

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RALPH B. JOHNSON, JR.

Appeal No. 2001-0671
Application No. 09/129,088

ON BRIEF

Before KRASS, LALL and BARRY, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-8, all of the pending claims.

The invention is directed to a computer programmed logistic system for planning transport of a variety of commodities. The commodities undergo transit by a transport

means from a source to a delivery receiving location under control of the programmed logistic system. Preselection of the commodity transit constraints is dependent on the total number of transits and conditions at the source and receiving location at which usage of the commodities occurs at a certain rate.

Representative independent claim 1 is reproduced as follows:

1. In combination with delivery of commodities from a source to a receiving location at which usage of the commodities occurs at a certain rate, a programmed logistic system for planning said delivery of the commodities during said usage thereof, comprising:

transport means for sequential transit of unit quantities of said commodities from the source to the receiving location;

means for preselecting constraints to be imposed on the transport means dependent on conditions at the source and the receiving location, including total number of the transits;

means for computing rate of delivery of the commodities at the receiving location by the transport means under said constraints; and

means imposing scheduling on said transport means for minimizing said total number of the transits to the receiving location at said rate of delivery in excess of said certain rate of the usage to maintain a reserve inventory of the commodities at said receiving location.

The examiner relies on the following references:

Schrader et al. (Schrader)	4,049,131	Sep. 20, 1977
Lu et al. (Lu)	5,450,317	Sep. 12, 1995
Lewis	5,615,711	Apr. 01, 1997
Masch	5,930,762	Jul. 27, 1999
		(filed Sep. 24, 1996)

Appeal No. 2001-0671
Application No. 09/129,088

Claims 1-8 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner offers Lu and Masch with regard to independent claims 1 and 5, adding Schrader with regard to claims 2-4, 6 and 7. The examiner cites Lu, Masch and Lewis with regard to claim 8.

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

We REVERSE.

It is the examiner's position, with respect to the independent claims, that Lu discloses the claimed subject matter but for an explicit showing of "preselecting constraints . . . [and] rate of delivery of commodities . . ." [Paper No. 4-page 4]. The examiner then turns to Masch, holding that the recitation therein, of "constraints" [e.g., column 14, line 9 and lines 20-21], both "predetermined" and "discretionary," suggests the claimed "preselecting constraints . . . [and] rate of delivery of commodities . . ." The examiner then concludes that it would have been obvious to modify Lu with the teachings of Masch because it "would have provided a means to '*eliminate or reduce outcomes falling outside the boundary limits . . . [i.e.,] limiting the risky outcomes*'" [Paper No. 4-page 5].

It is our view that the examiner has not established a prima facie case of obviousness with regard to the instant claimed subject matter.

Even assuming, arguendo, that the “constraints” disclosed by Masch could be considered the preselected constraints of the instant claims, the “preselected constraints” of the instant claimed invention is imposed on a transport means and it is done so “dependent on conditions at the source and the receiving location.” We find no indication in either Lu or Masch of imposing any constraints on a “transport” means and wherein such imposition is “dependent on conditions at the source and the receiving location.”

Moreover, we find nothing in the applied references suggesting usage of commodities “at a certain rate” or a “means for computing rate of delivery of the commodities at the receiving station,” as claimed.

The examiner says that it would have been obvious that Lu’s “*dynamic programming procedures . . . warehouse demand and customer demand matrices to determine interim demand solutions*” [answer, page 6, emphasis original] would have been selected in accordance with “preselecting constraints” and “rate of delivery of commodities” because “demand” would have been interpreted by skilled artisans as a required “constraint.” Further, “dynamic programming procedures...” would have been

interpreted by skilled artisans as “preselecting” procedures required to determine solutions and “dynamic programming model” would have been interpreted in context with the “rate of delivery of commodities.” We find no reason for such “interpretations” and the examiner has provided us with none. Accordingly, the examiner has provided no convincing rationale for a finding of these specifically claimed limitations in the applied references.

The examiner also indicates that Masch shows “production throughput” and that this is interpreted “in context as ‘rate of delivery of commodities . . .’” [answer-page 7]. Again, we find no support for such an allegation. The recitation of “production throughput” may just as well refer to a quantity, rather than to a rate or to a rate of delivery of commodities. We find no clear suggestion in the applied references for the “rate of delivery of commodities,” as claimed, and the examiner’s interpretation of the term, “production throughput,” as referring to a rate of delivery of commodities is pure speculation. A proper rejection under 35 U.S.C. § 103 may not be based on speculation.

Since the examiner has provided no convincing support for the many allegations of where the claimed elements are disclosed or suggested by the applied references,

Appeal No. 2001-0671
Application No. 09/129,088

no prima facie case of obviousness has been established. Accordingly, we will not sustain the rejection of claims 1-8 under 35 U.S.C. § 103.

The examiner's decision is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
PARSHOTAM S. LALL)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
LANCE LEONARD BARRY)	
Administrative Patent Judge)	

eak/vsh

Appeal No. 2001-0671
Application No. 09/129,088

OFFICE OF COUNSEL CODE 004
NAVAL SURFACE WARFARE CENTER
CARDEROCK DIVISION
9500 MACARTHUR BOULEVARD
WEST BETHESDA, MD 20817-5700