

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOSEPH D. SMITH,  
AUSTIN L. HIGGS and  
THIEG K. NGUYEN

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Appeal No. 2003-0768  
Application No. 09/396,287

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ON BRIEF

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Before KRASS, BARRY and SAADAT, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 14-27, 29, 30 and 33-37. Claims 1-13, 28 and 32 have been indicated by the examiner as being directed to allowable subject matter and are no longer part of this appeal.

The invention is directed to a computerized logistical system for coordinating delivery of a wide range of materials produced by different suppliers going to different base staging areas for final transport to different delivery locations by various types of transports over various routes. In particular, computers at delivery and base locations are utilized to select from materials on a first list stored in a central database and produce a second list of materials that comprises a manifest for delivery by one of a plurality of transports.

Representative independent claim 30 is reproduced as follows:

30. A logistics method for a plurality of transports to supply a plurality of delivery locations from one or more bases using logistics computer programming, comprising:

providing for respective computers at said one or more bases and at said plurality of delivery locations;

providing a central database for said respective computers, each of said respective computers being in communication with said central database, said logistics computer programming being operable for providing updated logistics information to said central database from said respective computers;

storing transport information relating to each of said plurality of transports in said central database, said transport information including daily cost and cost/mile information;

storing a list of materials, said materials being selectable-from said list of materials to produce a second list of materials comprising a manifest with manifested materials for delivery to one or more of said plurality of delivery locations by one of said plurality of transports;

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storing delivery location information in said central database related to each of said plurality of delivery locations; and  
storing a list of manifests in said central database relating to deliveries for said plurality of delivery locations.

The examiner relies on the following references:

Sims et al. (Sims)	5,434,775	Jul. 18, 1995
Wojcik et al. (Wojcik)	5,666,493	Sep. 09, 1997
Bush	5,835,377	Nov. 10, 1998
Kovarik, Jr. (Kovarik)	6,014,628	Jan. 11, 2000 (filed Aug. 17, 1998)

Claims 14, 17, 22, 27, 29, 30 and 33 stand rejected under 35 U.S.C. §102 (e) as anticipated by Kovarik.

Claims 15, 16, 18-21, 23-26 and 34-37 stand rejected under 35 U.S.C. §103. As evidence of obviousness, the examiner offers Kovarik with regard to claims 15 and 16, adding Wojcik with regard to claims 19-21 and 23-26. With regard to claim 18, the examiner offers Kovarik and Sims. With regard to claims 34-37, the examiner offers Kovarik and Bush.

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

OPINION

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984), cert. dismissed, 468 U.S. 1228 (1984), citing Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Independent claims 14 and 30 each requires materials being selected from a list of materials to produce a second list of materials for delivery to one or more of a plurality of locations. Claim 22 does not recite a “second list” but does require “materials being selectable to produce a manifest with manifested materials for delivery to one or more of said plurality of delivery locations...”

The examiner contends that this feature is “inherent” in Kovarik in that “it would only be logical to add another list of materials to the application in order to acknowledge the addition of materials especially since the application is customizable” (answer-page 5, referring to Kovarik’s teaching of a user customizing a tracking application at column 14, lines 54-56).

We disagree.

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To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) citing Continental Can Co. v. Monsanto Co., 948 F.3d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). “Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” Id., at 1269, 20 USPQ2d at 1749 (quoting In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981).

The examiner has not shown that Kovarik’s system *must* require materials to be selected from a list of materials and that a second list *must* be produced therefrom. Therefore, we find that it cannot be said that Kovarik *inherently* discloses the second list or the selection of materials to produce a manifest, as claimed. We do not agree with the examiner that it would be *logical* to add another list of materials, merely because Kovarik’s system may be customized by the user. Where is the teaching to produce a second list from the first list, and why would the skilled artisan have been led to do this in Kovarik, especially since, in the example given in the patent, Kovarik is dealing with a luggage tracking system at an airport? Of what possible use would a second list of the

luggage to be tracked, produced from the first list, be to a user of such a system?

Where is the teaching, in Kovarik, of selecting materials “to produce a manifest with manifested materials for delivery to one or more of a plurality of delivery locations by one of said plurality of transports,” as set forth in broader instant claim 22 (which does not require the second list)? The examiner has not specifically said. The closest the examiner comes to reaching this claimed limitation is to point to column 11, lines 24-25, of Kovarik, referring to “AddItem-Adds a TrackedItem 100 to the list of tracked items currently at the location.” This refers to a “list,” to be sure, but how does this relate to a stored list of materials, the “materials being selectable to produce a manifest with manifested materials for delivery to one or more of a plurality of delivery locations by one of said plurality of transports,” as claimed? The examiner does not explain.

In fact, Kovarik is directed to a tracking system which keeps track of materials flowing through a process, e.g., tracking luggage at an airport. It is not clear that Kovarik deals with the supply and delivery of items in the sense of the instant invention, i.e., Kovarik does not appear to be directed to a logistics method for a plurality of transports, as claimed. The mere tracking of an item, or a material, through a system is not the same as providing a logistics system for coordinating delivery of a wide range of materials produced by different suppliers going to different base staging areas for final

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transport to different delivery locations by various types of transports over various routes. This is why the examiner is having trouble finding the production of a second list and the selectivity of materials to produce a manifest in Kovarik. It is simply not there. If there is some way that the claim language can reasonably be interpreted as being taught by Kovarik, the examiner has clearly not discovered it.

Merely because Kovarik's system is customizable by a user, this does not translate into altering the Kovarik's system to meet the instant claimed subject matter, without some specific teaching of doing so. Moreover, even if it would have been obvious to do this, in view of the customization taught by Kovarik, and we do not believe that it would have been, the rejection is under 35 U.S.C. §102 (e), so a proper rejection requires that each and every claimed element be taught, either expressly or inherently, by the prior art reference.

Accordingly, we will not sustain the rejection of claims 14, 17, 22, 27, 29, 30 and 33 under 35 U.S.C. §102 (e).

We also will not sustain the rejection of claims 15, 16, 18-21 and 23-26 under 35 U.S.C. §103 because these rejections rely on an alleged teaching by Kovarik which, for the reasons, supra, are simply not there. The secondary references to Wojcik and Sims do not supply the deficiencies of Kovarik.

With regard to claims 34-37, independent claim 34 does not include the limitations of producing a second list from a first list and of materials being selectable from a list of materials to produce a manifest with manifested materials for delivery to one or more of a plurality of delivery locations. Rather, claim 34 monitors containers having cargo therein. Each of the containers has a wireless communications transmitter for providing container location intelligence and a respective listing of the cargo in that container.

The examiner contends that Kovarik teaches the claimed subject matter but for the wireless communication transmitter, and relies on Bush for such a teaching, holding that it would have been obvious to incorporate the wireless communication transmitter into Kovarik “because this type of technology is very beneficial for monitoring, tracking and locating an entity. Wireless communications helps to provide current, real-time reporting of an entity which is being monitored or tracked” (answer-page 9).

Appellants argue that neither reference discloses the feature whereby each client could monitor its own container cargo through his/her own computer. This is said to be claimed in the language, “any one of said plurality of clients being associated with designated of said plurality of containers and not all of said plurality of containers.” Specifically, appellants allege that “Although a single database holds information

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related to all of the containers, the clients, through their respective client computers can determine location information and cargo listings only for the containers for which the clients are designated” (principal brief-page 19).

The examiner counters that column 16, line 65 through column 17, line 3, of Kovarik discloses such a limitation. However, when we review that cited portion of Kovarik, we agree with appellants that the examiner is referring to some “abstruse language of Kovarik” which does not appear to disclose the simple concept of each client computer determining location information for its own cargo listings. Kovarik merely refers to a tracking engine means that provides a set of generic object models. It is not clear how this disclosure is one of a client “being associated with designated of said plurality of containers and not all of said plurality of containers” or where a client can access information from a database to determine container location intelligence and a respective listing of cargo for each of a plurality of clients only for said containers designated as being associated with each particular client, as claimed. Bush does not appear to remedy this deficiency of Kovarik.

Since the examiner clearly has not established a prima facie case of obviousness with regard to claims 34-37, we also will not sustain the rejection of these claims under 35 U.S.C. §103.

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The examiner's decision rejecting claims 14, 17, 22, 27, 29, 30 and 33 under 35 U.S.C. §102 (e) and rejecting claims 15, 16, 18-21, 23-26 and 34-37 under 35 U.S.C. §103 is reversed.

REVERSED

ERROL A. KRASS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
LANCE LEONARD BARRY	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
MAHSHID D. SAADAT	)	
Administrative Patent Judge	)	

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KENNETH L. NASH  
P.O. BOX 680106  
HOUSTON, TX 77268-0106