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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/423,658	06/12/2006	Robert C. Iwig	P07244US03 - PHI 1748H	6255
23377	7590	10/23/2013	EXAMINER	
WOODCOCK WASHBURN LLP CIRA CENTRE, 12TH FLOOR 2929 ARCH STREET PHILADELPHIA, PA 19104-2891			GILKEY, CARRIE STRODER	
			ART UNIT	PAPER NUMBER
			3689	
			NOTIFICATION DATE	DELIVERY MODE
			10/23/2013	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):

eofficemonitor@woodcock.com

Art Unit: 3689

DETAILED ACTION

In view of the appeal brief filed on 08 August 2013, PROSECUTION IS HEREBY REOPENED.

A new ground of rejection is 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:

/Janice A. Mooneyham/

Supervisory Patent Examiner, Art Unit 3689

Art Unit: 3689

Claim Status

1. This is in response to the applicant's communication filed on 08 August 2013, wherein: Claims 1, 3-11, 13, 14, 16, 17, 19-52, and 60-71 are currently pending.
2. The present application is being examined under the pre-AIA first to invent provisions.

Information Disclosure Statement

The information disclosure statement (IDS) was submitted on 24 January 2013. Examiner is unable to find US 7263210 by Dyer. US 7263210 appears to have been invented by Kummel. This appears to be an inaccurate number for the patent. Accordingly, this patent is not being considered by the examiner.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if 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. Patentability shall not be negated by the manner in which the invention was made.
2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
 1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.

Art Unit: 3689

3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 1, 3-11, 13, 14, 19, 20, 22-24, 27-37, and 39-52 and 60-71 are rejected under 35 U.S.C. 103(a) as obvious over Dyer et al. (US 6999877).**

Referring to claim 1:

Dyer discloses a method comprising:

characterizing a producer's field using an environmental classification (col. 7, lines 1-35 *The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination of the foregoing data...soil data 550 may be collected and analyzed on a sub-field basis...environmental data may be referenced to a reference site... where the various environmental data, such as soil data, weather data, and climate data, is interpreted as an environmental classification*);

determining, by a processor, a recommended seed product to be planted at the producer's field based on the environmental classification used to characterize the producer's field (col. 5, lines 3-44 and col. 6, lines 55-67 and col. 7, lines 1-35 and col. 18, lines 14-47 *If the user clicks on any location (e.g., the user's field) within the graphical map, the data processor will provide a recommended product (e.g., a particular variety of crop)...[col. 18, lines 29-47]* and where the particular variety of crop is interpreted as the seed to be planted, and where, as described in the

Art Unit: 3689

previous limitation, *The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination...The soil data 550 comprises...temperature regime, moisture/temperature regime... [col. 7, lines 1-35]* and, as stated above, the environmental data is interpreted as the environmental classification of the field, and, *Fig. 3 shows an illustrative method of characterizing an environment for growing plant-life. The method of Fig. 3 states in step S100. In step S100, environmental measurements are obtained[col. 6, lines 55-67]* and, *Genetics by environment is an analysis that links the environmental measurements or an environmental definition with product performance of an agricultural crop[col. 5, lines 3-44]* and in, *“The evaluation of crop performance versus geography may allow the seller (e.g. see supplier) to offer only those agricultural products (e.g., crop products or seeds) that are well-suited for the environment of a particular producer in a particular geographic area[col. 18, lines 14-47]”*;

pricing the recommended seed product for use in the producer's field based on the environmental classification of the producer's field and based on a performance of the recommended seed product within the producer's field (col. 13, line 8 thru col. 14, line 21 and col. 7, lines 1-35 and col. 16, line 32 thru col. 17, line 3 *The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination of the foregoing data...soil data 550 may be collected and analyzed on a sub-field basis...environmental data may be referenced to a reference site...[col. 7, lines 1-35]* where the

Art Unit: 3689

various environmental data, such as soil data, weather data, and climate data, is interpreted as an environmental classification and *Accordingly, developers, seed companies, researchers, and agricultural businesses can evaluate the performance of crops and the potential market for crops...a developer can determine the market potential for each agricultural product by environment...Each agricultural product may be assigned a corresponding sales value for a market that is defined by one or more suitable defined geographic areas (e.g., the total suitable tillable acreage)...[col. 13, lines 8-24] and ...a performance estimator estimates or determines a performance characteristic for the particular crop associated with at least a portion of the defined geographic area...[col. 14, lines 9-12] where, by evaluating the performance of the crops, the price that the market will bear in the area in which the crop performs as evaluated, is determined, and where a geographical area in which the performance is evaluated may be producer's field and The yield of a crop from one or more test sites may be used to provide an estimate of the market size of the crop...The market size may be determined based on the estimated yield for the crop, the geographic extent of the estimated yield, and commodity prices or other applicable prices for the product...For example, the customer-grower may be assigned to a nearest or most representative location node and a product type (e.g. seed, crop, or product identifier) on an annual basis and transactional statistics (e.g. quantity of seed purchased and price) may be kept for each grower...[col. 16, line 32 thru col. 17, line 3] and ...can evaluate the performance of crops and the potential market for crops based on the environmental definitions for defined geographic areas...[col. 13, lines 8-12]); and*

Art Unit: 3689

auditing the use of the recommended seed product at the producer's field (col. 5, lines 45-56
...actual performance (e.g. actual yield) of each agricultural product may be compared against a benchmark or check performance where determining the actual performance of the product is interpreted as auditing the use of the product).

Dyer does not disclose that the audit is performed "to ensure that the pricing of the recommended seed product is proper". However, "to ensure that the pricing of the recommended seed product is proper" is not a positively claimed step and therefore, receives little patentable weight.

Further, it would have been obvious to one of ordinary skill in the art at the time of invention to ensure that the pricing was proper. Dyer discloses that the seeds are priced based on performance of the seeds in a particular area (col. 13, line 8 thru col. 14, line 21 and col. 16, line 32 thru col. 17, line 3). When price is based on performance in a particular area, the sellers might want to ensure that the seeds are being used in that particular area. Otherwise, the price being paid may be the wrong price, which would be unfair to the sellers of the seed. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to ensure that the pricing was proper.

Referring to claim 3:

Dyer discloses wherein the performance is an expected performance of the recommended seed product in the producer's field (col. 14, lines 9-21 *...a performance estimator estimates or determines a performance level of a performance characteristic for the particular crop*

Art Unit: 3689

associated with at least a portion of the defined geographic area... where the defined geographic area is the producer's field).

Referring to claim 4:

Dyer discloses wherein the expected performance is at least partially based on characteristics of the producer's field (col. 18, lines 29-47 *If the user clicks on any location (e.g., the user's field) within the graphical map, the data processor will provide a recommended product... and where the definition of the location of the field, as defined by the user's click, is interpreted as a characteristic the field).*

Referring to claim 5:

Dyer discloses wherein the characteristics of the land base are based at least partially on the environmental classification used to characterize the producer's field (col. 7, lines 1-35 *The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination of the foregoing data...soil data 550 may be collected and analyzed on a sub-field basis).*

Referring to claim 6:

Dyer discloses wherein the step of determining the recommended seed product to be planted at the producer's field is at least partially based on performance of the recommended seed product in the environmental classification (col. 12, lines 7-11 and col. 7, lines 1-35 *Seed companies and*

Art Unit: 3689

other providers may seek to sell or market seeds for agricultural products that perform best in a particular geographic regions or defined areas[col. 12, lines 7-11] and The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination of the foregoing data...[col. 7, lines 1-35]).

Referring to claim 7:

Dyer discloses wherein the performance is an actual performance of the recommended seed product in the producer's field (col. 5, lines 45-56 *...the actual performance (e.g., actual yield) may be compared against a benchmark or check performance...*).

Referring to claim 8:

Dyer discloses recommending at least one other type of seed product for use in the producer's field (col. 5, line 60 thru col. 6, line 16 *The compiled customer names may be associated with corresponding list of available or geographically suitable products, such as certain varieties of crops, seeds, plant stock or the like. A salesperson may call on the customers by using the compiled customer lists and associated products, such as genetically modified seed varieties that are well suited for the customer's geographic location based on performance tests. Further, a marketing representative may send marketing materials to the customers with products that are specifically tailored to the customer's growing needs where "list of available or geographically suitable products" and "varieties of crops" and "products specifically tailored to the customer's growing needs" indicates that more than one seed product is recommended).*

Art Unit: 3689

Referring to claim 9:

Dyer discloses where the recommended seed product is determined at least partially based on genotype-by-environment interactions between the recommended seed product and the producer's field (col. 4, lines 38-54 and col. 5, lines 3-56 *The data analyzer 542 may be used to identify effective crop inputs and effective management techniques for improving the production of agricultural products[col. 4, lines 38-54] and Genetics by environments is an analysis that links the environmental measurements or an environmental definition with product performance of an agricultural crop[col. 5, lines 3-56]*).

Referring to claim 10:

Dyer discloses wherein the genotype-by-environment interactions are determined at least partially based on performance data associated with the recommended seed product (col. 5, lines 3-56 *Genetics by environments is an analysis that links the environmental measurements or an environmental definition with product performance of an agricultural crop* where "product performance" is interpreted as performance data).

Referring to claim 11:

Dyer discloses wherein the genotype-by-environment interactions are determined at least partially based on environmental classifications associated with performance data of the recommended seed product (col. 5, lines 3-56 *Each particular agricultural product may be*

Art Unit: 3689

associated with a corresponding environmental definition where “environmental definition” is interpreted as environmental classification).

Referring to claim 13:

Dyer discloses wherein the step of pricing the recommended seed product for use in the producer’s field based on the performance of the recommended seed product within the producer’s field is performed by a computer in operative communication with a database of performance data associated with the producer’s field (col. 2, lines 53-67 *The crop evaluation system includes one or more input devices 510 that provide input data to a data processor 512...support communications between or among one or more of the following components: the data processor 512...the data storage device 514).*

Referring to claim 14:

Dyer discloses a method comprising:

evaluating a producer’s field, based on an environmental classification associated therewith, to determine a quality of the producer’s field (col. 13, lines 27 thru col. 14, line 21 and col. 7, lines 1-35 *The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination of the foregoing data...soil data 550 may be collected and analyzed on a sub-field basis... environmental data may be referenced to a reference site...[col. 7, lines 1-35]* where the various environmental data, such as

Art Unit: 3689

soil data, weather data, and climate data, is interpreted as an environmental classification and *...weather data and corresponding location data is obtained for a defined geographic area...In one example, the defined geographic area comprises a sub-field unit having an area of approximately equal to or less than 300 square feet...soil data and corresponding location data are obtained for the defined geographic area...soil data comprises a soil type, a soil potential, and nutrient availability[*col. 13, lines 27-44*] where soil type, soil potential, and nutrient availability are all qualities of the producer's field);*

determining, by a processor, compensation for use of at least one recommended seed product at the producer's field at least partially based on the quality of the producer's field and the environmental classification of the producer's field (*col. 13, line 8 thru col. 14, line 21* *Accordingly, developers, seed companies, researchers, and agricultural businesses can evaluate the performance of crops and the potential market for crops...a developer can determine the market potential for each agricultural product by environment...Each agricultural product may be assigned a corresponding sales value for a market that is defined by one or more suitable defined geographic areas (e.g., the total suitable tillable acreage)...[*col. 13, lines 8-24*] and ...a performance estimator estimates or determines a performance characteristic for the particular crop associated with at least a portion of the defined geographic area...[*col. 14, lines 9-12*]* where, by evaluating the performance of the crops, the price that the market will bear in the area in which the crop performs as evaluated, is determined, and where a geographical area in which the performance is evaluated may be producer's field and where the estimate of product performance is based, in part, on the quality of the field, as is stated in *col. 13, lines 25-26*);

Art Unit: 3689

providing the at least one recommended seed product to the producer for the use in the producer's field in exchange for the compensation (col. 13, line 8 thru col. 14, line 21 *Accordingly, developers, seed companies, researchers, and agricultural businesses can evaluate the performance of crops and the potential market for crops...a developer can determine the market potential for each agricultural product by environment...Each agricultural product may be assigned a corresponding sales value for a market that is defined by one or more suitable defined geographic areas (e.g., the total suitable tillable acreage)...[col. 13, lines 8-24] and ...a performance estimator estimates or determines a performance characteristic for the particular crop associated with at least a portion of the defined geographic area...[col. 14, lines 9-12]* where, by evaluating the performance of the crops, the price that the market will bear in the area in which the crop performs as evaluated, is determined, and where a geographical area in which the performance is evaluated may be producer's field); and

auditing the use of the recommended seed product at the producer's field (col. 5, lines 45-56 *...actual performance (e.g. actual yield) of each agricultural product may be compared against a benchmark or check performance where determining the actual performance of the product is interpreted as auditing the use of the product).*

Dyer does not disclose that the audit is performed "to ensure that the pricing of the recommended seed product is proper". However, "to ensure that the pricing of the recommended seed product is proper" is not a positively claimed step and therefore, receives little patentable weight.

Art Unit: 3689

Further, it would have been obvious to one of ordinary skill in the art at the time of invention to ensure that the pricing was proper. Dyer discloses that the seeds are priced based on performance of the seeds in a particular area (col. 13, line 8 thru col. 14, line 21). When price is based on performance in a particular area, the sellers might want to ensure that the seeds are being used in that particular area. Otherwise, the price being paid may be the wrong price, which would be unfair to the sellers of the seed. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to ensure that the pricing was proper.

Referring to claim 19:

Dyer discloses wherein the quality of the producer's field is associated with a performance of the recommended seed product in the environmental classification (col. 7, lines 1-35 and col. 14, lines 9-21 *The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination of the foregoing data...soil data 550 may be collected and analyzed on a sub-field basis[col. 7, lines 1-35] and ...a performance estimator estimates or determines a performance level of a performance characteristic for the particular crop associated with at least a portion of the defined geographic area based upon the evaluation[col. 14, lines 9-21]).*

Referring to claim 20:

Claim 20 is rejected on the same basis as claim 8.

Art Unit: 3689

Referring to claims 22-23:

Claims 22-23 are rejected on the same basis as claims 9-10.

Referring to claim 24:

Dyer discloses wherein the genotype-by-environment interactions are determined by statistical methods (col. 5, lines 3-56 *Genetics by environments is an analysis that links the environmental measurements or an environmental definition with product performance of an agricultural crop and The product performance of the first genetically modified crop may be studied for variance in the regions with different environmental definitions to determine the influence of the environmental definition on crop performance and where “variance” is a statistical method used to determine if there is a statistically significant difference in the crop performance*).

Referring to claim 27:

Claim 27 is rejected on the same basis as claim 11.

Referring to claim 28:

Dyer discloses wherein said performance data includes at least one item from a set including yield, drought resistance, grain moisture, lodging, stand establishment, emergence, midsilk, test weight, protein, oil, and starch percentage, relative maturity, plant height, seed size, disease resistance genes, heading date, resistance to insects, brittle snap, stalk breakage, resistance to fungus, seed moisture, head shape, hullability, seedling vigor, beginning bloom date, maturity

Art Unit: 3689

date, seed shatter, winter survival, fiber strength, and color grade (col. 5, lines 3-56 ...*yield per acre, disease resistance, drought resistance or pest resistance...*).

Referring to claim 29:

Dyer discloses wherein the step of determining compensation for the use of the at least one recommended seed product is at least partially based on both the quality of the producer's field (col. 13, line 8 thru col. 14, line 21 *Accordingly, developers, seed companies, researchers, and agricultural businesses can evaluate the performance of crops and the potential market for crops...a developer can determine the market potential for each agricultural product by environment...Each agricultural product may be assigned a corresponding sales value for a market that is defined by one or more suitable defined geographic areas (e.g., the total suitable tillable acreage)...[col. 13, lines 8-24] and ...a performance estimator estimates or determines a performance characteristic for the particular crop associated with at least a portion of the defined geographic area...[col. 14, lines 9-12] where, by evaluating the performance of the crops, the price that the market will bear in the area in which the crop performs as evaluated, is determined, and where a geographical area in which the performance is evaluated may be producer's field and where the estimate of product performance is based, in part, on the quality of the field, as is stated in col. 13, lines 25-26) and an expected performance of the at least one recommended seed product within the producer's field (col. 14, lines 9-21 ...*a performance estimator estimates or determines a performance level of a performance characteristic for the particular crop associated with at least a portion of the defined geographic area... where the defined geographic area is the producer's field*).*

Art Unit: 3689

Referring to claim 30:

Dyer discloses wherein the step of determining compensation for at least one recommended seed product is at least partially based on both the quality of the producer's field (col. 13, line 8 thru col. 14, line 21 *Accordingly, developers, seed companies, researchers, and agricultural businesses can evaluate the performance of crops and the potential market for crops...a developer can determine the market potential for each agricultural product by environment...Each agricultural product may be assigned a corresponding sales value for a market that is defined by one or more suitable defined geographic areas (e.g., the total suitable tillable acreage)...col. 13, lines 8-24 and ...a performance estimator estimates or determines a performance characteristic for the particular crop associated with at least a portion of the defined geographic area...col. 14, lines 9-12* where, by evaluating the performance of the crops, the price that the market will bear in the area in which the crop performs as evaluated, is determined, and where a geographical area in which the performance is evaluated may be producer's field and where the estimate of product performance is based, in part, on the quality of the field, as is stated in col. 13, lines 25-26) and an actual performance of the at least one seed product within the land base (col. 5, lines 45-56 *...the actual performance (e.g., actual yield) may be compared against a benchmark or check performance...*).

Referring to claim 31:

Dyer discloses auditing a performance of the at least one recommended seed product within the producer's field (col. 5, lines 45-56 *...actual performance (e.g. actual yield) of each agricultural*

Art Unit: 3689

product may be compared against a benchmark or check performance where determining the actual performance of the product is interpreted as auditing the performance of the product).

Referring to claim 32:

Dyer discloses wherein the step of auditing includes auditing global positioning system data associated with crop production in the producer's field (col. 3, lines 1-32 ...*The input devices 510 comprise...location-determining receiver (e.g., a Global Position System (GPS))*).

Referring to claim 33:

Dyer discloses wherein the global positioning system data is associated with planting the at least one recommended seed product in the producer's field (col. 3, lines 1-32 ...*The input devices 510 comprise...location-determining receiver (e.g., a Global Position System (GPS))*... and where the input devices are used to gather any and all data including planting data).

Referring to claim 34:

Dyer discloses wherein the global positioning system data is associated with harvesting the at least one recommended seed product from the producer's field (col. 3, lines 1-32 ...*The input devices 510 comprise...location-determining receiver (e.g., a Global Position System (GPS))*... and where the input devices are used to gather any and all data including harvesting data).

Referring to claim 35:

Art Unit: 3689

Dyer discloses wherein the step of auditing includes reviewing weigh tickets for crops produced from the producer's field (col. 8, line 64 thru col. 9, line 7 ...*an evaluation 537 determines an estimated performance characteristic for a particular crop...the performance characteristic may comprise a yield of a particular crop, which may be expressed as a volumetric yield per land unit (e.g., bushel per acre) or a weight yield per land unit...* where it would have been obvious to a person of ordinary skill in the art at the time of invention to use weigh tickets to determine crop weight, since that is the information provided by weight tickets).

Referring to claim 36:

Dyer discloses wherein the step of auditing includes reviewing yield monitoring data for crops produced from the producer's field (col. 5, lines 45-56 ...*the actual performance (e.g., actual yield) may be compared against a benchmark or check performance...*).

Referring to claim 37:

Dyer discloses wherein the step of auditing comprises remote sensing of the producer's field (col. 3, lines 1-39 *The input devices 510 comprise one or more of the following devices: a user interface 524 (e.g., a keyboard or keypad), a crop management input 526 (e.g., crop management sensors), soil characteristic sensor 528, weather sensor 530, weather data 552 receiver 532, location-determining receiver 534 (e.g., a Global Positioning System (GPS) receiver with or without differential correction), and performance sensor 536 (e.g., yield sensor)... The soil characteristic sensor 528 may be any sensor that is capable of detecting at least one of the soil factors and sub-factors associated with the Soil Rating for Plant Growth*

Art Unit: 3689

(SRPG) soil factors or their equivalents, for example. The weather sensor 530 may detect air temperature, ground temperature, hours of sunlight, precipitation per unit time, and other weather or climatic information. The weather data 552 receiver 532 may receive a data feed from a regional, local or national weather service that provides weather data 552. The location-determining receiver 534 may be co-located with one or more of the input devices 510 or sensors. For example, the location-determining receiver 534, the crop management input 526, the soil characteristic sensor 528, the weather sensor 530, and the performance sensor 536 may be mounted on a stationary sensing station or on a mobile agricultural machine.).

Referring to claim 39:

Dyer discloses wherein the at least one seed product comprises a plurality of seeds (col. 12, lines 7-11 *...market seeds...* where seeds is plural and therefore, a plurality).

Referring to claim 40:

Claim 40 is rejected on the same basis as claim 13.

Referring to claim 41:

Dyer discloses a method:

determining a location of a producer's field at which at least one recommended seed product will be used (col. 18, lines 29-47 *If the user clicks on any location (e.g., the user's field) within the*

Art Unit: 3689

graphical map, the data processor will provide a recommended product... and where the determining of the location of the field, is defined by the user's click);

tying, by a processor, a use of the at least one recommended seed product within the land base to a cost of use of the at least one recommended seed product using an environmental classification associated with the producer's field (col. 13, line 8 thru col. 14, line 21 and col. 7, lines 1-35 *The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination of the foregoing data...soil data 550 may be collected and analyzed on a sub-field basis... environmental data may be referenced to a reference site...[col. 7, lines 1-35] where the various environmental data, such as soil data, weather data, and climate data, is interpreted as an environmental classification and Accordingly, developers, seed companies, researchers, and agricultural businesses can evaluate the performance of crops and the potential market for crops...a developer can determine the market potential for each agricultural product by environment...Each agricultural product may be assigned a corresponding sales value for a market that is defined by one or more suitable defined geographic areas (e.g., the total suitable tillable acreage)...[col. 13, lines 8-24] and ...a performance estimator estimates or determines a performance characteristic for the particular crop associated with at least a portion of the defined geographic area...[col. 14, lines 9-12] where, by evaluating the performance of the crops, the price that the market will bear in the area in which the crop performs as evaluated, is determined, and where a geographical area in which the performance is evaluated may be producer's field); and*

Art Unit: 3689

verifying the use of the at least one recommended seed product within the producer's field (*e.g. actual yield*) of each agricultural product may be compared against a benchmark or check performance where determining the actual performance includes verifying use of the product).

Dyer does not disclose that the audit is performed "to ensure that the cost of the use of the at least one recommended seed product was proper". However, "to ensure that the cost of the use of the at least one recommended seed product was proper" is not a positively claimed step and therefore, receives little patentable weight. Further, it would have been obvious to one of ordinary skill in the art at the time of invention to ensure that the cost was proper. Dyer discloses that the seeds are priced based on performance of the seeds in a particular area (col. 13, line 8 thru col. 14, line 21). When price is based on performance in a particular area, the sellers might want to ensure that the seeds are being used in that particular area. Otherwise, the price being paid may be the wrong price, which would be unfair to the sellers of the seed. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to ensure that the pricing was proper.

Referring to claim 42:

Dyer discloses verifying a performance of the at least one recommended seed product within the producer's field (col. 5, lines 45-56 ...*actual performance (e.g. actual yield) of each agricultural product may be compared against a benchmark or check performance where determining the actual performance includes verifying performance*).

Art Unit: 3689

Referring to claim 43-48:

Claims 43-48 are rejected on the same basis as claim 32-37.

Referring to claim 49:

Dyer discloses determining the environmental classification of the producer's filed at least partially based on the determined location (col. 7, lines 1-35 *The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination of the foregoing data...soil data 550 may be collected and analyzed on a sub-field basis...*).

Referring to claim 50:

Dyer discloses wherein the cost of use of the at least one recommended seed product is at least partially determined based on expected genotype-by-environment interactions between the environmental classification associated with the land base and the at least one recommended seed product (col. 5, lines 3-56 *Genetics by environment is an analysis that links the environmental measurements or an environmental definition with product performance of an agricultural crop* and where product performance is used to determine cost as in col. 13, line 8 thru col. 14, line 21).

Art Unit: 3689

Referring to claim 51:

Claim 51 is rejected on the same basis as claim 9.

Referring to claim 52:

Dyer discloses providing the at least one recommended seed product in exchange for compensation, wherein said compensation is the cost of use of the at least one recommended seed product (col. 13, lines 8-24 ...*sales value*...).

Referring to claim 60:

Dyer discloses a method comprising:

determining the at least one recommended seed product to be planted in each of a plurality of a crop producer's fields of a land base (col. 18, lines 29-47 *If the user clicks on any location (e.g., the user's field) within the graphical map, the data processor will provide a recommended product (e.g., a particular variety of crop)... and where the particular variety of crop is interpreted as the seed to be planted*);

providing an environmental classification of each field of the crop producer within the land base (col. 7, lines 1-35 *The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination of the foregoing data...soil data 550 may be collected and analyzed on a sub-field basis*);

Art Unit: 3689

determining, by a processor, a cost of the at least one recommended seed product for each field of the crop producer within the land base at least partially based on the environmental classification of each field of the crop producer within the land base (col. 13, line 8 thru col. 14, line 21 and col. 7, lines 1-35 and col. 16, line 32 thru col. 17, line 3 *The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination of the foregoing data...soil data 550 may be collected and analyzed on a sub-field basis...environmental data may be referenced to a reference site...[col. 7, lines 1-35]* where the various environmental data, such as soil data, weather data, and climate data, is interpreted as an environmental classification and *Accordingly, developers, seed companies, researchers, and agricultural businesses can evaluate the performance of crops and the potential market for crops...a developer can determine the market potential for each agricultural product by environment...Each agricultural product may be assigned a corresponding sales value for a market that is defined by one or more suitable defined geographic areas (e.g., the total suitable tillable acreage)...[col. 13, lines 8-24]* and *...a performance estimator estimates or determines a performance characteristic for the particular crop associated with at least a portion of the defined geographic area...[col. 14, lines 9-12]* where, by evaluating the performance of the crops, the price that the market will bear in the area in which the crop performs as evaluated, is determined, and where a geographical area in which the performance is evaluated may be producer's field and *The yield of a crop from one or more test sites may be used to provide an estimate of the market size of the crop...The market size may*

Art Unit: 3689

be determined based on the estimated yield for the crop, the geographic extent of the estimated yield, and commodity prices or other applicable prices for the product...For example, the customer-grower may be assigned to a nearest or most representative location node and a product type (e.g. seed, crop, or product identifier) on an annual basis and transactional statistics (e.g. quantity of seed purchased and price) may be kept for each grower...[col. 16, line 32 thru col. 17, line 3] and ...can evaluate the performance of crops and the potential market for crops based on the environmental definitions for defined geographic areas...[col. 13, lines 8-12]); and

auditing the use of the at least one recommended seed product in each of the plurality of the crop producer's fields within the land base (col. 5, lines 45-56 *...actual performance (e.g. actual yield) of each agricultural product may be compared against a benchmark or check performance* where determining the actual performance of the product is interpreted as auditing the use of the product).

Dyer does not disclose that the audit is performed "to ensure that the cost of the recommended seed product is proper". However, "to ensure that the pricing of the recommended seed product was proper" is not a positively claimed step and therefore, receives little patentable weight.

Further, it would have been obvious to one of ordinary skill in the art at the time of invention to ensure that the cost was proper. Dyer discloses that the seeds are priced based on performance of the seeds in a particular area (col. 13, line 8 thru col. 14, line 21). When price is based on performance in a particular area, the sellers might want to ensure that the seeds are being used in

Art Unit: 3689

that particular area. Otherwise, the price being paid may be the wrong price, which would be unfair to the sellers of the seed. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to ensure that the pricing was proper.

Referring to claim 61:

Dyer discloses determining the at least one type of recommended seed product for use in each of the plurality of fields of the land base (col. 12, lines 7-11 *Seed companies and other providers may seek to sell or market seeds for agricultural products that perform best in a particular geographic regions or defined areas* where marketing multiple seeds for an area is interpreted as recommending them).

Referring to claim 62:

Dyer discloses wherein the recommended seed product for use in the land base is determined at least partially based on genotype-by-environment interactions between the at least one recommended seed product and each of the plurality of the crop producer's fields of the land base (col. 5, lines 3-56 *Genetics by environments is an analysis that links the environmental measurements or an environmental definition with product performance of an agricultural crop*).

Referring to claims 63-64:

Claims 63-64 are rejected on the same basis as claims 10-11.

Art Unit: 3689

Referring to claim 65:

Dyer discloses wherein the step of determining a cost of the at least one recommended seed product is at least partially based on both a characterization of each of the plurality of the crop producer's fields within the land base (col. 13, lines 8-24 where *by environment* is interpreted as "characterization of each of the plurality of fields") and an expected performance of the at least one recommended seed product within each of the plurality of the crop producer's fields within the land base (col. 14, lines 9-21 ...*a performance estimator estimates or determines a performance level of a performance characteristic for the particular crop associated with at least a portion of the defined geographic area... where the defined geographic area is the producer's field*).

Referring to claim 66:

Dyer discloses wherein the step of determining a cost of the at least one recommended seed product is at least partially based on both a characterization of each of the plurality of the crop producer's fields within the land base (col. 13, lines 8-24; where "by environment" is interpreted as "characterization of each of the plurality of fields") and an actual performance of the at least one recommended seed product within each of the plurality of the crop producer's fields within the land base (col. 5, lines 45-56 ...*the actual performance (e.g., actual yield) may be compared against a benchmark or check performance...*).

Art Unit: 3689

Referring to claim 67:

Dyer discloses auditing a performance of the at least one recommended seed product within each of the plurality of the crop producer's fields within the land base (col. 5, lines 3-56 *Each particular agricultural product may be associated with a corresponding environmental definition where "environmental definition" is interpreted as environmental classification*).

Referring to claim 68:

Dyer discloses a method comprising:

identifying a location of a crop producer's land base at which the at least one recommended seed product will be planted, wherein the crop producer's land base comprises a plurality of fields (col. 18, lines 29-47 *...the seller's provision or offering of the right product for the right grower in the right field...If the user clicks on any location (e.g., the user's field) within the graphical map, the data processor will provide a recommended product... and where the user's click is interpreted as identifying the location and where ...right field... means that the system could be used for multiple fields*);

classifying the crop producer's land base to provide an environmental classification (col. 7, lines 1-35 *The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination of the foregoing data...soil data 550 may be collected and analyzed on a sub-field basis*);

determining, by a processor, at least one recommended seed product to be used at the crop producer's land base based on the environmental classification and performance of a genotype of each of the at least one recommended seed product in the environmental classification of the crop producer's land base (col. 5, lines 3-44 and col. 6, lines 55-67 and col. 7, lines 1-35 and col. 18, lines 14-47 and col. 13, line 8-18 thru col. 14, line 21 *...the seller's provision or offering of the right product for the right grower in the right field...If the user clicks on any location (e.g., the user's field) within the graphical map, the data processor will provide a recommended product...[col. 18, lines 29-47] and ...evaluate the performance of crops and the potential market for crops based on the environmental definitions for defined geographic areas and regions...determine the market potential for each agricultural product by environment...[col. 13, lines 8-18] and where the particular variety of crop is interpreted as the seed to be planted, and where, as described in the previous limitation, The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination...The soil data 550 comprises...temperature regime, moisture/temperature regime... [col. 7, lines 1-35] and, as stated above, the environmental data is interpreted as the environmental classification of the field, and, Fig. 3 shows an illustrative method of characterizing an environment for growing plant-life. The method of Fig. 3 states in step S100. In step S100, environmental measurements are obtained[col. 6, lines 55-67] and, Genetics by environment is an analysis that links the environmental measurements or an environmental definition with product performance of an agricultural crop[col. 5, lines 3-44] and in, "The*

Art Unit: 3689

evaluation of crop performance versus geography may allow the seller (e.g. see supplier) to offer only those agricultural products (e.g., crop products or seeds) that are well-suited for the environment of a particular producer in a particular geographic area[col. 18, lines 14-47]);

determining compensation for the at least one recommended seed product at least partially based on the environmental classification of the crop producer's land base (col. 13, line 8 thru col. 14, line 21 and col. 7, lines 1-35 and col. 16, line 32 thru col. 17, line 3 *The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination of the foregoing data...soil data 550 may be collected and analyzed on a sub-field basis... environmental data may be referenced to a reference site...[col. 7, lines 1-35] where the various environmental data, such as soil data, weather data, and climate data, is interpreted as an environmental classification and Accordingly, developers, seed companies, researchers, and agricultural businesses can evaluate the performance of crops and the potential market for crops...a developer can determine the market potential for each agricultural product by environment...Each agricultural product may be assigned a corresponding sales value for a market that is defined by one or more suitable defined geographic areas (e.g., the total suitable tillable acreage)...[col. 13, lines 8-24] and ...a performance estimator estimates or determines a performance characteristic for the particular crop associated with at least a portion of the defined geographic area...[col. 14, lines 9-12] where, by evaluating the performance of the crops, the price that the market will bear in the area in which the crop performs as evaluated, is determined, and where a geographical area in which*

Art Unit: 3689

the performance is evaluated may be producer's field and where the various environmental data, such as soil data, weather data, and climate data, is interpreted as an environmental classification and *Accordingly, developers, seed companies, researchers, and agricultural businesses can evaluate the performance of crops and the potential market for crops...a developer can determine the market potential for each agricultural product by environment...Each agricultural product may be assigned a corresponding sales value for a market that is defined by one or more suitable defined geographic areas (e.g., the total suitable tillable acreage)...[col. 13, lines 8-24]* and *The yield of a crop from one or more test sites may be used to provide an estimate of the market size of the crop...The market size may be determined based on the estimated yield for the crop, the geographic extent of the estimated yield, and commodity prices or other applicable prices for the product...For example, the customer-grower may be assigned to a nearest or most representative location node and a product type (e.g. seed, crop, or product identifier) on an annual basis and transactional statistics (e.g. quantity of seed purchased and price) may be kept for each grower...[col. 16, line 32 thru col. 17, line 3]* and *...can evaluate the performance of crops and the potential market for crops based on the environmental definitions for defined geographic areas...[col. 13, lines 8-12]*); and

providing the at least one recommended seed product to the crop producer in exchange for the compensation (col. 13, line 8 thru col. 14, line 21 *Accordingly, developers, seed companies, researchers, and agricultural businesses can evaluate the performance of crops and the potential market for crops...a developer can determine the market potential for each agricultural product by environment...Each agricultural product may be assigned a corresponding sales value for a*

Art Unit: 3689

market that is defined by one or more suitable defined geographic areas (e.g., the total suitable tillable acreage)...[col. 13, lines 8-24] and ...a performance estimator estimates or determines a performance characteristic for the particular crop associated with at least a portion of the defined geographic area...[col. 14, lines 9-12] where, by evaluating the performance of the crops, the price that the market will bear in the area in which the crop performs as evaluated, is determined, and where a geographical area in which the performance is evaluated may be producer's field); and

auditing the use of the at least one recommended seed product at the crop producer's land base (col. 5, lines 45-56 *...actual performance (e.g. actual yield) of each agricultural product may be compared against a benchmark or check performance where determining the actual performance of the product is interpreted as auditing the use of the product).*

Dyer does not disclose that the audit is performed "to ensure that the compensation of the recommended seed product was proper". However, "to ensure that the compensation of the recommended seed product was proper" is not a positively claimed step and therefore, receives little patentable weight. Further, it would have been obvious to one of ordinary skill in the art at the time of invention to ensure that the compensation was proper. Dyer discloses that the seeds are priced based on performance of the seeds in a particular area (col. 13, line 8 thru col. 14, line 21). When price is based on performance in a particular area, the sellers might want to ensure that the seeds are being used in that particular area. Otherwise, the price being paid may be the wrong price, which would be unfair to the sellers of the seed. Therefore, it would have been

Art Unit: 3689

obvious to one of ordinary skill in the art at the time of invention to ensure that the compensation was proper.

Referring to claim 69-71:

Claims 69-71 are rejected on the same basis as claims 65-67, respectively.

4. **Claims 16-17 are rejected under 35 U.S.C. 103(a) as unpatentable over Dyer et al. (US 6999877), in view of Olson, David M. et al. (2001); *Terrestrial Ecoregions of the World: A New Map of Life on Earth*, BioScience, Vol. 51, No. 11., pp. 933–938, as found on the web at <http://wolfweb.unr.edu/~ldyer/classes/396/olsonetal.pdf> (hereinafter referred to as “Olson”).**

Referring to claim 16:

Dyer discloses a system for evaluating crop performance. Dyer discloses taking environmental measurements associated with a geographic region or a defined geographic area within the geographic region and that the measurements can include temperature, moisture and moisture temperature (col. 7, lines 1-30) and that environmental measurements may also be defined by location in terms of latitude (col. 8, lines 49-63). Dyer also discloses that the performance of crops can be evaluated based on environmental definitions for defined geographic areas and regions (col. 13, lines 8-24). Dyer does not disclose wherein the environmental classification is included in a set of environmental classes, the set of environmental classes comprising a

Art Unit: 3689

temperate class, a temperate dry class, a temperate humid class, a high latitude class, and a subtropical class.

However, Olson teaches a complimentary system for providing environmental definitions for defined geographic areas and regions (Olson page 934, Figure 1). Olson teaches wherein the environmental classification is included in a set of environmental classes, the set of environmental classes comprising a temperate class, a temperate dry class, a temperate humid class, a high latitude class, and a subtropical class (page 934, Figure 1 where the key to the figure lists several environmental classes, including *Temperate Coniferous Forests*, interpreted as temperate, *Temperate Grasslands, Savannas, and Shrubla*, interpreted as temperate dry, *Temperate Broadleaf and Mixed Forests*, interpreted as temperate humid, *Tundra*, interpreted as high latitude class, and *Tropical and Subtropical Moist Broadleaf Forests*, interpreted as subtropical class).

It would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the teachings of Dyer to include environmental classifications as taught by Olson because this is a classification scheme familiar to biologists (Olson page 933, last paragraph in left column), thereby assisting the client by providing a logical way to define environmental classifications. Further, a PHOSITA would have found it obvious at the time of invention to classify environmental regions in any logical manner and further, to try any known climate zones/regions as a classification scheme and name the regions according to a description of the environment of the area, including temperature and humidity.

Art Unit: 3689

Referring to claim 17:

Dyer discloses a system for evaluating crop performance. Dyer discloses taking environmental measurements associated with a geographic region or a defined geographic area within the geographic region and that the measurements can include temperature, moisture and moisture temperature (col. 7, lines 1-30) and that environmental measurements may also be defined by location in terms of latitude (col. 8, lines 49-63). Dyer also discloses that the performance of crops can be evaluated based on environmental definitions for defined geographic areas and regions (col. 13, lines 8-24). Dyer does not disclose wherein the environmental classification is included in a set of environmental classes, the set of environmental classes comprising biotic classifications.

However, Olson teaches a complimentary system for providing environmental definitions for defined geographic areas and regions (Olson page 934, Figure 1). Olson teaches wherein the environmental classification is included in a set of environmental classes, the set of environmental classes comprising biotic classifications (pages 933-934, Figure 1 where the key to the figure lists several biotic classifications, where "biotic classifications" is interpreted as a classification based on life in the area and *Ecoregions reflect the distributions of a broad range of fauna and flora...[page 933]*).

It would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the teachings of Dyer to include environmental classifications as taught by

Art Unit: 3689

Olson because this is a classification scheme familiar to biologists (Olson page 933, last paragraph in left column), thereby assisting the client by providing a logical way to define environmental classifications. Further, a PHOSITA would have found it obvious at the time of invention to classify environmental regions in any logical manner and further, to try any known climate zones/regions as a classification scheme and name the regions according to a description of the environment of the area, including temperature and humidity.

5. Claim 21 is rejected under 35 U.S.C. 103(a) as unpatentable over Dyer et al. (US 6999877), in view of Goshert (US 20050283314).

Referring to claim 21:

Dyer discloses a system for evaluating crop performance. Dyer does not disclose selecting crop insurance based on the recommended seed product.

However, Goshert teaches a complimentary system for crop insurance plans (abstract). Goshert teaches selecting crop insurance based on the recommended seed product ([0093]-[0097] *For example, the policy calculations may be used to formulate performance statistics regarding, inter alia, patterns or trends (e.g., percent change) in loss and indemnity payments over a specified time period; trend analysis regarding correlations between expected and actual yield*[0093] where the performance statistics vary widely depending on the crop and *...these statistics may prove valuable to a farmer or sales agent in assessing the value of the multitude of crop*

Art Unit: 3689

insurance plans and thereby determining the best plan and the corresponding variable selections...[0094]).

It would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the teachings of Dyer to include insurance selection based on seed product as taught by Goshert because it would help the farmer choose an appropriate insurance plan for both the farmer and the insurance agent (Goshert [0094]), thereby assisting the farmer by ensuring he is properly insured in case of disaster.

6. **Claims 25-26 are rejected under 35 U.S.C. 103(a) as unpatentable over Dyer et al. (US 6999877), in view of Semchenko, Marina and Zobel, Kristjan, *The effect of breeding on allometry and phenotypic plasticity in four varieties of oat*, Science Direct, available online 17 November 2004 (hereinafter referred to as “Semchenko”).**

Referring to claim 25:

Dyer discloses a system for evaluating crop performance. Dyer does not disclose where the genotype-by-environment interactions are determined by a qualitative method.

However, Semchenko teaches a complimentary system for crop improvement. Semchenko teaches where the genotype-by-environment interactions are determined by a qualitative method (pages 1-2).

Art Unit: 3689

It would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the teachings of Dyer to include a qualitative method as taught by Semchenko because it provides an additional way of researching genotype-by-environment interactions (Semchenko pages 1-2), resulting in more accurate results.

Referring to claim 26:

Dyer does not disclose; however Semchenko teaches where the qualitative method is phenotype plasticity (pages 1-2).

7. Claim 38 is rejected under 35 U.S.C. 103(a) as unpatentable over Dyer et al. (US 6999877), in view of Penner (US 20030126635).

Referring to claim 38:

Dyer discloses a system for evaluating crop performance. Dyer does not disclose wherein the step of providing the at least one recommended seed product in exchange for the compensation further comprises providing the at least one recommended seed product in exchange for the compensation under a license agreement.

However, Penner teaches a complimentary system for identifying seeds and plants. Penner teaches wherein the step of providing the at least one recommended seed product in exchange for the compensation further comprises providing the at least one recommended seed product in

Art Unit: 3689

exchange for the compensation under a license agreement ([0090] *Licensing fees may be calculated...*).

It would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the teachings of Dyer to include licensing as taught by Penner because a license agreement provides payment for the right to use the seed (Penner [0090]), thereby benefitting the farmer by allowing him to plant the seeds.

Response to Arguments

Applicant's arguments filed 13 September 2013 have been fully considered but they are not persuasive.

Claim Rejection under 35 USC §103(a)

(1) Dyer teaches determining, by a processor, a recommended seed product to be planted at the producer's field based on the environmental classification used to characterize the producer's field.

Applicant argues that Dyer does not disclose recommending a seed product based on an environmental characterization of the *producer's field*. Examiner respectfully disagrees. In col. 18, lines 29-47, Dyer states, "If the user clicks on any location (e.g., ***the user's field***) within the graphical map, the data processor will provide a recommended product (e.g., a particular variety of crop)..." (emphasis added). To be clear, the user's field is interpreted as the producer's field.

Art Unit: 3689

Applicant also argues that the recommendation is based on geography and data from test sites, not on an environmental classification of the producer's field. Examiner respectfully disagrees. In col. 7, lines 1-35, Dyer states, "The environmental measurements are associated with a geographical region or a defined geographic area within the geographic region. Each environmental measurement includes soil data 550, weather data 552, climate data 544 or any combination...The soil data 550 comprises...temperature regime, moisture/temperature regime..." and, as stated above, the environmental data is interpreted as the environmental classification of the field. Dyer also states, in col. 6, lines 55-67, "Fig. 3 shows an illustrative method of characterizing an environment for growing plant-life. The method of Fig. 3 states in step S100. In step S100, environmental measurements are obtained" and col. 5, lines 3-44, "Genetics by environment is an analysis that links the environmental measurements or an environmental definition with product performance of an agricultural crop" and in col. 18, lines 14-47, "The evaluation of crop performance versus geography may allow the seller (e.g. see supplier) to offer only those agricultural products (e.g., crop products or seeds) that are well-suited for the environment of a particular producer in a particular geographic area." Dyer summarizes all this by saying, in col. 13, lines 8-12, "...can evaluate the performance of crops and the potential market for crops based on the **environmental definitions** for defined geographic areas..." (emphasis added).

Art Unit: 3689

(2) Dyer discloses pricing the recommended seed product for use in the producer's field based on the environmental classification of the producer's field and based on a performance of the recommended seed product within the producer's field

Applicant argues that because the data is obtained based on test sites, Dyer does not teach this limitation. Examiner respectfully disagrees. A test site is, naturally, a producer's field. Crops are grown in fields.

Applicant further argues that the price is directed to a market, not a producer's field. Examiner respectfully disagrees. Dyer states, "...a developer can determine the market potential for each agricultural product by environment...Each agricultural product may be assigned a corresponding sales value for a **market that is defined by one or more suitable defined geographic areas (e.g., the total suitable tillable acreage)**..." (Dyer col. 13, lines 8-24) and "The yield of a crop from one or more test sites may be used to provide an estimate of the market size of the crop...The market size may be determined based on the estimated yield for the crop, the geographic extent of the estimated yield, and commodity prices or other applicable prices for the product...For example, the customer-grower may be assigned to a nearest or most representative location node and a product type (e.g. seed, crop , or product identifier) on an annual basis and transactional statistics (e.g. quantity of seed purchased and price) may be kept for each grower..." (Dyer col. 16, line 32 thru col. 17, line 3).

Art Unit: 3689

(3) A person having ordinary skill in the art would have modified Dyer to arrive at the claims

KSR forecloses applicant's argument that a specific teaching is required for a finding of obviousness. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396. The above claims recite combinations which only unite old elements with no change in their respective functions and which yield predictable results. Thus, the claimed subject matter likely would have been obvious under *KSR*. In addition, neither applicant's specification nor applicant's arguments present any evidence that modifying Dyer was uniquely challenging or difficult for one of ordinary skill in the art. Under those circumstances, the Examiner did not err in holding that it would have been obvious to one having ordinary skill in the art at the time of the invention was made to modify the Dyer to include the purpose of the audit to be that of ensuring that the pricing of the seed is proper to allow for the desire of the seed sellers to ensure that the price paid for the seed was the proper price when the price is based on performance. Because this is a case where the improvements are no more than the predictable use of prior art elements according to their established functions, no further analysis is required by the Examiner. *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

Claims 16 and 17

Applicant has pointed out that Hall was commonly owned by the real party in interest and is, therefore, inappropriate prior art. Therefore, Examiner has modified this rejection to include new art.

Art Unit: 3689

Claim 21

Applicant argues that there is no indication in Dyer that Dyer is concerned with insurance and therefore, there is no reason to modify Dyer to include Goshert. Applicant then goes on to argue that Dyer appears to provide an effective solution to its problem, but Examiner is unsure what problem applicant can be referencing, since applicant has previously stated that Dyer is not concerned with insurance. Regardless, Examiner respectfully disagrees with applicant. To require Dyer to include each limitation of the claims, such as insurance, would effectively block any sort of 103 combination. Dyer is not required to include insurance in order to be combinable with Goshert. Examiner has provided reasoning for combining the two pieces of art (see above), which applicant does not refute.

Applicant also accuses the Examiner of evaluating the claim in a piecemeal fashion rather than as a whole, indicating that to do so is improper. Examiner can only interpret this to mean that applicant objects to Examiner's matching of the prior art to each individual limitation of the claims. Examiner has laid out the prior art in such a manner merely for clarity. Examiner is not evaluating the claims in a piecemeal fashion.

Claims 25-26

Again, applicant refers to Dyer providing an effective solution to its problem, thereby arguing that there is no motivation to combine Dyer and Semchenko. Again, Examiner respectfully disagrees. To require Dyer to include each limitation of the claims, such as insurance, would

Art Unit: 3689

effectively block any sort of 103 combination. Examiner has provided reasoning for combining the two pieces of art (see above), which applicant does not refute.

Claim 38

Applicant repeats similar arguments as in claims 21, 25, and 26. Examiner responds as above.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARRIE STRODER GILKEY whose telephone number is (571)270-7119. The examiner can normally be reached on Monday - Thursday 9:00 a.m. - 6:00 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan Mooneyham can be reached on (571)272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Application/Control Number: 11/423,658

Page 46

Art Unit: 3689

/CARRIE STRODER GILKEY/

Primary Examiner, Art Unit 3689