

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT W. ALLPORT,  
STEPHEN KELLY, TIMOTHY J. NICHOLLS,  
CHRISTOPHER J. CAPELLI and  
DOUGLAS QUINE

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Appeal No. 2003-1052  
Application 09/222,644

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ON BRIEF

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Before THOMAS, BARRETT, and BLANKENSHIP, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1-3.

Representative claim 1 is reproduced below:

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1. A method for generating a postal bar code with a closed system metering device, the method comprising:

coupling a scanning device to a closed system postage meter;

scanning recipient address information printed on a mailpiece;

determining a postal code corresponding to the recipient address; and

printing the postal code on the mailpiece.

The following references are relied on by the examiner:

Cordery et al. (Cordery)	5,454,038	Sep. 26, 1995
Kara	5,819,240	Oct. 6, 1998

Claims 1-3 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Cordery in view of Kara.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief and reply brief for appellants' positions, and to the answer for the examiner's positions.

#### OPINION

We reverse the stated rejection of the claims on appeal under 35 U.S.C. § 103.

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At the outset, we make reference to our consideration of the United States Postal Service document issued on January 12, 1999 entitled "Information Based Indicia Program (IBIP), Performance Criteria For Information-Based Indicia and Security Architecture For Closed IBI Postage Metering Systems (PCIBI-C)." To the extent appellants and the examiner rely upon this document for their respective positions as to the glossary definitions therein relating to a "closed system" and to an "open system," our decision cannot be based upon this document since its publication date is after the present application's filing date of December 30, 1998.

Pages 7 and 8 of the answer makes reference to the United States Postal Services proposed rule for 39 CFR parts 111 and 502 dated March 28, 1997. Although there is no evidence before us that this document did mature into a final rule, the definitions of an open system and closed system at pages 13 and 14 of this document (see also the appendix to this opinion) that is a part of the application file are somewhat consistent with the definitions of the United States Postal Services proposed IBIP program document dated January 12, 1999.

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The significance of an accurate prior art definition of the term "closed system" is critical to our determination to reverse the rejection of the claims on appeal. The preamble of independent claim 1 requires a "closed system metering device" whereas the body of claim 1 in its first clause recites a "closed system postal meter." The entire first clause requires "coupling a scanning device to a closed system postal meter." Although the examiner's remarks in the answer rightly indicate there is an apparent "disconnect" between the postage meter with the scanning device in this claim and the further recited scanning, determining, and printing functions, the examiner also characterizes the claim as indicating that the closed system postal meter is merely an "ornamental" recitation.

In response, in the paragraph bridging pages 1-2 of the reply brief, appellants state:

Page 6, first paragraph of the Examiner's Answer contends that the meter, as the claims are written, is purely ornamental and its presence has no bearing on the implementation of the method. Appellants respectfully disagree. Claim 1 includes the limitations of determining a postal code corresponding to the recipient address and printing the postal code on the mailpiece. Each of these steps is performed by the closed system postage meter (Specification, page 6, lines 3-13; Fig. 2; page 8, line 18 to page 3, line 4). Accordingly, the closed system postage meter affects

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the method in a manipulative sense, i.e., the closed system meter determines the postal code and prints the postal code on the mailpiece, and therefore is not purely ornamental.

Thus, according to this position, the subject matter of claim 1 on appeal requires that a closed system postage meter not only perform the explicit function of coupling a scanning device to the closed system postage meter but also requires that the functions of scanning, determining and printing the postal code on the mailpiece, which postal code corresponds to the scanned recipient address, must be performed by the closed system postage meter.

Neither reference applied by the examiner in formulating the rejection under 35 U.S.C. § 103 teaches such a closed system environment.

Appellants argue that Kara is an open system. We agree. The open system definition at page 13 of the Postal Service 37 CFR document indicates that such a system does not require that the implementing components be dedicated to the printing of postage information functions. This is easily determinable by viewing Fig. 1A of Kara which is characterized as a general purpose computer or personal computer in the corresponding text of this patent. Note also the Field of Invention discussion at

column 1 and the initial third of the discussion at column 7 in Kara. This is significant because Kara shows in Fig. 3 and discusses generally the use of scanning bar code information in the examiner-referenced discussion at column 9, line 53 through column 10, line 3. Additionally, the examiner's reliance upon column 16 also indicates that such bar code information is generated by the addressee zip code information. Thus, the weight of the evidence appears to us to indicate that Kara may be fairly characterized by the artisan as being an open system consistent with the manner which appellants argue this. The artisan therefore would not regard the scanning and the inclusion of addressee zip code information in the indicia to be printed on a mailpiece as comprising a closed system postage meter arrangement of any kind.

For similar reasons, we must conclude the same about Cordery, which appellants most strenuously argue in the brief and reply brief. Fig. 1 in Cordery shows generally the first embodiment of his invention. This figure shows the mailer unit there in more detail in Fig. 3, the data center components in Fig. 4 and the post office components in Fig. 5. The second

embodiment in this patent is shown in Fig. 9 and succeeding figures which are consistent with those of the earlier embodiment. What is significant here is that there is no explicit teaching that any type of scanning device is coupled to the mailer unit which corresponds to the overall structure of the subject matter of claim 1 on appeal as we perceive the examiner's position and as we believe the artisan would perceive it. Only Fig. 5 shows the use of a scanning type device 504 where the Post Office may scan an already printed Postage Revenue Block PRB on a mailpiece 122 to include scanning the addressee information 123. This is significant because it is performed by the Post Office components shown in Fig. 5 to yield a verification procedure depicted in Fig. 8.

Although the scanning device in Cordery is broadly "coupled to" the entire postage meter systems of Cordery as claimed, we agree with appellants' urgings, since they are consistent with the definition of open system environments in the U.S. Postage Systems' earlier-noted 37 CFR document. In fact, the definition at pages 13 and 14 of this document indicates that what may be previously regarded as a closed system becomes an open system under certain circumstances when utilized as part of an integrated mailing system.

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From our study of Cordery, appellants' observations are correct in the three principal arguments set forth at pages 10 and 11 of the principal brief on appeal that this reference requires for the generation of any indicia to be printed the inclusion of the addressee information in the indicia itself, that closed-system meters do not generally have the capability to perform address cleansing with a feature of dependent claim 3 providing a corrected postal code and that Cordery's system prints other indicia other than the Postal Revenue Block itself, a feature indicative of open rather than closed systems.

Appellants have also stated at page 2 of the reply brief that "the definitions of closed and open meter systems used by Appellant to characterize the system of Cordery et al. are promulgated by the United States Post Office, and are well known to one skilled in the art." Appellants also emphasize in their reply brief repeatedly that Cordery's system requires the inclusion of addressee information in the encrypted evidence of postage printed on the mailpiece for subsequent verification by the U.S. Postal Service.

We also reproduce the following from page 4 of the reply brief:

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In an open metering system, the indicia are made secure by including addressee information in the encrypted evidence of postage printed on the mailpiece for subsequent verification. It is an absolute requirement of the United States Postal Service that an open system indicium include the destination zip code in the barcode data of the indicium (see Information Based Indicia Program (IBIP) Open System Indicium Specification, dated July 23, 1997). The system of Cordery et al. requires that each digital token must include encrypted information based on the recipient address for verification to occur because the system of Cordery et al. is an open metering system, and not a closed metering system.

Because we have concluded that both references relied upon by the examiner to formulate the rejection under 35 U.S.C. § 103 are open systems, the combined teachings and suggestions of them within 35 U.S.C. § 103 would not have yielded the claimed subject matter of independent claim 1 on appeal regarding a closed system postage meter.

In reaching our decision to reverse the rejection for the claims on appeal under 35 U.S.C. § 103, we observe in passing that there appears to be somewhat blurred distinctions between open and closed systems in the art surrounding the timeframe of the filing date of December 30, 1998 of this application. At the bottom of page 9 of the specification as filed, appellants make reference to a prior art virtual, closed system postage meter as described in the Serial No. 08/993,358, filed on December 18,

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1997 and incorporates it by reference into the specification as evidence of an exemplary closed system postage meter. This application matured into a patent on May 16, 2000 bearing the U.S. Patent No. 6,064,993.

The Background of the Invention at columns 1 and 2 of this reference discusses closed and open system devices, and column 2 makes reference to Cordery by patent number and characterizes it as an open system. What is significant about the patentee's contributions in the art is that the patent recognizes that prior to his patent a so-called virtual postage meter was characterized as an open system, whereas according to his disclosed invention a virtual postage meter may be considered as a closed system. The details of the three figures in this patent and the corresponding discussion, however, do not indicate that the indicia printed on the mailpiece according to his teachings would include addressee information. In fact, column 3, lines 2 and 3 indicates that his invention may utilize a low-cost device without the need to include destination address as in open system meters. The nature of the actual indicia that is processed according to the invention involves a process where a printer module actually

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requests from a remote data center various indicia data rather than supplying the indicia data to it according to the open system environment as in Cordery. This closed system virtual postage meter feature is discussed in the Summary of the Invention at column 3, lines 36-54 and the top half of columns 5 and 6.

It is also worthy of note that the initial paragraph at page 1 of the present specification made reference to certain co-pending applications that were incorporated by reference and identified by attorney document number. One of these is referenced by serial number (09/224,255) in the amendment filed on June 25, 2001 replacing the previously submitted subject matter at page 5 beginning at line 15. This prior art application was determined by us to have been filed on the same date as the present application. It significantly identifies and expands upon the meaning of a closed system since it is taught to scan destination address information from a mailpiece in order to include at least some part of the destination address information in an indicium. This feature was said to enhance the security of a metering system by making the detection of duplicate indicia much easier.

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We emphasize again that on the basis of the arguments and overall evidence before us, the artisan would have recognized the teachings of Cordery and Kara as being open systems thus making them unable to teach or suggest the closed system postage meter environment of the claims on appeal. There is no evidence before the filing date of this application that closed systems embraced/included scanning addressee information and caused it to be included in or otherwise corresponded to a postal code printed on a mailpiece. Stated differently, there is no evidence before us that the general distinctions in the art that apparently existed before the filing date of the present application would have matured to the point of the artisan considering Cordery's system as a closed system notwithstanding the fact that there appeared to be movement in the development of the art such that previous distinctions between open and closed systems were becoming somewhat blurred.

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In view of the foregoing, the decision of the examiner  
rejecting claims 1-3 under 35 U.S.C. § 103 is reversed.

REVERSED

James D. Thomas	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
Lee E. Barrett	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
Howard B. Blankenship	)	
Administrative Patent Judge	)	

JDT/cam

APPENDIX

Sec. 502.7 Description of open and closed systems.

(a) An "Open System" does not require that the implementing components be dedicated to the IBIP functions. This system may allow multiple non-postage related software applications to be in use and it also may depend on several interconnected devices that may serve multiple purposes for their user. The open system computer and peripherals such as the printer and CD-ROM drive may perform functions unrelated to the Information Based Indicia Program (IBIP). Host operations may depend upon computer software such as operating systems and communications

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systems. The open system version is responsible for composing a complete, integrated mailpiece front (or a tape/label for the piece).

(b) The "closed system" is a device dedicated toward IBIP functions. Closed systems do not have to satisfy Postal Service address standards or include the destination ZIP Code in the indicia. Closed systems may satisfy the other administrative requirements through external processes. If a closed system operates as a component of an integrated mailing system, it may be subject to the open system requirements. An integrated mailing system shall be subject to open system requirements if it includes a computer interfaced to the meter and it prepares mailpiece fronts or labels that include both the destination address and the indicium. The integrated system is an open system even if different printers apply the address and the indicium. If the mailing system satisfies these criteria, the USPS considers the "meter" to be an open system peripheral device that performs the dual functions of printing indicia and interfacing the PSD to the open host. The integrated mailing system must be approved by the USPS according to the open system criteria.

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