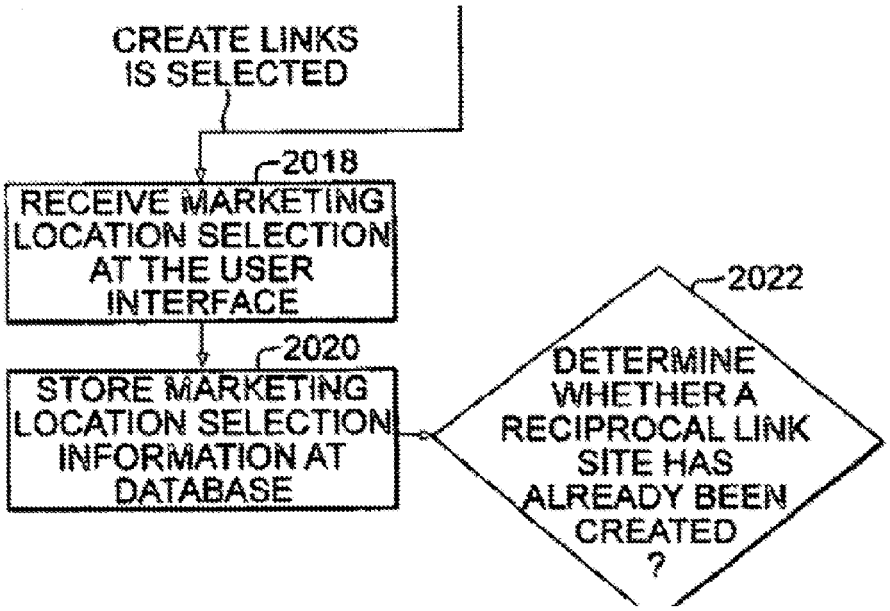


The present application discloses that "[a] server computer is a computer which stores web page information, retrieves that information in response to a browser's request, and sends the information, via the internet, to the client computer" (page 2, lines 7-10 of Appellant's disclosure). The present Application further discloses that the "system 100 includes a server computer 140 operably connected to the internet 130 using standard techniques well-known in the art" (page 12, lines 12-14 of Appellant's disclosure).

Claim 22 of the present application next requires "establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1005 of 1793

opting to participate in the reciprocal arrangement." The present application discloses that "[u]pon receiving the [website] selection information, the [website][1] selection information is stored at ... database 160 [and t]his stored information is later used to generate links at the selected ... websites" (page 50, lines 12-19 of Appellant's disclosure). The website selection information is an indication that a user has opted into a reciprocal arrangement. The storage of this information is an example of establishing the reciprocal arrangement. (see Figure 20, illustrated in part below, and pages 49, line 20 through page 52, line 20 of Appellant's disclosure).



An example of a manner by which a user can opt into the reciprocal arrangement is illustrated by the GUI illustrated in Figure 12 of Appellant's disclosure, a portion of which is illustrated below:

[1] The terms "marketing locations" are "websites" are used interchangeably ("information is later used to generate links at the selected marketing locations (i.e., websites)").

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1006 of 1793

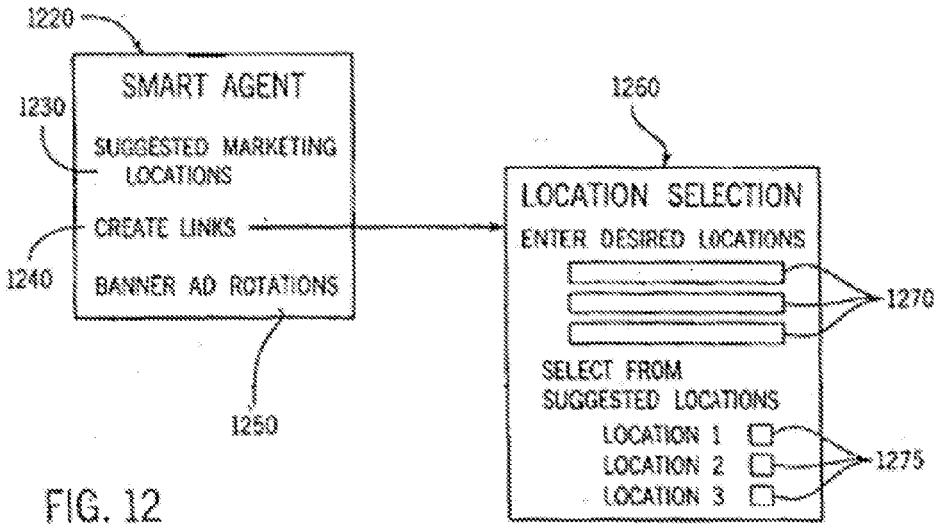


FIG. 12

Figure 12 illustrates how a registered user may access smart agent menu 1220, and select create links option 1240 to access "location selection menu 1260, in which the registered user can identify addresses for websites to which the registered user desires its website to be linked" (page 31, lines 20-23). This can be accomplished by the registered user entering the website addresses into open fields 1270, or by the registered user checking selection boxes 1275 corresponding to website addresses that server 140 suggests may be beneficial for linking (page 31, line 23 through page 32, line 10).

The first web page includes, based upon the reciprocal arrangement, a first link to the second web page and associated with the second user, and the second web page includes, based upon the reciprocal arrangement, a second link to the first web page and associated with the first user (page 51, line 14 through page 52, line 2 of Appellant's disclosure).

Claim 32

Referring to Figure 1 and also to independent claim 32, a webpage implementation server system 180 is configured to serve a first web page associated with a first user and a second web

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1007 of 1793

page associated with a second user (page 51, line 14 through page 52, line 2 of Appellant's disclosure). The server system 180 includes a database system 160/170/190 that stores information associated with the first and second web pages (page 13, line 9 through page 14, line 6; and page 50, lines 12-24 of the Appellant's disclosure). A computer hardware system of the server system 180 is configured to perform the following. First input received from the first user into the database system 160/170/190, and second input received from the second user is stored into the database system 160/170/190 (page 50, lines 12-19 of Appellant's disclosure).

Claim 32 of the present application next requires "establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement." The present application discloses that "[u]pon receiving the [website] selection information, the [website] selection information is stored at ... database 160 [and t]his stored information is later used to generate links at the selected ... websites" (page 50, lines 12-19 of Appellant's disclosure). The website selection information is an indication that a user has opted into a reciprocal arrangement. The storage of this information is an example of establishing the reciprocal arrangement. (see Figure 20 and pages 49, line 20 through page 52, line 20 of Appellant's disclosure). An example of a manner by which a user can opt into the reciprocal arrangement is illustrated by the GUI illustrated in Figure 12 of Appellant's disclosure, which has already been reproduced and discussed, *supra*.

Claim 32 next requires the first web page is generated using the first input received from the first user and the reciprocal arrangement, and the second web page is generated using the second input received from the second user and the reciprocal arrangement (page 50, lines 12-19 of Appellant's disclosure). The second web page includes, based upon the reciprocal arrangement, a second link to the first web page; and the first web page includes, based upon the

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1008 of 1793

reciprocal arrangement, a first link to the second web page (page 50, lines 12-19; page 51, line 14 through page 52, line 2 of Appellant's disclosure).

Claim 44

Referring to Figure 1 and also to independent claim 44, a method within a computer hardware system 180 that is configured to serve a first web page associated with a first user and a second web page associated with a second user is disclosed (page 51, line 14 through page 52, line 2 of Appellant's disclosure). The computer hardware system 180 is coupled to a database system 160/170/190 that stores information associated with the first and second web pages (page 13, line 9 through page 14, line 6; and page 50, lines 12-24 of the Appellant's disclosure). First input received from the first user into the database system 160/170/190, and second input received from the second user is stored into the database system 160/170/190 (page 50, lines 12-19 of Appellant's disclosure).

Claim 44 of the present application next requires "establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement." The present application discloses that "[u]pon receiving the [website] selection information, the [website] selection information is stored at ... database 160 [and t]his stored information is later used to generate links at the selected ... websites" (page 50, lines 12-19 of Appellant's disclosure). The website selection information is an indication that a user has opted into a reciprocal arrangement. The storage of this information is an example of establishing the reciprocal arrangement. (see Figure 20 and pages 49, line 20 through page 52, line 20 of Appellant's disclosure). An example of a manner by which a user can opt into the reciprocal arrangement is illustrated by the GUI illustrated in Figure 12 of Appellant's disclosure, which has already been reproduced and discussed, *supra*.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1009 of 1793

Claim 32 next requires the first web page is generated using the first input received from the first user and the reciprocal arrangement, and the second web page is generated using the second input received from the second user and the reciprocal arrangement (page 50, lines 12-19 of Appellant's disclosure). The second web page includes, based upon the reciprocal arrangement, a second link to the first web page; and the first web page includes, based upon the reciprocal arrangement, a first link to the second web page (page 50, lines 12-19; page 51, line 14 through page 52, line 2 of Appellant's disclosure).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 22-26, 28-36, and 38-46 were rejected under 35 U.S.C. § 101; and

2. Claims 22-26, 28-36, and 38-46 were rejected under 35 U.S.C. § 102 for anticipation based upon Bezos et al., U.S. Patent No. 6,029,141.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1010 of 1793

VII. ARGUMENT

PRINCIPLES OF LAW

Examiner's Burden

The Examiner has the initial burden to set forth the basis for any rejection so as to put Appellant on notice of the reasons why Appellant is not entitled to a patent on the claim scope that Appellant seeks – the so-called "*prima facie* case." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Additionally, the "[t]he examiner's action will be complete as to all matters," 37 C.F.R. § 1.104(b), and "[t]he pertinence of each reference, if not apparent, must be clearly explained." 37 C.F.R. § 1.104(c). Reference is also made to 37 C.F.R. § 1.2, which states "[t]he action of the Patent and Trademark Office will be based exclusively on the written record in the Office."

If the Examiner does not produce a *prima face* case of unpatentability, then the rejection cannot be maintained, and Appellant is not obligated to respond. *See In re Oetiker*, *supra* ("If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent"). Only after a *prima face* case of unpatentability does the burden shifts to Appellant to rebut the *prima facie* case. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("[o]n appeal to the Board, an applicant can overcome a rejection by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1011 of 1793

"[T]he Board cannot simply reach conclusions based on its own understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings." *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). The failure of the Board to provide an administrative record showing the evidence by which findings of fact are based constitutes reversible error. *In re Lee*, 277 F.3d 1338 (Fed. Cir. 2002). With regard to the burden placed on the Board in analyzing the rejections, the Federal Circuit held the following in *Gechter v. Davidson*, 1167 F.3d 1454, 1460 (Fed. Cir. 1997):

> In sum, we hold that the Board is required to set forth in its opinions specific findings of fact and conclusions of law adequate to form a basis for our review. In particular, we expect that the Board's anticipation analysis be conducted on a limitation by limitation basis, with specific fact findings for each contested limitation and satisfactory explanations for such findings. Claim construction must also be explicit, at least as to any construction disputed by parties to the interference (or an applicant or patentee in an ex parte proceeding).

In the Decision of *Ex parte Frye*, (Appeal No. 2009-006013) (Precedential), while referring to a rejection under 35 U.S.C. § 103, the Honorable Board stated:

> The panel then reviews the obviousness rejection for error based upon the issues identified by appellant, and in light of the arguments and evidence produced thereon. *See Oetiker*, 977 F.2d at 1445 ("In reviewing the examiner's decision on appeal, the Board must necessarily weigh all of the evidence and argument.") (emphasis added); *see also* 37 C.F.R. § 41.37(c)(1)(vii) (appeal brief must include "the contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on"). Specifically, the Board reviews the particular finding(s) contested by an appellant anew in light of all the evidence and argument on that issue.

Therefore, a complete *de novo* review is to be performed on all issues that are raised by Appellant without deference to the positions taken by the Examiner. Also, as stated within *In re Nuvasive*, 842 F.3d 1376, 1383 (Fed. Cir. 2016), "it is not adequate to summarize and reject arguments without explaining why the PTAB accepts the prevailing argument."

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1012 of 1793

Anticipation

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single prior art reference. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993). Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art. *See, e.g., In re Spada*, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990). Under 35 U.S.C. § 102, not only must a prior art reference disclose all elements within a claim, the prior art reference must also disclose those elements "arranged as in the claim." *E.g., Net MoneyIn, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008).

"Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the claims. ... The second step in the analyses requires a comparison of the properly construed claim to the prior art." *Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted). During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification," *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000), and the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). Therefore, the Examiner must:

(i) identify the individual elements of the claims and properly construe these individual elements, *In re Crish*, 393 F.3rd 1253, 1256 (Fed. Cir. 2004), *Panduit Corp. v.*

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1013 of 1793

Dennison Mfg. Co., 810 F.2d 1561, 1567-68 (Fed. Cir. 1987) (In making a patentability determination, analysis must begin with the question, "what is the invention claimed?" since "[c]laim interpretation, ... will normally control the remainder of the decisional process");

(ii) identify corresponding elements disclosed in the allegedly anticipating reference. *Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984);

(iii) and compare these allegedly corresponding elements to the individual elements of the claims, *Id.*, while making factual findings that "each and every limitation is found either express or inherently in [that] single prior art reference." *Crish* at 1256.

THE REJECTION OF CLAIMS 22-26, 28-36, AND 38-46 UNDER 35 U.S.C. § 101

For convenience of the Honorable Board in addressing the rejections, claims 25-26 and 28-31 stand or fall together with independent claim 22; claims 33 and 45 stand or fall together with dependent claim 23; claims 34 and 46 stand or fall together with dependent claim 24; claims 35-44 stand or fall together with independent claim 32.

A. Claims are Directed to an Improvement to Computer Technology

Under 35 U.S.C. § 101, patentable subject matter includes "any new and use process, machine ... or any new and useful improvement thereof." The Supreme Court recognized an improvement to an existing technological process can be patent eligible. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct 2347, 2358 (2014) (discussing *Diamond v. Diehr*, 101 S.Ct. 1048 (1981)). Consequently, under both steps of the *Alice* analysis, the Federal Circuit has found a claimed invention to be patent eligible based upon a finding that the invention is directed to a specific improvement in existing computer technology. *See, e.g., BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) (noting that an improvement to computer technology can render an invention patent-ineligible under step two of

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1014 of 1793

the *Alice* analysis); *Ancora Tech., Inc. v. HTC America, Inc.*, __ F.3d __ (Fed. Cir. 2018) (slip op., at 8) ("We have several times held claims to pass muster under *Alice* step one when sufficiently focused on such improvement").

Regarding computer-implemented inventions, the Court also has confirmed that "software-based innovations can make 'non-abstract improvements to computer technology' and be deemed patent eligible subject matter." *Finjan, Inc. v. Blue Coat Sys,. Inc.*, 879 F.3d 1299, 1304 (Fed. Cir. 2018). These improvements can include, for example, an improvement to the usability of existing computer technology. *See Data Engine Tech LLC v. Google LLC*, __ F.3d __ (Fed. Cir. 2018) (slip op., at 3) (noting that patent addressed a problem associated with "ease of use of this [spreadsheet] technology").

At the time of the invention, preparation of a webpage was not usually done in house. Rather, it required working with both a website developer and a website service provider. Appellant's disclosure describes the state of the art at the time of the invention as follows:

> The most commonly used avenue for an individual to get his web page on the internet is to employ one of numerous companies to provide, for a fee, web page/website development services. After contacting such a website development company, the individual would meet with one of the company's web page designers to explain the individual's concept for his web page. The designer would then create the associated HTML document. After approval by the individual, the designer may provide the service of posting the web page to a server. The server typically is not associated with the website development company. Thus, the individual must separately contract with an ISP associated with the server to host the web page.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1015 of 1793

Page 2, line 23 through page 24, line 7 of Appellant's disclosure. This computer-implemented process was expensive, time consuming, and inefficient. Page 2, lines 7-12 of Appellant's disclosure.

The use of reciprocal links in webpages to create hyperlinks between separate individual's webpages was known at the time of Appellant's invention. Reciprocal links are discussed, for example, in U.S. Patent 6,629,135 to Ross et al., assigned to DDR Holdings (hereinafter, Ross),[2] which was cited as prior art during prosecution of U.S. Patent No. 7,996,259, upon which the present application claims priority. Referring to column 1, lines 30-36, Ross states that "website programmers increased visitor traffic by placing 'links' within their websites to other websites, usually related in content or function, in exchange for a reciprocal link ... [and] link sharing developed into a standard practice."

At the time of the Appellant's invention, prior art systems that facilitated the creation of reciprocal links were also known, as described in U.S. Patent 5,995,099 to Horstmann (hereinafter, "Horstmann"), which is current being cited as prior art.[3] Regarding the creation of reciprocal links in webpages, Horstmann recognized that "the tasks of communicating between the bike-shop and bookstore and manually adding links are time consuming." Horstmann, 1:43-55. Additionally, "it is possible that either the bookstore and/or the bike-shop will neglect to establish the agreed upon links," and thus, there was a need to verify/enforce the creation of

[2] U.S. Patent 6,993,572 is the patent at issue in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), which is a Continuation Application of U.S. Patent 6,629,135 to Ross, *available at* https://patents.google.com/patent/US6629135.

[3] Appellant successfully distinguished over Horstmann during the prosecution of U.S. Patent No. RE45,971, which is a reissue of aforementioned U.S. Patent No. 7,996,259.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1016 of 1793

these links. Horstmann, 1:41-53; Horstmann, 4:13-24. Horstmann also explains that certain links may be "undesirable" and provides the user with techniques for removing these links. Horstmann, 6:4-6.

The process by which Horstmann describes facilitating the creation of reciprocal links is illustrated in Figure 2 and reproduced below:

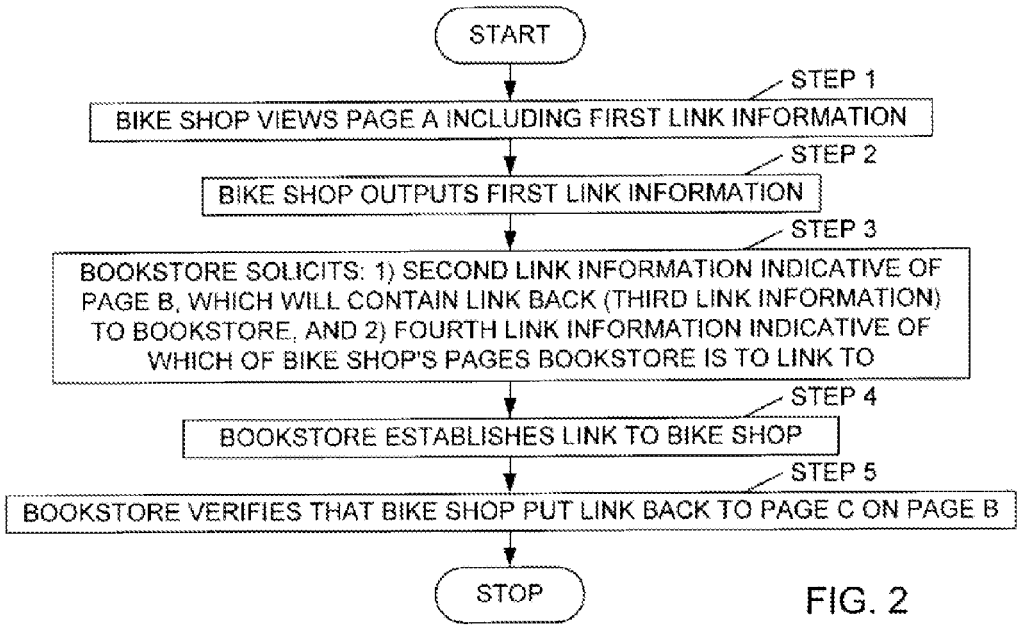


FIG. 2

Horstmann's disclosure refers to two parties, a bookstore (and associated webpage) and the owner of a bike-shop (and associated webpage). In short, Horstmann discloses: bike-shop owner visits the bookstore webpage (Step 1); the bike-shop owner indicates a desire to add a link to the bookstore webpage (Step 2); a system in concert with the bookstore webpage collects information needed to add the link (Step 3); a link to the bike-shop webpage from the bookstore webpage is added to the bookstore webpage (Step 4), and the system implements a verification process to ensure that the bike-shop webpage eventually contains a link back to the bookstore

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1017 of 1793

webpage (Step 5). Horstmann, 2:55-3-42. The present claims improve upon this process for facilitating the generation of reciprocal links between webpages.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1018 of 1793

A(1) Improvement to Web Page and Reciprocal Link Creation

As part of streamlining the process of webpage creation, Appellant combined the conventional functionality of a website development company (who created the website) and an internet service provider (ISP) whose server hosted the website. In combining these functions, Appellant recognized that the resultant system could be configured to provide an improved methodology by which reciprocal links between webpages are generated.

The claim limitations associated with this improved combined functionality are:

- "a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user," as recited in claims 22 and 44. Claim 32 recites similar limitations.
- "including, within the second web page and based upon the reciprocal arrangement, a second link to the first web page associated with the first entity," as recited in claim 22. Claims 32 and 44 recite similar limitations.
- "including, within the first web page and based upon the reciprocal arrangement, a first link to the second web page and associated with the second entity," as recited in claim 22. Claims 32 and 44 recite similar limitations.

The prior art conventional process described in Appellant's specification involved as many as three different entities per user (i.e., the user, the website development services, and the ISP).[4] Appellant's combining of the different functionalities eliminates as many as 3 out of the 6 different entities, thus increasing the efficiency of the process.

Appellant's invention, however, does more than just improve upon conventional systems by taking old processes performed by different entities and performing these combined processes in a single system. In addition, the claims describe a different manner by which reciprocal links between webpage are generated, which results in additional benefits, as discussed in more detail *infra*. For example, the claimed process ends in the generation of reciprocal links between

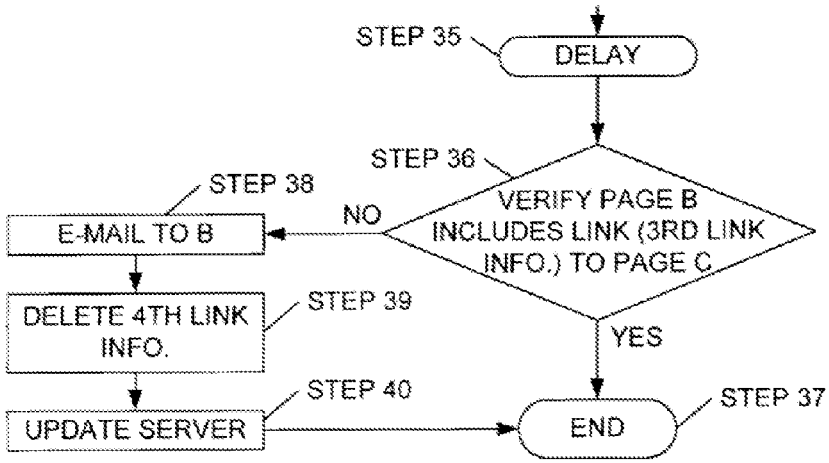
[4] By extension, the creation of reciprocal links could require the coordination of as many as six different entities (*i.e.*, two each of the three different entities).

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1019 of 1793

pages. However, the prior art Horstmann system ends at the verification process (Step 5 in Figure 2), while trusting that the other user (e.g., the bike-shop owner) follows through in the creation of a link back to the bookstore webpage.

A(2) Claimed Invention Eliminates Need for Reciprocal Link Enforcement

Horstmann describes the need for a process that verifies the existence of a reciprocal link that was agreed upon. Horstmann, 4:12-23. The verification process of Step 5 in Figure 2 of Horstmann is illustrated in greater detail in steps 36-40 of Figure 3, which is reproduced in part below:



After the link has been added to the bookstore webpage in step 34 (not shown), Horstmann describes waiting for a period of time (step 35) before implementing a verification process in step 36. Horstmann, 4:7-13. This verification process includes checking the webpage of the bike-shop to see if a link back to the bookstore webpage has been included. Horstmann, 4:13-16. If not, in step 38, an email is sent that reminds the bike-shop owner to include the link back to the bookstore. Horstmann, 4:17-21. In steps 39/40, the process also entails deleting the

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1020 of 1793

original link that was added to the bookstore webpage should a link back not be provided in the bike-shop webpage. Horstmann, 4:21-23.

By contrast, Appellant's claimed invention negates the need for reciprocal link enforcement by allowing a single operator/system to both create and serve the reciprocal links. While the system of Horstmann automatically generates the link in the bookstore webpage to the bike-shop webpage in step 34, Horstmann, 4:7-11, Horstmann does not contemplate the same system generating a link from the bike-shop webpage back to the bookstore webpage. However, the claimed invention requires "including, within the second web page and based upon the reciprocal arrangement, a second link to the first web page and associated with the first entity" and "including, within the first web page and based upon the reciprocal arrangement, a first link to the second web page and associated with the second entity" Generating both links based upon the claimed reciprocal arrangement, eliminates the need to verify the existence of the other link. Thus, the claims provide for an improvement over the state of the art, as represented by Horstmann.

A(3) Improvement Addressing Undesired Reciprocal Links

At the time of the invention, web designers faced the problem of "undesirable links." While Horstmann disclosed a mechanism by which these links can be deleted, Horstmann, 6:4-11, Appellant improved on that solution by claiming a process that prevents undesired links before they are included in the user's website. For example, a competitor of the bookstore described in Horstmann could add a link to the competitor's website without any intention of providing a link back to the bookstore knowing that the added link will exist for a period of time

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1021 of 1793

before being deleted. Similarly, the competitor could add a link to a third party website having a negative reputation anticipating that potential customers may be offended by the mere presence of this link. While Horstmann describes that these links can subsequently be deleted, the damage is already done by either losing customers to a competitor or loss of reputation.

While Horstmann provides a mechanism that allows one party (i.e., the bike-shop) to choose the website that contains the link to the bike-shop's website, the same does not hold true for the bookstore. Horstmann, 2:55-62. Rather, the bookstore owner merely opts into an arrangement that allows *any entity* to include links on the bookstore's web page *without any input* by the bookstore owner. Horstmann, 2:37-41. Thus, although Horstmann partially addresses the problem of undesirable links, Horstmann's process could be improved upon.

The claimed invention addresses the problem of undesired reciprocal links using the claimed "both the first and second users opting to participate in the reciprocal arrangement." Thus, each user has control over the links contained within the respective user's web pages, which prevents their own website from including an unwanted link to an undesirable website. Thus, the claimed invention is an improvement over Horstmann by claiming a process that prevents undesired links before they are included in the user's website.

Referring to page 14 of the Fourth Office Action, the Examiner admits that "the claims are a technical solution." However, contrary to the Examiner's assertion on page 15, the problem is not one with an "ancient lineage." The World Wide Web was only first proposed in 1989 by Tim Berners-Lee. "History of the Web," *available at*

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1022 of 1793

https://webfoundation.org/about/vision/history-of-the-web/. In 1990, Berners-Lee created "the three fundamental technologies that remain the foundation of today's web: … HTML, URI … (also commonly called a URL), [and] HTTP." *Id.* In 1991, the World Wide Web was first made available to the public. "Internet History," *available at* https://www.internethalloffame.org/internet-history/timeline. In 1993, CERN put the World Wide Web software (including both a browser and a web server) in the public domain. "The birth of the Web," available at https://home.cern/science/computing/birth-web. The present application claims priority to an application filed on June 7, 2000. Consequently, the problem being addressed was not of an "ancient lineage."

B Based upon 2019 Guidelines, Claims are Not Directed to an Abstract Idea

The Examiner's rejection was made on August 10, 2018 which preceded the 2019 Revised Patent Subject Matter Eligibility Guidance (hereinafter the 2019 Guidelines). As such, the Examiner's rejection did not follow the guidelines described therein.

On pages 9-11 of the 2019 Guidelines, the Patent Office has stated that when a claim does not recite matter than falls within one of these groupings of subject matter (i.e., "Mathematical concepts," "Certain methods of organizing human activity," and "Mental processes"), then the claims "should not be treated as reciting abstract ideas."

B(1) Claims Not Directed to Any of the Excluded Categories

Mathematical concepts

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1023 of 1793

The phrase *Mathematical concepts* includes "mathematical relationships, mathematical formulas or equations, mathematical calculations." 2019 Guidelines, Page 9. Appellant's claimed invention, however, does not recite any mathematical relationships, mathematical formulas or equations, or mathematical calculations. Moreover, the Examiner's analysis in the Fourth Office Action does not imply that the claims invention is directed to a mathematical concept.

Certain methods of organizing human activity

The phrase *Certain methods of organizing human activity* includes a laundry list of concepts including, but not limited to "fundamental economic principles or practices ...; commercial or legal interactions ...; [and] managing personal behavior or relationships or interactions between people." 2019 Guidelines, Page 10. Appellant's claimed invention, however, involves operations that are necessarily performed on a computer and is not directed to organizing human activity. To the extent that anything is being organized by the claimed invention, it is the creation of web pages – not human activity. Specifically, the claimed invention is directed to an improved and new set of operations that are used to generate reciprocal links in web pages – operations that are necessarily performed with and by a computer.

Mental processes

The phrase *Mental processes* is described as "concepts performed in the human mind." 2019 Guidelines, Page 11. None of the three separate operations recited in claim 22 are performed in the human mind. The claimed "establishing a reciprocal arrangement" involves the

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1024 of 1793

creation of one or more computer data structures that represent the reciprocal arrangement, which is not a process performed in the human mind. The reciprocal arrangement is then used to include the first and second links, respectively, in the second and first web pages. The inclusion of links in first and second web pages are computer operations that cannot be performed in the human mind. Consequently, the claimed invention is not directed to a mental process. Thus, based upon the 2019 Guidelines, the claims "should not be treated as reciting abstract ideas."

B(2) Examiner's Characterization of Claimed Invention Does Not Fall Within One of the Excluded Categories

On page 4 of the appealed Fourth Office Action, the Examiner asserted that the claimed invention is "directed in part to reciprocal arrangements between web pages." Based upon this characterization, the claimed invention is not directed to one of the excluded groupings of subject matter. The Examiner's characterization does not refer to either mathematical concepts or human activity. Thus, neither of the first two groupings of subject matter listed above is implicated by the claimed invention. Additionally, the Examiner has made no allegations that the claimed invention can be performed in the human mind and/or is otherwise a mental process. Consequently, based upon the Examiner's characterization of the claimed invention, the claims do not fall within of the excluded groupings of subject matter identified within the 2019 Guidelines.

C The Examiner has Not Properly Characterized Claimed Invention

Under step one of the *Alice* inquiry, "the focus of the claimed advance over the prior art" is evaluated to determine if the claimed invention, as a whole, is directed to excluded subject

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1025 of 1793

matter. *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1338 (Fed. Cir. 2017), quoting *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). The Examiner identifies the claimed invention as being directed to reciprocal arrangements between web pages. However, merely creating reciprocal links on web pages is *not* the claimed advance over the prior art as this technology preexisted the priority date of the present application.

C(1) Claimed Invention Directed to an Improved Process for Generating Web Pages Having Reciprocal Links

Advances over conventional technical processes are captured via the claimed invention by a claimed series of specific computer-implemented operations that are performed *in conjunction with* a single particular type of computer hardware system that is both configured to edit and serve web pages, as discussed in more detail above. Not only is the claimed invention more efficient over prior art processes that achieve the same result of generating web pages with reciprocal links, as discussed *supra*, the claimed invention captures additional benefits not provided by these prior processes.

C(2) Examiner Has Overgeneralized Claimed Invention

The Federal Circuit has recognized that an overgeneralization of a claimed invention, as occurred here, can be dangerous because "if carried to its extreme, [it would make] all inventions unpatentable." *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (quoting *Diamond v. Diehr*, 450 U.S. 175, 189 n.12 (1981)). Referring to *Alice*, "describing the claims at such a high level of abstraction and untethered from the language of the claims all but

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1026 of 1793

ensures that the exceptions to § 101 swallow the rule." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1337 (Fed. Cir. 2016) (internal citations omitted). Therefore, the Step one analysis must "articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful." *Thales Visionix Inc. v. United States*, 850 F.3d 1343, 1347 (Fed. Cir. 2017).

In this instance, the Examiner's assertion that the claimed invention is directed to "agreements between web pages to promote one another" is an overgeneralization of the claimed invention. As already discussed *supra*, the prior art already describes the technological feature of reciprocal links. By encompassing the prior art with the Examiner's characterization of the claimed invention, the Examiner's characterization does not recognize the technical inventive features of the claimed invention. A proper analysis under 35 U.S.C. § 101 requires that the claimed invention "must be considered as a whole." *Diamond v. Diehr*, 450 U. S. 175, 188 (1981); *see Parker v. Flook*, 437 U. S. 584, 594 (1978) ("Our approach ... is ... not at all inconsistent with the view that a patent claim must be considered as a whole"). This approach, however, has not been followed by the Examiner.

C(3) Claims Not Directed to *Result* of "reciprocal arrangements between web pages"

The Federal Circuit has described, as "one helpful way of double-checking the application of the Supreme Court's framework to particular claims," an approach that considers "an important common-sense distinction ... between desired results (functions) and particular ways of achieving (performing) them." *Electric Power Group, LLC v. Alstom, SA*, 830 F.3d 1350 (Fed. Cir. 2016) (a claim that is "so result-focused, so functional, as to effectively cover

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1027 of 1793

any solution to an identified problem" is likely to be patent ineligible). A claim that is merely directed to a result "would 'inhibit[] innovation by prohibiting other inventors from developing their own solutions to the problem without first licensing the abstract idea.'" *Id.* (citing district court). On the other hand, "patenting a particular solution 'would incentivize further innovation in the form of alternative methods for achieving the same result.'" *Id.*

The end result of claim 22 is a pair of web pages that include reciprocal links. However, Appellant does not merely claim this desired result because this result is part of the prior art. Rather, Appellant claims a different and specific set of operations that achieves the improved result of providing a pair of web pages that do not have the specific drawbacks found in the prior art: (1) reducing the number of required participating entities; (2) eliminating the need for reciprocal link enforcement; and (3) improving the ability to police undesirable links.

(D) Facts of Present Application are Comparable to DDR Holdings

In *DDR Holdings*, this court recognized that the use of links between web pages "introduces a problem that does not arise in the 'brick and mortar' context." *DDR Holdings, LLC, v. Hotels.com, L.P.*, 773 F.3d 1245, 1258 (Fed. Cir. 2014). While the present application addresses different problems than the problem addressed in *DDR Holdings*, the problem of web page and reciprocal link creation that is addressed by the claimed invention is also one that does not occur in a brick and mortar context.

As discussed above, the claimed invention improves upon the process of generating associated web pages, which specifically involves serving of a web page having a link to another

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1028 of 1793

web page – an invention that is necessarily rooted in computer technology. *See DDR Holdings* at 1249 ("Representative claim 13 of the '572 recites ... a computer processor ... programmed, upon receiving an indication that the link has been activated ... to serve a composite web page ... with content based on the commerce object associated wit[h] the link."). When there is an improvement, the case law asks whether the improvement is directed towards a technological process or is it directed to the abstract idea. *See, e.g., Enfish*, 822 F.3d at 1335-35 (holding that improvements to technology or computer functionality do not always need to undergo the full eligibility analysis). Here, the claimed invention does not simply improve upon an abstract idea. Rather, the claimed invention provides a novel improvement to a conventional computer process – the process of generating a pair of web pages that include reciprocal links. Therefore, the claims of the present application are patent eligible.

E Examiner Has Not Shown How Claimed Invention *Preempts* Alleged Abstract Idea of "reciprocal arrangements between web pages"

In *Alice*, the Supreme Court explained that "the concern that drives [the Section 101] exclusionary principle [is] one of preemption." 134 S.Ct. at 2354 (2013) (citing *Bilski v. Kappos*, 130 S. Ct. 3218 (2010)). Since then, the Federal Circuit has confirmed the importance of considering the preemptive impact of a claim while stating that "[p]reemption is ... part and parcel with the § 101 inquiry." *Return Mail, Inc. v. United States Postal Serv.*, 868 F.3d 1350, 1370 (Fed. Cir. 2017).

The concern over preemption "arises when the claims are not directed to a specific invention and instead improperly monopolize 'the basic tools of scientific and technological

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1029 of 1793

work.'" *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016). Thus, lack of preemption is a factor to be considered during a patent eligibility analysis. *See Id.* at 1315-16 (Fed. Cir. 2016); *BASCOM*, 827 F.3d at 1352 ("[T]he claims of the ... patent do not preempt the use of the abstract idea of filtering content on the Internet or on generic computer components performing conventional activities.").

The absence of *complete* preemption does not necessarily demonstrate patent eligibility, *See FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, __ (Fed. Cir. 2017). For example, lack of complete preemption can be shown by the addition of an insignificant admission. However, lack of *broad* preemption is shown by a "specific, discrete implementation," which is sufficient to establish that an abstract idea has not been preempted. *See BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1351 (Fed. Cir. 2016) ("[n]or do the claims preempt all ways of filtering content on the Internet; rather, they recite a specific, discrete implementation of the abstract idea of filtering content").

Additionally, the Federal Circuit has recognized that a claim that merely limits the abstract idea to conventional components (e.g., a generic computer or the internet) may still be patent ineligible. *See BASCOM*, 827 F.3d at 1352. Hence, the Federal Circuit has held, for example, that the "specific structure of the claimed rules would prevent broad preemption of all rules-based means of automating lip synchronization." *McRo,* 837 F.3d at 1315; *see also Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016) ("[claimed] arrangement is not so broadly described to cause preemption concerns ... it is narrowly circumscribed to the particular system outlined").

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1030 of 1793

Claim 22 does not even remotely come close to broadly preempting the alleged abstract idea of *reciprocal links between web pages*. Reciprocal links between web pages already existed prior to the claimed invention. Moreover, Horstmann discloses a mechanism by which to create reciprocal links between web pages, and claim 22 does not broadly preempt that mechanism. Consequently, claim 22 does not broadly preempt the Examiner's alleged abstract idea.

Alice Step Two

The Court need only reach *Alice* Step Two if it determines that Claim 1 is directed to an abstract idea. *McRo,* 837 F.3d at 1312. *Alice* Step Two has been described as "the search for an 'inventive concept,' or some element or combination of elements sufficient to ensure that the claim in practice amounts to 'significantly more' than a patent on an ineligible concept." *DDR Holdings*, 773 F.3d at 1255 (citing *Alice Corp.*, 134 S.Ct. at 2355). The inventive concept includes those "additional features," beyond the abstract idea, that assure "that the [claim] is more than a drafting effort designed to monopolize the [abstract idea]." *Mayo Collaborative Servs. v Prometheus Labs., Inc.*, 132 S.Ct. 1298, 1297 (2012). Therefore, this step involves "consider[ing] the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent eligible application." *Alice*, 134 S.Ct. at 2355 (quoting *Mayo*, 132 S.Ct. at 1289). Step Two of the *Alice* test is satisfied when the additional elements "involve more than performance of 'well-understood, routine, [and] conventional activities previously known to the industry.'" *Content Extraction*, 776 F.3d at 1347-48 (quoting *Alice*, 134 S.Ct. at 2359).

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1031 of 1793

In *Berkheimer*, this court held that "whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact." 881 F.3d at 1368. Referring to the Examiner's analysis on page 3 of the appealed Fourth Office Action, the Examiner only mentions individual elements (e.g., "computer hardware system," "first and second web page," "web implementation server system," "database"). However, nearly all inventions are combination of known elements. *DDR Holdings*, 773 F.3d at 1258 n.5. Thus, the Examiner noting that the claims recite conventional components does not establish that the ordered combination of elements cannot be substantially more than the alleged abstract idea. *See e.g., BASCOM*, 827 F.3d at 1349-50 ("an inventive concept can be found in the nonconventional and non-generic arrangement of known, conventional pieces.") The Examiner presents no evidence that the claimed combination of elements were not routine, conventional, and well-understood. Rather, in the first full paragraph on page 4 of the Fourth Office Action, the Examiner presents the conclusory assertion that "[t]here is no indication that the combination of elements improves the functioning of a computer or improves any other technology."

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buySafe, Inc. v. Google, Inc.

The Examiner's reliance upon *buySafe, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014), is misplaced. As stated by the Federal Circuit:

> The claims in this case do not push or even test the boundaries of the Supreme Court precedents under section 101. The claims are squarely about creating a contractual relationship—a "transaction performance guaranty"—that is beyond question of ancient

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1032 of 1793

> lineage. *See* Willis D. Morgan, *The History and Economics of Suretyship*, 12 Cornell L.Q. 153 (1927). Id. at 1354-55.

The Federal Circuit also characterized this as a "long-familiar commercial transaction[]." Id. at 1355. As reproduced above, the Federal Circuit also presented evidence of the "ancient lineage" of the alleged "contractual relationship." Claim 1 of U.S. Patent No. 7,644,019 (hereinafter the '019 Patent), recites the following limitations:

> A method, comprising:
> receiving, by at least one computer application program running on a computer of a safe transaction service provider, a request from a first party for obtaining a transaction performance guaranty service with respect to an online commercial transaction following closing of the online commercial transaction;
> processing, by at least one computer application program running on the safe transaction service provider computer, the request by underwriting the first party in order to provide the transaction performance guaranty service to the first party, wherein
> the computer of the safe transaction service provider offers, via a computer network, the transaction performance guaranty service that binds a transaction performance guaranty to the online commercial transaction involving the first party to guarantee the performance of the first party following closing of the online commercial transaction. (emphasis added)

As recognized by the Federal Circuit, "[t]he computer functionality is generic — indeed, quite limited: a computer receives a request for a guarantee and transmits an offer of guarantee in return." *Id.* at 1355.

The Examiner's analysis regarding *buySafe* is to assert "the 'establishment of a reciprocal agreement between a first web page and a second web page...' is comparable to a contractual agreement as in BuySAFE" (page 4 of the Third Office Action) and "claim language simply transfers the issue of guaranteeing performance for a contract into a computing environment – a long standing problem in the pre internet area" (page 12 of the Third Office Action). These assertions both misrepresent the salient facts of *buySafe* and fail to reasonably tie the facts of the present application to the facts of *buySafe*.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1033 of 1793

As discussed above, the Federal Circuit presented evidence of the "ancient lineage" of a "transaction performance guaranty." However, no such evidence has been presented by the Examiner regarding the present claims. Moreover, even *assuming arguendo* that the claimed invention was directed to generating reciprocal links without anything more, this is an operation necessarily rooted in technology and not *some fundamental economic practice long prevalent in our system of commerce*.

underwriting a transaction performance guaranty service

The claim at issue in *buySafe* merely recited "receiving ... a request from a first party for obtaining a transaction performance guaranty service" and "processing ... the request by underwriting the first party." In short, the only operations being claimed are receiving a request, over a computer, for a transaction performance guaranty (again, a business method of ancient lineage) and underwriting the first party with a transaction performance guaranty.

Reference is made to column 4, lines 7-24 of the '019 Patent, which contains a description as to what constitute a "transaction performance guaranty":

> The transaction performance guaranty may be provided in a variety of different forms. FIG. 2 illustrates different exemplary forms in which a transaction performance guaranty 210 may be provided, according to an embodiment of the inventions. It may be offered in the form of a surety bond 220, a specialized bank guaranty 230, . . . , a specialized insurance policy 240, or in a form of a safe transaction guaranty 250. The safe transaction service provider 130 may provide various forms of a performance guaranty. It may also provide other forms of guaranty based on its agreement with other institutions. The safe transaction service provider 130 may provide its own guaranty in the form of, for instance, the surety bond 220 and the safe transaction guaranty 250. The safe transaction service provider 130 may also provide a performance guaranty in forms supported by other institutions such as the specialized bank guaranty 230 supported by a

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1034 of 1793

> bank or the specialized insurance policy 240 (or surety bond) supported by an insurance company. (emphasis added)

A surety bond 220,[5] specialized bank guaranty 230[6] or specialized insurance policy 240 are essentially different ways of describing a contractual arrangement in which one party (i.e., the surety, or bank, or insurer) will pay another party based upon the occurrence of some insured-against event. The claims of the '019 Patent recite "processing ... the request by underwriting the first party in order to provide the transaction performance guaranty service to the first party." To "underwrite" is to "[s]ign and accept liability under (an insurance policy), thus guaranteeing payment in case loss or damage occurs."[7] In essence, it describes the acts of a company (e.g., an insurance company) in underwriting an insurance contract whereby the "first party" is paid by the underwriting company upon the failure of an online transaction (i.e., the occurrence of the insured-against event). Therefore, the claim at issue in *buySafe* can be simplified as such:

> 1) receive a request from a first party for performance insurance (i.e., a transaction performance guaranty) for an online transaction, and
> 2) underwrite the performance insurance.

Accordingly, the claims of *buySafe* involve little more than performing "long-familiar commercial transaction[]" *over the internet* and *regarding an internet transaction*.

In comparison, the claims of the present application are directed to a set of operations that describe the creation and serving of web pages including reciprocal links. By way of example, there is a huge difference between creating a contractual relationship (i.e., by underwriting an

[5] See https://en.wikipedia.org/wiki/Surety_bond.
[6] See https://www.investopedia.com/terms/b/bankguarantee.asp ("A performance bond serves as collateral for the buyer's costs incurred if services or goods are not provided as agreed in the contract.").
[7] See https://en.oxforddictionaries.com/definition/underwrite.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1035 of 1793

insurance policy) tied to the performance of "building a new school" versus the actual operations involved in "building a new school." The same scope of difference also exists between the facts of the present application and the salient facts of *buySafe*. The claimed invention does not purport to underwrite an insurance contract to be paid out upon the failure of reciprocal hyperlinks to be generated. Rather the claimed invention involves set of operations involved in performing technology-based operations that directly result in the creation of reciprocal hyperlinks.

The Examiner's assertion that "the 'establishment of a reciprocal agreement between a first web page and a second web page...' is comparable to a contractual agreement as in BuySAFE" misrepresents how the Federal Circuit's used the concept of "contractual relationship" in the decision. The Federal Circuit cited *Bilski* as referring to "an abstract idea in certain arrangements involving contractual relations, which are intangible entities." *Id.* 1353. The Federal Circuit also referred to a specific contractual relationship and found that this was "beyond question of ancient lineage." *Id.* at 1355. As already argued above, the Examiner has not presented any evidence of the "ancient lineage" of the alleged "contractual relationship." Also, the language of the Court is "certain arrangements involving contractual relations," which implies that there is a difference in arrangements such that some involve contractual relations and others do not. In this instance, the claims of the present application do not purport to create a contractual relationship.

The Examiner's other assertion that the "claim language simply transfers the issue of guaranteeing performance for a contract into a computing environment – a long standing

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1036 of 1793

problem in the pre internet area" also fails to reflect that the claim of *buySafe* does not purport to "guaranty" the performance of anything. Instead, *buySafe* creates the contractual "guaranty" (i.e., an insurance policy) that will be paid out if the online transaction is not performed. As discussed above, the claims of the present application are directed to specific operations that describe the creation and serving of web pages including reciprocal links, which does not involve creating anything comparable to the performance guaranty service of *buySafe*. Accordingly, the Examiner has not reasonably tied the facts of present application to *buySafe*.

Return Mail, Inc. v. U.S. Postal Service

The Examiner's reliance upon *Return Mail, Inc. v. U.S. Postal Service*, 868 F.3d 1350 (Fed. Cir. 2017), is also misplaced. The Federal Circuit agreed with the Board that the claims "are directed to the abstract idea of 'relaying mailing address data.'" *Id.* at 1368. The Federal Circuit further noted the following:

> Encoding and decoding mail recipient information — including whether the sender wants a corrected address — are processes that can, and have been, performed in the human mind. The claims here simply recite that existing business practice with the benefit of generic computing technology. That is insufficient to make the claims any less abstract under step 1. Id. (emphasis added).

Accordingly, the key facts present in this case is that the claims were directed to an a *pre-existing business practice* that can and has been *performed in the human mind*.[8]

[8] In fact, U.S. Patent No. 6,826,548, which was the patent at issue in *Return Mail*, recognized that the invention was directed to an improvement to a manual process (e.g., "an improved method of processing returned mail is now provided that addresses the shortcomings of historical manual updating methods').

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1037 of 1793

As discussed above, the claimed invention is directed to the creation and serving of web pages, which is inherently a technical operation that requires a specialized computer system that can both create and serve web pages. The claimed invention also includes a mechanism by which reciprocal links (i.e., hyperlinks) are created in web pages. Notably, this is neither some practice known from the pre-Internet world nor something that can be accomplished in the human mind. Rather, this is a technical operation that is necessarily performed by a specialized computer system.

The Examiner's sole analysis regarding *Return Mail* was to assert "relaying address data (i.e. website information), which was found to be abstract idea by a controlling court in Return Mail" and "including links between the pages (i.e. web addresses) is comparable to relaying address data as in Return Mail." First, links between pages (i.e., hyperlinks) are not comparable to the address data of *Return Mail*. Claim 42, which the Federal Circuit used as a representative claim, recites "receiving from a sender a plurality of mail items, each including i) a written addressee, and ii) *encoded data indicating whether the sender wants a corrected address to be provided for the addressee*." *Id.* at 1367 (italics in original). Accordingly, what the Federal Circuit deemed to be the "address data" is the physical mailing address of an addressee (i.e., the physical address to which physical mail item is sent). A link is not a physical mailing address of an addressee, and consequently, the Examiner's finding of "similar[ity]" is not grounded on the facts.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1038 of 1793

For the reasons discussed above, the Examiner has not reasonably tied the facts of present application to *Return Mail*. Accordingly, the Examiner has improperly gone beyond those concepts that are similar to what the Courts identified as the abstract idea within *Return Mail*.

On page 15 of the Fourth Office Action, the Examiner responded by asserting the following:

> Examiner cited tot [sic] this case for purposes of relaying address data that the addresses in question are not identical is not required. Web links *inherently* are tied to an address, which in the pending claims, is relayed between the two users in order to create the updated page.

By the Examiner's logic all inventions that involves web pages or links are rendered abstract based upon *Return Mail* because all web pages or links involves addresses. Clearly, this is not accurate since the invention within *DDR Holdings* also involved links. A difference between the addresses of *Return Mail* and the links of the present application and *DDR Holdings*, is that addresses are <u>not</u> inherently tied to technology while links are inherently tied to technology. The Examiner, on page 14, asserts that "the operation is not itself necessarily rooted in technology," but the Examiner presents no explanation to support this assertion.

<u>Claim 23</u>

The Examiner's only analysis regarding dependent claims 23-24, 33-34, and 45-46 is to assert the following on page 4 of the appealed Fourth Office Action:

> Dependent claim(s) 23, 24, 33, 34, 45, 46 /are not directed to any additional abstract ideas, however, they do recite non-abstract elements including the database(s) previously discussed in the independent claims. However, the databases are only functioning to store and retrieve information, and as such they

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1039 of 1793

are not directed to significantly more.

The Examiner's analysis ignores both USPTO Guidelines and Federal Circuit case law. Reference is made to M.P.E.P. § 2106.05(II), which states the following with regard to dependent claims:

> Examiners should examine each claim for eligibility separately, based on the particular elements recited therein. Claims should not be judged to automatically stand or fall with similar claims in an application. For instance, one claim may be ineligible because it is directed to a judicial exception without amounting to significantly more, but another claim dependent on the first may be eligible because it recites additional elements that do amount to significantly more. (emphasis added)

The case law is clear that each claim stands or falls alone, and dependent claims can add additional elements that recite substantially more than the alleged abstract idea. While the Examiner's analysis incompletely identifies certain additional elements (e.g., the claimed database), the Examiner's analysis does not adequately explain why these additional elements recited in the dependent claims do not add significantly more to the alleged exception.

The Examiner asserts "the databases are only functioning to store and retrieve information, and as such they are not directed to significantly more." There are at least two problems with this abbreviated analysis. First, as already discussed above, the Examiner only looks at the database limitations and not the other limitations being recited in the claims. Second, merely alleging that certain elements perform conventional functions (i.e., "function[] to storage and retrieve information") is not dispositive as the Federal Circuit has found "an inventive concept can be found in the nonconventional and non-generic arrangement of known, conventional pieces." *See BASCOM*, 827 F.3d at 1350. *Alice* Step Two involves "consider[ing] the elements of each claim both individually and 'as an ordered combination' to determine

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1040 of 1793

whether the additional elements 'transform the nature of the claim' into a patent eligible application." *Alice*, 134 S.Ct. at 2355 (quoting *Mayo*, 132 S.Ct. at 1289). However, the Examiner only looks at a single limitation, in isolation, and not all of the claimed limitations as part of an ordered combination, as required.

Consequently, the Examiner's rejection of dependent claims does not meet the requirements described within the M.P.E.P. and, therefore, the Examiner has not set forth a *prima facie* case of patent ineligible subject matter with regard to the dependent claim 23.

Claim 24

Appellant incorporates herein the arguments previously advanced with regard to claim 23 since the Examiner relied upon the same analysis as to both dependent claims 23 and 24. Dependent claim 24 recites a set of operations involving the dynamic generating and serving of a the first web page in response to a request from a third user. These elements go to how the first web page is generated and served to a requesting third user. These elements are substantially more than the Examiner's alleged abstract idea of "reciprocal agreements between web pages."

Claim 32

Independent claims 32 and 44, while similar to independent claim 22, recite additional limitations that are substantially more than the alleged abstract idea of "reciprocal agreements between web pages." The Examiner's analysis (see pages 3 and 4 of the Fourth Office Action)

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1041 of 1793

neither specifically identifies these additional limitations nor explains why these limitations are not substantially more than the allege abstract idea.

THE REJECTION OF CLAIMS 22-26, 28-36, AND 38-46 UNDER 35 U.S.C. § 102 FOR ANTICIPATION BASED UPON HORSTMANN

For convenience of the Honorable Board in addressing the rejections, claims 23-26, 28-36, and 38-46 stand or fall together with independent claim 22.

Summary of Arguments

Claim 22 recites "establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement." Additionally, claim 22 recites a second link to the first web page and a first link to the second web page (i.e., reciprocal links) are respectively included in the second and first web pages based upon the reciprocal arrangement. Therefore, the links are not added until after the reciprocal arrangement has been established. Moreover, the reciprocal arrangement between the first and second web pages is based upon both users opting to participate in the reciprocal arrangement. However, with reference to column 3, lines 20-26, Horstmann teaches:

> Software on the links server (step 4) automatically modifies page A to include a link 6 (the fourth link information) from page A to page D as requested by the bike-shop owner. The new page A, including the link to page D, is then redisplayed to the bike-shop owner. Thus, page A is modified and redisplayed without any intervention from the bookstore owner. (emphasis added)

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1042 of 1793

Referring to the underlined portion of the above-reproduced passage, Horstmann describes that a link is automatically created without one user (i.e., the bookstore owner) intervening within the process. Accordingly, the bookstore owner has not opted into this particular reciprocal arrangement at the time that the links were included in the first and second web pages. Moreover, once the link has been added (without intervention), at no time does Horstmann require the bookstore owner to perform any action to keep the link. Accordingly, at no time does Horstmann inherently (i.e., necessarily) or explicitly teach that both of the users opt to participate in the reciprocal arrangement since one of the users (e.g., the bookstore owner) never need do anything to keep the link.

Claim 22

The methodology described by Horstmann is quite different from the claimed invention. While it purports to be "[a] method [that] establishes links between pages on the Internet" (see Abstract), it does so in a manner different than that claimed. As described within the Abstract of Horstmann:

> To ensure reciprocity, the method also includes prompting the owner of the second site for a link back to a page of the first site and later checking the second site for the link back.

Referring to page 6 of the appealed Fourth Office Action, the Examiner cites column 2, line 55 through column 3, lines 15-41. For ease of reference, column 3, lines 27-42 of Horstmann is reproduced below:

> After a period of time (typically a few days), verification software, typically located on the links server, verifies (step 5) that the bike-shop owner reciprocated by providing a link back 5 to page C as requested on form 4. Because the bike-shop owner indicated on form 4 that the back link would be provided on page B, the verification software searches page B for link back 5 (the third link information) to page C. If link back 5 does not exist, then the verification software removes link 6 (fourth link

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1043 of 1793

> information) from the bookstore's page A to the bike shop's page D. Alternatively, the software may issue a reminder to the bike shop (via e-mail, for example) to add link back 5 to the bookstore. Once link back 5 (third link information) is verified to exist on the bike shop's page B, the method terminates. In this way, the inventive method provides for the creation of reciprocal page links. (emphasis added)

As discussed above, verification software is used to search page B for a link back 5 to page C. If the link back 5 does not exist, the verification software issues a "reminder to the bike shop … to add link back 5 to the bookstore." A similar methodology is also disclosed in column 4, lines 15-24 of Horstmann with reference to Figure 3.

The claimed invention, as recited in claim 22, includes "establishing a reciprocal arrangement between the first web page and the second web page based upon both the first and second users opting to participate in the reciprocal arrangement." The claims subsequently recite that the reciprocal links are included in the respective first and second web pages *based upon the reciprocal arrangement*. However, this is not what is disclosed by Horstmann.

Reference is made to Figures 2 and 3 and column 2, line 55 through column 3, line 26, the process described by Horstmann is essentially as follows:

1) the bike shop owner clicks on "add link" link on the bookstore's page (Step 1 in Figure 2; Step 30 in Figure 3);
2) the bike shop owner is presented with a form that solicits link information from the bike shop owner (Step 3 in Figure 2; Step 31 in Figure 3);
3) using the information from the bike shop owner, a link from bookstore's page to a page associated with the bike shop owner is automatically created without input from the bike shop owner (Step 4 in Figure 2; Step 34 in Figure 3); and
4) the verification process already described above is performed (Step 5 in Figure 2; Steps 36-40 in Figure 3).

The creation of the link from the bookstore's page to the bike shop's page is not based upon a reciprocal arrangement since the page of the bike shop owner is not required to do include

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1044 of 1793

anything (i.e., "page A is modified and redisplayed without any intervention from the bookstore owner"). This is why Horstmann requires the use of a verification process to determine whether the bike shop page includes a link back to the bookstore's page.

Additionally, the user associated with the bookstore's page does not opt to participate in the reciprocal arrangement, as claimed. Rather, the user associated with the bookstore's page opts into a scheme (i.e., Horstmann's system) that allows anybody to place a link on the bookstore's page so long as the form associated with the "add link" link has been completed. As claimed, the reciprocal arrangement is between the first web page and the second web page. However, when the user associated with the bookstore opts into Horstmann's system, the identity of the other web page is unknown. Accordingly, the user associated with the bookstore's page cannot opt into "a reciprocal arrangement between the first web page and the second web page," since the identity of other web page is unknown at the time of the opting in.

Referring to page 7 of the appealed Fourth Office Action, the Examiner asserted "bookstore website now shows the link to the bike store website, based on the bike shop's request and the agreement between the two." However, this statement is not accurate. As discussed above, the bookstore's website shows the link based upon the bike shop's request. However, the bookstore's owner has not opted to participate in this particular reciprocal arrangement. Instead, the link is automatically generated *with no intervention from the owner of the bookstore*. Moreover, the bike shop owner has not necessarily opted into the reciprocal arrangement since a link from the bike store page to the bookstore page does not necessarily exist. For this reason, Horstmann discloses the need for a verification process.

TikTok Inc. EX1002
TikTok Inc. v. Distefano Website Innovations, LLC
IPR2025-01061
Page 1045 of 1793