

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. 32

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BARBARA L. FOX and BRIAN A. LAMACCHIA

Appeal No. 2004-1156
Application No. 09/071,594

ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-39, which are all of the claims pending in this application.

We **AFFIRM-IN-PART**.

BACKGROUND

Appellants' invention relates to an intelligent trust management method and system. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. In a computer system, a method of making a decision on a proposed action of a system component, comprising:

receiving action information from the system component, the action information comprising the proposed action including data that identifies the proposed action relative to other actions;

obtaining a selected policy object corresponding to the proposed action from among a plurality of policy objects, the selected policy object obtained based on the data that identifies the proposed action;

invoking the selected policy object, the selected policy object including executable code that dynamically obtains variable information at the selected policy object from a source independent of the system component and makes a decision based on the variable information; and

returning the decision to the system component.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Brandt et al. (Brandt)	5,892,905	Apr. 06, 1999 (filed Dec. 23, 1996)
Grimm et al. (Grimm)	6,317,868	Nov. 13, 2001 (filed Oct. 07, 1998)

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Claims 1-39 stand rejected under 35 U.S.C. § 103 as being unpatentable over Brandt in view of Grrimm.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 28, mailed Jul. 10, 2003) for the examiner's reasoning in support of the rejections, and to appellants' brief (Paper No. 27, filed Apr. 28, 2003) and reply brief (Paper No. 29, filed Sep. 12, 2003) for appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we make the determinations which follow.

At the outset, we note that appellants have elected to group the claims as standing or falling together in five separate groupings. (See brief at page 4.) We will address appellants' arguments thereto, but will separate independent claim 37 separately from independent claim 1 since we do not find corresponding limitations to independent claims 1 and 23.

OBVIOUSNESS

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. **See In re Rijckaert**, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. **See In re Lintner**, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. **See In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See **In re Warner**, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), **cert. denied**,

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389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. **See, e.g., Grain Processing Corp. v. American Maize-Prods. Co.**, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, "the [E]xaminer can satisfy the burden of showing obviousness of the combination 'only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in art would lead that individual to combine the relevant teachings of the references.'" **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing **In re Fritch**, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). "Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact." **Dembiczak**, 175 F.3d at 999, 50 USPQ2d at 1617, citing **McElmurry v. Arkansas Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

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Further, as pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." **In re Hiniker Co.**, 150 F.3d 1362,1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the limitations set forth in independent claim 1. At pages 5-7 of the brief, appellants argue that the invention recited in independent claim 1 is directed to a proposed action and a selected policy object from among a plurality of policy objects. The selected policy object is invoked to dynamically obtain variable information at the selected policy object from a source independent of the system component. (See brief at page 6.) At pages 7-9 of the brief, appellants paraphrase the examiner's position concerning the interpretation of the claimed invention and the applied prior art references. Here, we agree with appellants assessment of the examiner's application of the prior art to the claimed invention and agree with appellants that the logon security procedures of Brandt arguably may have a single security policy object, but it is not selected from a plurality of policy objects. Therefore, the combination of Brandt and Grimm does not teach or fairly suggest the invention as recited in independent claims 1 and 23. Therefore, we cannot sustain the rejection of independent claims 1 and 23 and their dependent claims 2-22 and 24-36.

With respect to independent claim 37, accepting appellants' interpretation discussed above and the examiner's position, we find no such corresponding limitation in independent claim 37 concerning the selection of a policy object from a plurality of policy objects. Therefore, this argument is not persuasive with respect to independent claim 37, and we cannot group independent claim 37 with independent claims 1 and 23.

With respect to independent claim 1, Appellants argue that Grimm only has one policy service and it is not obtained/selected based on a proposed action received from an application program or the like that is seeking a policy decision. (See brief at page 10.) We evaluate this argument with respect to independent claim 37 and find that the teachings of Grimm and Brandt do teach and fairly suggest that the security policy service is obtained based on data that identifies a proposed action. Here, we find that the language of independent claim 37 is broader than the language in independent claim 1. We find that the security login procedures of Brandt would have been a policy decision with which a policy decision is made to allow the proposed action to allow access to an individual seeking access. The inputting of the account information and password, etc. would have been from a source independent of the requesting entity. The requesting entity would have been the user's computer and the user would have been a source independent of the requesting entity.

Appellants argue that Grimm teaches directly away from the present invention. (See brief at pages 10-11.) We disagree with appellants, and find that Grimm is a different teaching than the claimed invention and not a specific “teaching away.” Appellants argue that another limitation with respect to independent claim 1 is the “selected policy object.” (See brief at page 11.) Here, we find no limitation with respect to a selection of a policy object or a selected policy object in independent claim 37. Therefore, this argument is not persuasive. Appellants argue that Grimm and Brandt do not teach or suggest a policy object that dynamically obtain variable information to make a decision let alone from a source independent of the system component from which the proposed action was received. We disagree with appellants as discussed above with respect to a login procedure disclosed by Brandt in view of the Grimm.

Appellants argue that the examiner has relied upon improper hindsight to reconstruct the claimed invention. (See brief at page 11.) We disagree with appellants with respect to independent claim 37 and find that this claim is broader than the arguments set forth by appellants with respect to independent claim 1. Therefore, these arguments are not commensurate in scope with the claim language of independent claim 37 and not persuasive. Appellants argue that neither Brandt nor Grimm teaches or suggests a policy object that operates to obtain variable information.

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(See brief at page 12.) Here, we find no such limitation as to a policy object in independent claim 37. Therefore, this argument is not persuasive. Appellants present specific arguments to independent claim 23 at page 13 of the brief, but only mention independent claim 37 once on page 12 of the brief without a specific argument thereto. Finding no specific argument thereto and not finding a persuasive argument with respect to independent claim 1, which was convincing as to the limitations of independent claim 37, we will sustain the examiner's rejection of independent claim 37 and dependent claims 38 and 39 which appellants elected not to specifically argue.

With respect to dependent claims 20 and 22, we find that the examiner has not relied upon the teachings of the additional three references recited in the statement of the rejection concerning the concept of verifying a digital signature. Therefore, we find no evidence in the rejection concerning digital signatures and no *prima facie* case of obviousness thereto. Therefore, we additionally reverse the rejection of dependent claims 20 and 22 for this reason.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-36 under 35 U.S.C. § 103 is reversed , and the decision of the examiner to reject claims 37-39 under 35 U.S.C. § 103 is affirmed.

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

AFFIRM-IN-PART

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
MICHAEL R. FLEMING)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JOSEPH L. DIXON)	
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