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Paper 12
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KCURA LLC,
Petitioner,

v.

BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES,
Patent Owner.

Case IPR2017-00899
Patent 7,809,717 B1

Before JAMES T. MOORE, KRISTEN L. DROESCH, and MINN CHUNG, *Administrative Patent Judges.*

MOORE, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

kCura LLC ("Petitioner") filed a Petition requesting an *inter partes* review of claims 1–30 of U.S. Patent No. US 7,809,717 B1 (Ex. 1001, "the '717 patent"). Paper 2 ("Pet."). Blackbird Technologies ("Patent Owner") filed a Preliminary Response to the Petition. Paper 10 ("Prelim. Resp.").

Institution of an *inter partes* review is authorized by statute when "the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a); *see also* 37 C.F.R. §§ 42.4, 42.108. Upon considering the Petition and the Preliminary Response, we determine that Petitioner has shown a reasonable likelihood that it would prevail in showing the unpatentability of at least one challenged claim. Accordingly, we institute an *inter partes* review of claims 1–30 of the '717 patent.

A. Related Proceedings

According to Petitioner, the '717 patent has been asserted by Patent Owner against Petitioner in *Blackbird Tech LLC v. kCura LLC*, No. 1-16-cv-00418, filed by Patent Owner in the District of Delaware on June 7, 2016. A consolidated proceeding with other parties is pending as *Blackbird Tech LLC d/b/a Blackbird Tech. v. Advanced Discovery, Inc.*, No. 1-16-cv-00413 (D. Del.). Pet. 2.

B. *The '717 Patent and Relevant Background*

The '717 patent, entitled "Method and Apparatus for Concept-Based Visual Presentation of Search Results," issued to Orland Hoeber, Xue-Dong Yang, and Yiyu Yao from U.S. Application No. 11/526,409 ("the '409 application"), filed September 25, 2006. Ex. 1001, at [21], [60], [71], [72].

The '409 Application claimed priority to Canadian Application 2,549,536, filed June 6, 2006. *Id.* at [30].

The instant invention relates to a method for visually coding search results based upon at least one concept. Ex. 1001, 2:30–31. Figure 9, which we reproduce below, illustrates the concept and indicator.

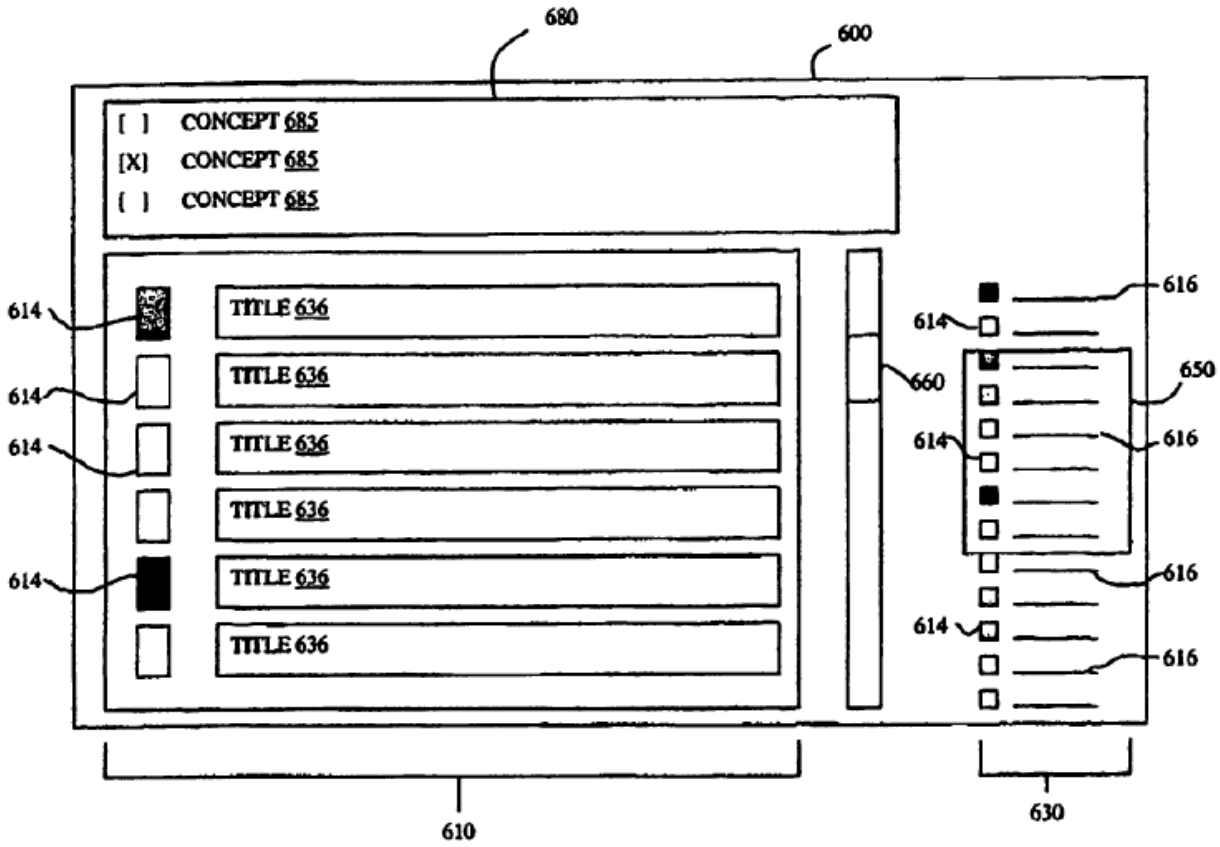

FIG. 9

Figure 9 is a graphical interface displaying a number of returned documents with an accordance indicator.

As phrased by Patent Owner, the inventors of the '717 patent "conceived of a way of layering both keyword and a particular variant of

concept searching, to improve the relevancy determinations made by search engines." Prelim. Resp. 5.

C. Challenged Claims

Claims 1 and 16 are illustrative of the claimed invention, and read as follows:

> 1. A computer implemented method of displaying search results, the computer comprising at least one processor for executing computer readable instructions stored in a memory, the method comprising:
>
> receiving at the computer a search query containing at least one of search term to conduct a search of a plurality of computer readable documents;
>
> obtaining search results comprising a first document and second document based on the at least one search term of the search query;
>
> determining at least one concept related to the search query by matching the at least one search term to the at least one concept in a concept knowledge base;
>
> evaluating the similarity between the first and second documents and the at least one concept by determining an accordance value indicating a similarity between the first and second documents and the at least one concept by:
>
> determining a first accordance value by evaluating the similarity between the first returned document and the at least one concept;
>
> determining a second accordance value by evaluating the similarity between the second returned document and the at least one concept; and
>
> displaying the first returned document and second returned document sorted in an order based on the first accordance value and the second accordance value.

Ex. 1001, 17:21–48.

16. A data processing system for displaying search results comprising:

at least one processor;

a memory operatively coupled to the at least one processor;

a display device operative to display data; and

a program module stored in the memory and operative for providing instructions to the at least one processor, the at least one processor responsive to the instructions of the program module, the program module operative for:

receiving a search query containing at least one search term to conduct a search of a plurality of computer readable documents;

obtaining search results comprising a first returned document and a second returned document on the at least one search term of the search query;

determining at least one concept related to the search query by matching the at least one search term to the at least one concept in a concept knowledge base;

evaluating the similarity between a returned document and the at least one concept to determine an accordance value by determining a first accordance value by evaluating the similarity between the first returned document and the at least one concept and a second accordance value by evaluating the similarity between the second returned document and the at least one concept; and

displaying the first returned document and second returned document sorted in an order based on the first accordance value and the second accordance value.

Id. at 19:1–28.

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