

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL N. DUNCAN, ALEXANDER N. SVORONOS,
and THOMAS J. MILLER

Appeal No. 2004-0008
Application No. 09/547,627

ON BRIEF

Before THOMAS, JERRY SMITH, and LEVY, 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 through 50. Representative claim 1 is reproduced below:

1. A method for ordering inbound inquiries, the method comprising:

receiving plural inbound inquiries, each inbound inquiry having associated inquiry information;

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applying a model to the inquiry information to determine a priority value for each inquiry, the model estimating the probability of an outcome of an inbound inquiry having a predetermined result; and

ordering the inbound inquiries with the priority values.

The following references are relied on by the examiner:

Jolissaint	5,040,208	Aug. 13, 1991
Rogers et al. (Rogers)	5,946,386	Aug. 31, 1999
Gisby	6,002,760	Dec. 14, 1999
Walker et al. (Walker)	6,088,444	Jul. 11, 2000

(filed Apr. 11, 1997)

Claims 1, 3 through 35, 37 through 44 and 46 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Walker. The remaining claims on appeal stand rejected under 35 U.S.C. § 103. As evidence of obviousness as to claims 2, 36, 45 and 47, the examiner relies upon Walker in view of Rogers. As to claims 48 and 49, the examiner relies upon Walker in view of Gisby and, as to claim 50, the examiner adds Jolissaint to Walker.¹

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

¹As noted at pages 3 and 12 of the answer, the examiner has withdrawn a rejection of claim 1 under the second paragraph of 35 U.S.C. § 112.

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OPINION

We reverse the various rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103 of claims 1 through 43, but sustain the rejections of remaining claims 44 through 50.

As generally argued by appellants in the brief and reply brief, the rejections of independent claims 1, 16, 33 and 39 under 35 U.S.C. § 102 must be reversed because there are key recitations in each of these independent claims that Walker does not teach. Walker's computations or calculations of "economic value" as outlined by the examiner in the answer fail to teach "estimating the probability of an outcome of an inbound inquiry having a predetermined result" as recited in independent claim 1; fail "to predict an outcome of the pending inbound call" in independent claim 16; fail to determine an order of inbound inquiries "based in part on the predicted outcome of the inbound inquiries" as set forth in independent claim 33 and fail to teach anything "that prioritizes the inbound calls in accordance with forecasted outcomes for the inbound calls" as recited in independent claim 39 on appeal.

Notwithstanding the examiner's urging otherwise in the answer that these noted features are taught in Walker, the portions identified and relied upon by the examiner do not

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support the examiner's conclusion that these quoted features of each of these noted independent claims is taught to the artisan either expressly or inherently within 35 U.S.C. § 102. In fact, the various teachings of economic value calculations in Walker are not detailed; the specifics of the nature, how and what actual calculations are performed simply are absent from Walker's teachings. Therefore, we are unable to conclude that the artisan would have determined from Walker's teachings any estimation of any kind of probability to predict an outcome or any determination of forecasting outcomes.

Likewise, we agree with appellants' observations at the top of page 2 of the reply brief that "[n]o basis exists to conclude that large historical orders are used by Walker to predict the outcome of a call or even that a correlation *necessarily* exists between economic value and call outcome." The feature of customer status in the paragraph bridging columns 3 and 4 of Walker also does not lead us to conclude that the artisan would have been led to understand that Walker teaches the earlier-quoted features of independent claims 1, 16, 33 and 39 on appeal.

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The examiner's responsive arguments at pages 13 and 14 of the answer also do not convince us that the teachings in Walker anticipate the subject matter quoted from these independent claims.

Because we do not sustain the rejection of independent claims 1, 16, 33 and 39 on appeal under 35 U.S.C. § 102, the rejection of the respective dependent claims under 35 U.S.C. § 102 and 35 U.S.C. § 103 must also be reversed. Thus, the stated rejections of claims 1 through 43 are reversed.

We reach an opposite conclusion, however, with respect to the rejection of independent claim 44 and its dependent claim 46 under 35 U.S.C. § 102, the rejection of its dependent claims 45 and 47 under 35 U.S.C. § 103 and the third and fourth stated rejections of claims 48, 49 and 50 under 35 U.S.C. § 103.

Independent claims 44, 48, 49 and 50 contain a common recitation "applying the inquiry information to one or more models to determine a priority value for each inquiry." As to these rejections, we do not agree with appellants' urging that Walker does not teach the use of a model. As to independent claims 48 through 50 as argued at the bottom of page 7 of the principal brief on appeal, appellants do not argue that Walker does not teach priority call queueing "to determine a priority

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value for each inquiry" as set forth in each of these independent claims as well as independent claim 44. This is plainly evident at least from the abstract of Walker.

The examiner has properly set forth various portions of Walker to urge that Walker essentially sets forth in his own terms a "model" to the extent broadly recited in these affirmed claims. The examiner has made reference to the teachings at column 3, line 45 through column 4, line 8; the teachings at column 5, line 24 through column 6, line 28 as well as the showings in figures 5 through 8 which, in our view as well, depict to the artisan a process relating to a model/modular software since CPU 52 of figure 3 performs the noted value calculations. To these teachings we add the following: The showing in figure 2 and the general discussion thereof at column 4, lines 17 through 24 and 45 through 47 indicating that control/call distribution "procedures" are taught. Column 6, lines 29 through 42 teach of plural queues indicating conditional transfers from one queue to another based upon predetermined or modeled software. Additionally, the teachings at column 6, line 62 through column 7, line 3 indicates that the control software or processes taught in Walker may be embodied in one or more media disks.

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The brief argument set forth at the bottom of page 7 of the principal brief on appeal does not argue against the combinability of Walker as to independent claims 48 and 49 with the noted secondary reference to Gisby, and also does not argue against the combinability of Walker with Jolissaint as to claim 50. The arguments there as well do not argue that the examiner's reliance upon the additional teachings of Gisby and Jolissaint are not specifically taught in these respective references as alleged by the examiner. Even though appellants' argue at the bottom of page 7 that all rejections under 35 U.S.C. § 103 are to be considered together, there appears to be no arguments at all presented as to the second stated rejection of dependent claims 45 and 47 in view of the collective teachings of Walker and Rogers. Page 2 of the supplemental reply brief indicates the rejection of these dependent claims "fall with the claims from which they depend."

No arguments at all were presented as to dependent claim 46.

In view of the foregoing, the examiner's decision to reject claims 1 through 43 under 35 U.S.C. § 102 or 35 U.S.C. § 103 is reversed. On the other hand, the examiner's decision to reject claims 44 and 46 under 35 U.S.C. § 102 is affirmed, and the

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examiner's decision to reject claims 45 and 47 through 50 under 35 U.S.C. § 103 is affirmed. Therefore, the decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

JAMES D. THOMAS)	
Administrative Patent Judge)	
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JERRY SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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STUART S. LEVY)	
Administrative Patent Judge)	

JDT:hh

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