

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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* FRANK W. LIEBENOW

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Appeal No. 2003-0247  
Application 09/185,924

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ON BRIEF

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

*DECISION ON APPEAL*

This appeal is from the final rejection of claims 1-15 and 23, which are all of the claims pending in the application.

*THE INVENTION*

The appellant claims a method, computerized system and machine-readable medium for sending from a first computer system,

after failure of that computer system to initiate communication with a first network communications device associated with a second computer system, a message to a second communications device associated with the second computer system. Claim 1, directed toward the method, is illustrative:

1. A method of operating a first computerized system having a first network communications device, the method comprising:

operating the first computerized system to try to initiate communications between the first network communications device and a network communications device associated with a second computerized system; and

after failing to initiate communications between the first and second network communications devices, operating the first computerized system to communicate a message to a second communications device associated with the second computerized system.

*THE REFERENCES*

Walton et al. (Walton)	4,930,151	May 29, 1990
Thro et al. (Thro)	5,884,159	Mar. 16, 1999
		(filed Nov. 27, 1995)

*THE REJECTION*

Claims 1-15 and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Thro in view of Walton.

*OPINION*

We reverse the aforementioned rejection. We need to address only the independent claims, i.e., claims 1, 5, 10, 12 and 14.

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The independent claims require that after a failed attempt by a first computer system to initiate communication between a network communications device of that computer system and a first network communications device associated with a second computer system, the first computer system is operated to at least try to communicate a message to a second network communications device associated with the second computer system.<sup>1,2</sup>

Thro discloses a system and method for spawning a communication service, which can be a location determination service, a schedule or itinerary communication service, or a stored message service, when a call attempt from a first user of a first communication unit to a second user of a second communication unit fails (col. 1, line 66 - col. 2, line 5; col. 2, lines 52-65).<sup>3</sup> The first unit can be a wireline telephone and the second unit can be a cellular phone, or the

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<sup>1</sup> In claims 5 and 10 the communications device of the first computer system and the first communications device associated with the second computer system are modems and the second communication device associated with the second computer system is a pager.

<sup>2</sup> In claim 12, the first appearance of "second" should read "first".

<sup>3</sup> "Spawning, generally refers to starting a second distinct process or service based on a previous process or service" (col. 4, lines 53-55).

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first unit can be a computer and the second unit can be a pager or a two-way radio (col. 3, lines 3-7 and 30-34). Spawning the communication service results in a message being directed at a unit other than the second unit, such as the first unit or a third unit associated with a third user (col. 2, lines 17-24; col. 4, line 61 - col. 5, line 23).

Thro discloses, as an alternative embodiment, sending a notification message to a server informing the server of the failed call attempt (col. 2, lines 27-33). The determination of whether a server is to be notified is made by either a different server or the second communication unit (col. 4, lines 5-20).

Walton discloses a call forwarding device which is stationed to the facility side of a telephone utility rotary switch and has a separate rotary port wired to each of multiple rotary outlet ports (col. 2, lines 31-34). Each rotary port is assigned a separate device modem port which is connected with a separate modem (col. 2, lines 34-37). A call inbound to one rotary port from the rotary switch is routed to the rotary port's assigned modem port to ring its associated modem (col. 2, lines 42-45). If the modem does not answer or is busied out, the call forwarding device either reroutes the call to another of the modems for answering, or dials out, via an available rotary port,

the rotary switch and the telephone utility, to a backup facility answering site (col. 2, lines 48-65).

The examiner argues (answer, page 4) that Thro discloses:

after failing to establish communications between the first and second network communications devices, operating said first system to communicate a message to a second communications device associated with the second system (see column 2, lines 1-51, column 3, line 52 to column 4, line 55, column 5, lines 7-20; "a system for and method of spawning a communication service when a call attempt from a first user of a first communication unit to a second user of a second communication unit fails. . . . The spawned communication service may be primarily directed at a communication unit, including the first communication unit or a third communication unit").

Contrary to the examiner's argument, the quoted portion of Thro does not disclose sending a message from the first communication unit to the second communication unit but, rather, discloses that the spawned communication service can communicate with the first communication unit or a third communication unit. Furthermore, we do not find in the other cited portions of Thro the disclosure argued by the examiner.

The examiner argues that Thro does not explicitly show a computerized system and that Walton discloses such a system (answer, page 4). Walton, however, like Thro, does not disclose sending a message from the system that initiated the failed communication attempt to the system to which the failed

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communication attempt was directed, and the examiner has not explained how Thro and Walton would have fairly suggested doing so to one of ordinary skill in the art.

Regarding claim 5 the examiner argues that Thro discloses "after failing to establish communications between the first and second communication units, trying to communicate a message via the first communications unit to a pager associated with the second system (see column 2, lines 1-51, column 3, line 52 to column 4, line 55, column 5, lines 7-20)" (answer, page 6). Thro discloses sending a message from a computer to either a pager or a two-way radio (col. 3, lines 30-44), but does not disclose sending a message to either the pager or the two-way radio after an attempt to send a message to either of those devices has failed.

For the above reasons we conclude that the examiner has not carried the burden of establishing a *prima facie* case of obviousness of the appellant's claimed invention.

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*DECISION*

The rejection of claims 1-15 and 23 under 35 U.S.C. § 103 over Thro in view of Walton is reversed.

*REVERSED*

LEE E. BARRETT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
TERRY J. OWENS	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
JOSEPH L. DIXON	)	
Administrative Patent Judge	)	

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. BOX 2938  
Minneapolis, MN 55402