

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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** JOHN JUTTEN LAWSER and LARRY ARNISE RUSSELL

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Appeal No. 2002-1136  
Application 09/030,601

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ON BRIEF

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Before BARRETT, FLEMING, and DIXON, **Administrative Patent Judges**.  
FLEMING, **Administrative Patent Judge**.

**DECISION ON APPEAL**

This is a decision on appeal from the final rejection of claims 1 through 25, all the claims pending in the instant application.

**Invention**

The invention relates to a technique for efficiently completing a call from a calling party to a called party, when one or both may subscribe to Internet Telephony services.

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See page 1 of Appellants' specification. The method commences upon receipt of a call from the calling party dialed to the Plain Old Telephony Service (POTS) number of the called party. A first hub, such as a local office, receives and routes the call to the called party if the called party is not on line. If the called party is on line, the first hub offers the call to the Internet Service Provider (ISP) serving the called party. The ISP serving the called party converts the call to an Internet format and then delivers the call to the called party over the Internet. See page 2 of Appellants' specification.

Independent claim 1 present in the application is representative of the claimed invention and is reproduced as follows:

1. A method for completing a call dialed from a calling party to a Plain Old Telephony Service (POTS) number associated with a called party, comprising the steps of:

receiving the call dialed to the POTS number associated with the called party at a first hub in a telecommunications network;

routing the call to the called party if the called party is not an Internet Telephony (IT) services subscriber that is presently on-line, but if the called party is an IT subscriber that is on line, then

receiving the call from the calling party at an Internet Service Provider serving the called party;

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converting the call to an Internet Telephony format at the Internet Service Provider if the call is not presently in such a format; and

delivering the call to the called party in an Internet Telephony format for receipt by the called party so that the parties can converse via using an Internet Telephony protocol.

### References

The references relied on by the Examiner are as follows:

McMullin	5,809,128	Sept. 15, 1998 (Filing date Nov. 1, 1996)
Krishnaswamy et al. (Krishnaswamy)	5,999,525	Dec. 7, 1999 (Filing date Nov. 18, 1996)

### Rejections at Issue

Claims 1, 2, and 5 through 16 stand rejected under 35 U.S.C. § 102 as being anticipated by McMullin. Claims 3 and 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over McMullin in view of Krishnaswamy.<sup>1</sup>

Throughout our opinion, we make reference to the briefs<sup>2</sup> and the answer for the respective details thereof.

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<sup>1</sup>We note that the Examiner has allowed claims 17 through 25. See page 7 of Examiner's answer.

<sup>2</sup> Appellants filed an appeal brief on June 18, 2001. Appellants filed a reply brief on January 14, 2002. The Examiner mailed out an office communication on March 14, 2002, stating that the reply brief has been entered.

**OPINION**

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of the Appellants and the Examiner, for the reasons stated **infra**, we reverse the Examiner's rejection of claims 1, 2, and 5 through 16 under 35 U.S.C. § 102 and we reverse the Examiner's rejection of claims 3 and 4 under 35 U.S.C. § 103.

We will first address the rejection of claims 1, 2, and 5 through 16 under 35 U.S.C. § 102. It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. **See In re King**, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and **Lindemann Maschninenfabrik GMBH v. American Hoist & Derrick Co.**, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

Appellants argue that the Examiner has not shown that McMullin's patent teaches Appellants' claimed step of "converting the call to an Internet Telephony format at the Internet Service Provider if the call is not presently in such a format" as recited in Appellants' claim 1. See page 6 of Appellants' brief. In particular, Appellants argue that McMullin does not teach converting the call to an Internet Telephony format at the

Internet Service Provider because McMullin teaches that the proxy 38, provides the function of converting the call to an Internet Telephony format which is not at the Internet Service Provider. See pages 6 and 7 of the brief and pages 1 and 2 of the reply brief.

Upon our review of McMullin, we find that McMullin teaches that the proxy IVRS would be equipped with the necessary software and hardware to interconnect the caller with the sound equipment of the proxy. See McMullin, column 11, lines 38 through 40. McMullin further teaches that the IVRS is part of a called party proxy 38. See McMullin, figure 2. McMullin teaches that figure 2 shows a functional block diagram of the logical network elements interconnected with a called party proxy 38 which is advantageously employed to provide an audio interactive voice response to the calling party that attempts to call a subscriber whose telephone link is busy. See McMullin, column 8, lines 13 through 20. McMullin teaches that the Data Communications Service shown as element 50 in figure 2 is an Internet Service Provider. See McMullin, column 1, lines 20 through 25, and column 5, lines 34 through 63. Therefore, McMullin teaches that the called party proxy 38 performs the function of providing the necessary formatting of the incoming call and via the IVRS 14.

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McMullin does not teach that this function is preformed at the Internet Service Provider, DCS 50. Therefore, the Examiner has failed to show that McMullin teaches "converting the call to an Internet Telephony format at the Internet Service Provider if the call in not presently in such a format" as recited in Appellants' claim 1. Therefore, we will not sustain the Examiner's rejection of claims 1, 2, and 5 through 16 under 35 U.S.C. § 102.

Claims 3 and 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over McMullin in view of Krishnaswamy. We note that claims 3 and 4 depend from claim 1 and therefore, recite the step of "converting the call to an Internet Telephony format at the Internet Service Provider if the call is not presently in such a format." We note that the Examiner has relied on McMullin to teach this limitation. Furthermore, we note that Krishnaswamy fails to teach the step as well. Therefore, we will not sustain the Examiner's rejection of claims 3 and 4 for the same reasons as above.

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In view of the foregoing, we have not sustained the Examiner's rejection of claims 1, 2, and 5 through 16 under 35 U.S.C. § 102. Furthermore, we have not sustained the Examiner's rejection of claims 3 and 4 under 35 U.S.C. § 103.

**REVERSED**

LEE E. BARRETT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
MICHAEL R. FLEMING	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
JOSEPH L. DIXON	)	
Administrative Patent Judge	)	

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