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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/015,262	07/27/2023	8719101	P60678RE	9031
160962	7590	10/28/2025		
Stonebridge IP, PLLC 10432 Balls Ford Rd Suite 300 Manassas, VA 20109			EXAMINER CAMPBELL, JOSHUA D	
			ART UNIT	PAPER NUMBER
			3992	
			MAIL DATE	DELIVERY MODE
			10/28/2025	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ADNEXUS INC.
Patent Owner and Appellant

Appeal 2025-002849
Reexamination Control 90/015,262
Patent 8,719,101 B1
Technology Center 3900

Before JOHN A. JEFFERY, ERIC B. CHEN, and CYNTHIA L. MURPHY,
Administrative Patent Judges.

MURPHY, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellant¹ appeals from the Examiner's rejection of claims 1 and 4 in the above-identified reexamination of US Patent No. 8,719,101 B1 ("Patent"). We REVERSE.²

¹ Appellant identifies the real party in interest as Adnexus Inc. Appeal Br. 2.

² We have statutory authority to review these rejections per 35 U.S.C. §§ 6, 134(b), and 306. An oral hearing was held on October 20, 2025.

THE APPELLANT'S INVENTION

The Appellant discloses a method involving an advertisement (e.g., a banner ad) that is delivered to a computing device of a recipient, an interactive element (e.g., a clickable logo) that is displayed within the advertisement, an indication that the recipient has activated (e.g., clicked) the interactive element, and an identifier-present determination (e.g., a check of whether or not a cookie is present on the recipient's computing device). *See* Patent c3:30–31, c3:64–65, c4:4–5, c4:25–26, c4:53–56, c7:49–53, Fig. 24.

The identifier-present determination (e.g., the cookie check) is performed in response to the indication that the recipient has activated the interactive element (e.g., clicked the logo) displayed within the advertisement. *See* Patent c3:64–66. Thus, in the Appellant's method, the cookie-check is done not only in response to the activation of an interactive element, but more specifically in response to the activation of an interactive element **displayed within the advertisement**.

INDEPENDENT CLAIM ON APPEAL

Claim 1. A method of online advertising, comprising:
providing an advertisement associated with a first party for display in a network communication delivered to a computing device of a recipient during a browsing session, wherein the advertisement contains an interactive element displayed within the advertisement, and wherein the network communication is associated with a second party different than the first party;
receiving an indication that the recipient activated the interactive element displayed within the advertisement;
determining, in response to the receiving the indication, whether an identifier containing unique identifying information about the recipient is present on the computing device;

if the identifier containing unique identifying information about the recipient is not present on the computing device:
causing a text field to be displayed in at least a portion of the advertisement;
receiving contact information inputted into the text field by the recipient;
generating a user profile associated with the recipient based on the contact information; and
causing an identifier associated with the user profile to be stored on the computing device of the recipient; and
if the identifier containing unique identifying information about the recipient is present on the computing device:
retrieving a user profile associated with the recipient from a visitor information database using at least a portion of the identifier, wherein the user profile comprises at least delivery method preferences and demographic information;
retrieving additional information associated with the advertisement based on at least a portion of the user profile associated with the recipient;
delivering the additional information to the recipient based on the delivery method preferences, the delivering being performed without interrupting the browsing session of the recipient; and
recording the activation by the recipient of the interactive element as recipient tracking data in an analytics server, the recipient tracking data being associated with the unique identifying information about the recipient.

REJECTION

The Examiner rejects claims 1 and 4 under 35 U.S.C. § 103 as unpatentable over Meyer³ and Teague.⁴ Final Act. 2.

³ WO 99/46708, published September 16, 1999.

⁴ US 2006/0212355 A1, published September 21, 2006.

ANALYSIS

Independent claim 1 sets forth a method involving “an advertisement” that is “delivered to a computing device of a recipient,” “an interactive element” that is “displayed within the advertisement,” and “an indication” that the recipient has “activated the interactive element displayed within the advertisement.” Appeal Br., Claims App. The Examiner finds that Meyer discloses a method involving these aspects of the claimed method. *See* Final Act. 5–6.

The Examiner’s rejection is premised upon Meyer’s Figure 21 (below) showing an “advertisement [that] contains an interactive element displayed within the advertisement.” Final Act. 5; *see also* Ans. 6–7.

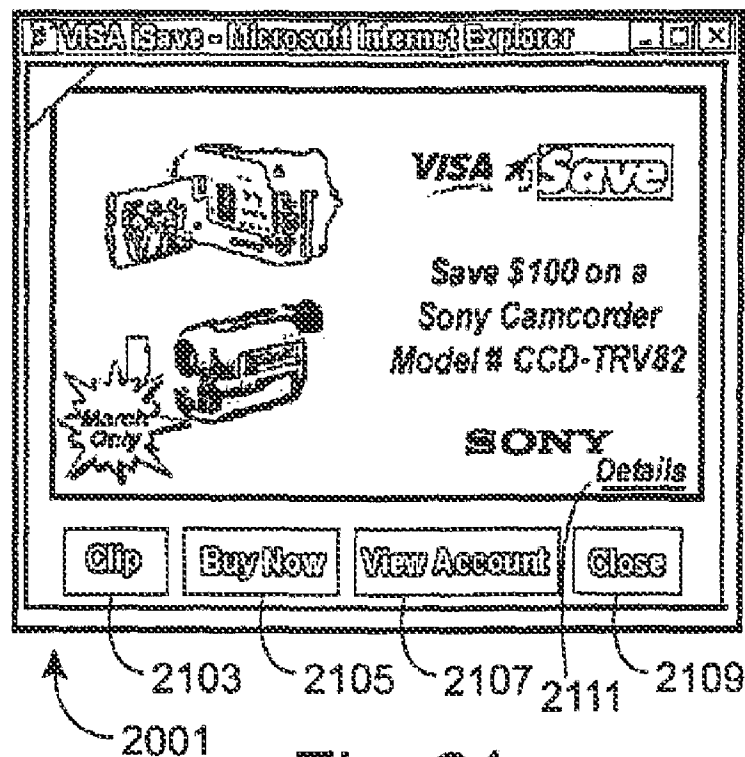


Fig. 21

The above drawing (Figure 21) depicts an “incentive display” including a “Details hyperlink 2111.” Meyer p52:19–23. As correctly noted by the Examiner, when a user clicks on hyperlink 2111, more information about the advertised product is delivered to the recipient. *See* Ans. 7; *see also* Meyer p52:19–23. And we agree with the Examiner that there would be an “indication” that a user has clicked on an interactive element in Meyer’s method. *See* Final Act. 6.

Independent claim 1 sets forth an identifier-present determination (i.e., a determination of “whether an identifier containing unique identifying information about the recipient is present on the computing device”). Appeal Br., Claims App. The Examiner finds that Meyer discloses “information about the consumer” may be required in order to display the incentive (e.g., the incentive shown in Figure 21), and that Meyer discloses “checking if the consumer is a member by looking for the presence of a cookie on a consumer computer.” Final Act. 6. In other words, Meyer “check[s] whether a cookie is present on the user’s computer, and information from the cookie can then be used to tailor the production and display of the incentive” (e.g., the incentive shown in Figure 21). Appeal Br. 7.

Independent claim 1 requires the identifier-present determination to be performed “in response to . . . receiving the indication” that “the recipient activated the interactive element displayed within the advertisement.” Appeal Br., Claims App. Thus, claim 1 requires the identifier-present determining step to be performed not only in response to the activation of an interactive element, but more specifically “in response to” the activation of “the interactive element displayed within the advertisement.” *Id.*

As discussed above, there would be an “indication” when the user clicks on the hyperlink 2111 in Figure 21 (i.e., the interactive element displayed within the advertisement). But the Examiner’s rejection is not premised upon Meyer’s cookie check being performed in response to the clicking of hyperlink 2111.

Rather, the Examiner’s rejection is premised upon Meyer’s cookie check being triggered by the clicking of what Meyer calls an “incentive icon.” Final Act. 6. As correctly contended by the Examiner (*see id.*) and acknowledged by the Appellant (*see Appeal Br. 7*), this “incentive icon” is clicked to start the process in which Meyer’s cookie check is performed. But this “incentive icon” is not displayed on what the Examiner considers the “advertisement” (i.e., the inventive display shown in Figure 21). *See Meyer* p46:19–p47:24, Figs. 2, 5A. Indeed, as explained by the Appellant, this incentive icon “is necessarily first clicked” so that Meyer “can check whether a cookie is present on the user’s computer, and information from the cookie can then be used to tailor the production and display of the incentive.” *Appeal Br. 7*.⁵

Consequently, we are persuaded by the Appellant’s arguments that the Examiner does not adequately support a finding that Meyer discloses the identifier-present determination that is required by independent claim 1 (i.e., a determination that is performed in response to an indication that the

⁵ When describing the “incentive icon,” Meyer says that “[i]n window 1901, the incentive icon is seen in area 1921.” *Meyer* p37:24. However, an element with this numeric label is not seen in Figure 19. Moreover, this figure “shows one screen 1901 that comes up on [a] promotional author computer 113 when defining an incentive.” *Id.* at p33:9–10.

recipient activated an interactive element **displayed within the advertisement**). *See* Appeal Br. 7–9; Reply Br. 2–9. Thus, we do not sustain the Examiner’s rejection of independent claim 1.

The Examiner’s further findings with respect to dependent claim 4 do not compensate for this shortcoming. *See* Final Act. 10–13. Thus, we also do not sustain the Examiner’s rejection of dependent claim 4.

SUMMARY

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 4	103	Meyer, Teague		1, 4

REQUESTS FOR EXTENSIONS OF TIME

Requests for extensions of time in this *ex parte* reexamination proceeding are governed by 37 C.F.R. § 1.550(c). *See* 37 C.F.R. § 41.50(f).

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