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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MITCHELL J. FRANCIS

Appeal 2008-5667
Application 10/327,611
Technology Center 3600

Decided:[1] March 25, 2009

Before HUBERT C. LORIN, DAVID B. WALKER, and BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 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).

STATEMENT OF THE CASE

The Appellant seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-15 which are all the pending claims in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF THE DECISION

We REVERSE.

THE INVENTION

The Appellant's claimed invention is directed to a system for facilitating the distribution of unused theater tickets. The system includes a central distribution processor to which theater patrons are provided access for determining the availability of theater tickets and purchasing them at a discounted rate (Spec. 3:1-5). Claim 1, reproduced below, is representative of the subject matter on appeal:

> 1. A system for facilitating the distribution of unused theater tickets, comprising:
>
> a central distribution processor to which theater patrons are provided access for determining the availability of theater tickets and purchasing available theater tickets at a discounted rate;
>
> a plurality of remote ticket offices of distinct theaters linked to the central distribution processor, the remote ticket offices including interface software compatible with the central distribution processor for facilitating the uploading of relevant ticket information to the central distribution processor, wherein the interface software facilitating the uploading of relevant ticket

> information is under the control of the remote ticket offices; and
>
> wherein the interface software further provides a user interface through which the plurality of remote ticket offices selectively enter available theater ticket information which is subsequently uploaded under the control of the remote ticket offices to the central distribution processor for access and purchase by theater patrons.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Stein	US 5,459,306	Oct. 17, 1995

The following rejections are before us for review:

1. Claims 1-2, 5-7, 10-12, and 15 are rejected under 35 U.S.C. § 102(b) as anticipated by Stein
2. Claims 3-4, 8-9, and 13-14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Stein.

THE ISSUE

The issue is whether the Appellant has shown that the Examiner erred in making the aforementioned rejections.

With regards to claims 1-2, 5, 11-12, and 15 this issue turns on whether Stein discloses that "interface software further provides a user interface through which the plurality of remote ticket offices selectively

enter available ticket information which is subsequently uploaded under the control of the remote ticket offices to the central distribution processor."

With regards to claims 3-4 and 13-14 this issue turns on whether it would have been obvious to modify Stein to meet this same claimed limitation that is present in claims 1 and 11.

With regards to claims 6-7 and 10 this issue turns on whether Stein discloses a "user interface permitting the plurality of remote ticket offices to selectively enter available ticket information for uploading to the central distribution processor." With regards to claims 8-9 this issue turns on whether it would have been obvious to modify Stein to meet this same claimed limitation that is present in claim 6.

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence:[2]

FF1. Stein is directed to a system with the real-time production of coupons for delivering on demand promotions and coupons (Col. 1:9-12, Col. 5:59-63).

FF2. Stein is directed to solving problems in the movie rental and sale business (Col. 1:25-29).

FF3. Stein discloses that a host system 13 dials up a point of sale computer 11 once per day and polls the point-of-sale computer for current information and inventory (Col. 5:2-5, Col. 5:20-26, and Col. 8:29-30).

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[2] *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

FF4. Stein references generally that the system can be used in other industries that print tickets or coupons such as sports, concerts halls, and movie theaters (Col. 8:61-65).

FF5. Stein does not disclose that the interface software provides a user interface through which the plurality of remote ticket offices selectively enter available ticket information which is subsequently uploaded under the control of the remote ticket offices to the central distribution processor.

PRINCIPLES OF LAW

Principles of Law Relating to Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987). Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

Principles of Law Relating to Obviousness

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, (1966). *See also KSR*, 127 S. Ct. at 1734 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.") In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," *id.* at 1739.

ANALYSIS

Claims 1-2, 5, 11-12, and 15

The Appellant argues as a group the rejection of claims 1-2, 5, 11-12, and 15 under 35 U.S.C. § 102(b) as anticipated by Stein. We select claim 1 as representative of this group, and the remaining claims stand or fall with claim 1. *See* 37 C.F. R. § 41.37 (c)(1)(vii) (2007).

The Appellant argues that the rejection of claim 1 under 35 U.S.C. § 102(b) as anticipated by Stein is improper because Stein fails to disclose

> *a plurality of remote ticket offices of distinct venues linked to a central distribution processor* wherein the remote ticket offices include interface software compatible with the central distribution processor for facilitating the uploading of relevant ticket information to the central distribution processor under the control of the remote ticket offices…..wherein *interface software provides a user interface through which the plurality of remote ticket offices selectively enter available*

> *ticket information which is subsequently uploaded under the control of the remote ticket offices to the central distribution processor* for access and purchase by patrons.

(Br. 7, emphasis added).

The Appellant argues that the presently claimed invention uploads information to the central distribution processor under the control and guidance of the remote ticket offices via the utilization of the claimed interface software whereas Stein instead discloses a point of sale computer 11 having no control over the information that is provided to the host computer 13. The Appellant argues that the host computer 13 of Stein contacts the point of sale computer to get what it wants and not vice versa (Br. 7). The Appellant further argues that Stein fails to disclose a user interface to which the plurality of ticket offices selectively enter ticket information which is uploaded under the control of the remote ticket offices to the central distribution processor (Br. 7-8). The Appellant argues that Stein makes only a general statement to the distribution of tickets and that the Examiner has used impermissible hindsight in filling in the blanks (Ans. 8).

In contrast the Examiner has determined that Stein does disclose a plurality of remote ticket offices with which the user would interact with (Ans. 6). The Examiner has determined that the point of sale computer 11 would control the information sent and inherently facilitate uploading to the central processor (Ans. 6).

We agree with the Appellant. Claim 1 requires that “interface software further provides a user interface through which the plurality of remote ticket offices selectively enter available theater ticket information

which is subsequently uploaded under the control of the remote ticket offices to the central distribution processor." Stein is directed to a system with the real-time production of coupons for delivering on demand promotions and coupons (FF1). Stein discloses that a host system 13 dials up a point of sale computer 11 once per day and polls the point-of-sale computer for current information and inventory (FF2). As the host system 13 dials up and polls the point of sale computer 11, the point of sale computer does not have control of the uploads to the central distribution processor. Further, Stein does not disclose the use of interface software that provides a user interface through which the plurality of remote ticket offices selectively enter available ticket information which is subsequently uploaded under the control of the remote ticket offices to the central distribution processor (FF5).

The Examiner has also taken the position that the claimed user interface operation is inherent in Stein (Ans. 6-7).

> To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

In re Robertson, 169 F.3d 743, 745 (Fed. Cir. 1999) (citations omitted) (internal quotation marks omitted). Here, Stein is directed primarily to a system of real-time production of coupons for delivering on demand promotions and coupons (FF1). Stein references only generally that the system can be used in other industries that print tickets or coupons such as

sports, concerts halls, and movie theaters (FF4). There is no extrinsic evidence that in any theater ticket system of Stein that the user interface would operate inherently as claimed except through the use of possibilities and conjecture. For these reasons the rejection of claim 1 under 35 U.S.C. § 102(b) as anticipated by Stein is not sustained. The rejection of claims 3-4 and 13-14, which depend from claim 1 or 11, under 35 U.S.C. § 103(a) as unpatentable over Stein is not sustained for the same reasons as claims 1 and 11 above.

Claims 6 and 8-9

The Appellant argues that the rejection of claim 6 under 35 U.S.C. § 102(b) as unpatentable over Stein is improper because Stein in no way discloses installing interface software compatible with the central distribution processor at a plurality of remote ticket offices, uploading the relevant ticket information, and entering the available ticket information at the remote ticket offices via a user interface associated with the interface software (Br. 12-13).

In contrast, the Examiner has determined that Stein discloses all these claimed features inherently (Ans. 6).

We agree with the Appellants. Like claim 1 addressed above, claim 6 includes a similar limitation requiring that a "user interface permitting the plurality of remote ticket offices to selectively enter available ticket information for uploading to the central distribution processor." Stein does not disclose that the use of interface software provides a user interface through which the plurality of remote ticket offices selectively enter available ticket information which is subsequently uploaded to the central distribution processor (FF5). For the same reasons addressed above in

addressing this similar limitation in claim 1, the rejection of claim 6 is not sustained. The rejection of dependent claims 8-9, which depend from claim 6, under 35 U.S.C. § 103(a) as unpatentable over Stein is not sustained for these same reasons.

CONCLUSIONS OF LAW

We conclude that Appellant has shown that the Examiner erred in rejecting claims 1-2, 5-7, 10-12, and 15 under 35 U.S.C. § 102(b) as anticipated by Stein.

We conclude that Appellant has shown to show that the Examiner erred in rejecting claims 3-4, 8-9, and 13-14 under 35 U.S.C. § 103(a) as unpatentable over Stein.

DECISON

The Examiner's rejection of claims 1-15 is reversed.

REVERSED

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