

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH M. ZOMPA and SUSAN L. BATTEN

Appeal No. 2004-1421
Application No. 09/471,674

ON BRIEF

Before HAIRSTON, FRANKFORT, and NASE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 4, 5, 8 through 13, 16 and 17, all of the claims remaining in this application. Claims 2, 3, 6, 7, 14 and 15 have been canceled.

Appellants' invention relates to a system and method for enhancing preparedness of members of a large business or organization who are planning to engage in international travel,

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and seeks to automatically provide such members with important travel information from a number of different and specialized travel service providers, e.g., a medical office or clinic which provides information concerning immunization recommendations for countries to which travel is intended and guidance for dealing with medical emergencies in such countries, and/or an information technologies (IT) operation which provides, for example, a laptop computer to a member/traveler and appropriate adapters and other components to make the computer equipment useable at foreign sites. Another aspect of appellants' invention relates to providing different levels of information to members of the business or organization who are planning to engage in international travel depending upon whether or not the individual traveler has previously received travel service information from a contacted travel service provider. Independent claims 1, 5 and 10 are representative of the subject matter on appeal and a copy of those claims can be found in Appendix A of appellants' brief.¹

¹ A minor error appears in claim 5 as reproduced in Appendix A of the brief and as reproduced in the amendment filed October 10, 2002 (Paper No. 6). More specifically, the clause in claim 5 reciting a second data transmission link erroneously recites "the second data link of a given member of a given computer being disposed to transmit a first travel preparation message to said message receiving device," when this portion of the claim should
(continued...)

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

Flake et al. (Flake)	5,832,451	Nov. 3, 1998
Robertson	6,269,369	Jul. 31, 2001
Vance et al. (Vance)	6,442,526	Aug. 27, 2002

Claims 1, 4, 5, 8 through 13, 16 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Flake in view of Robertson and Vance.

Rather than attempt to reiterate the examiner's full commentary with respect to the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellants regarding the rejection, we make reference to the examiner's answer (Paper No. 17, mailed January 15, 2004) for the reasoning in support of the rejection, and to appellants' brief (Paper No. 16, filed October 30, 2003) and reply brief (Paper No. 18, filed March 8, 2004) for the arguments thereagainst.

¹(...continued)
actually read that --- the second data link of a given computer [or given travel service provider computer] being disposed to transmit a first travel preparation message to said message receiving device---. Correction of this error should be made in any further prosecution of the application before the examiner.

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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 have made the determination that the examiner's rejection of claims 1, 4, 5, 8 through 13, 16 and 17 under 35 U.S.C. § 103(a) will not be sustained. Our reasons for this determination follow.

Looking first to the communication systems defined in independent claims 5 and 10 on appeal, we note that claim 10 is drafted in "means-plus-function" terms, and that while claim 5 is drafted in structure-plus-function terminology, it is clear that the claim defines the underlying function without recitation of particular structure for achieving the specified function. Thus, as we view the claims and appellants' arguments directed thereto, claims 5 and 10 must each be interpreted as invoking 35 U.S.C. § 112, sixth paragraph, and the respective "means" and "data transmission link" limitations therein must be construed to cover the corresponding structure described in appellants'

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specification and equivalents thereof. See In re Donaldson Co. Inc., 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994).

The result of the above-noted claim construction is that independent claims 5 and 10 on appeal are, when properly construed, clearly directed to a distributed system and infrastructure like that shown in Figure 2 of the application drawings, thereby requiring a communication system having a travel center (16) for an organization, first transmission means or data transmission link (22) extending from the organization's travel center to each of a number of travel service providers associated with the organization and operable to transmit a travel notification message from the travel center to each of said travel service providers for a given organization member, a computer (18a-18n) associated with each of the travel service providers, and a second transmission means or data transmission link (24) extending from each of said computers to a message receiving device of a given member and operable to transmit a travel preparation message generated by the computer associated with a given one of the travel service providers to the message receiving device accessible to the given member, said travel preparation message comprising a list of travel services

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available to the given member from said given travel service provider.

By contrast, Flake, the examiner's primary reference, teaches a centralized system and infrastructure (Figure 1) wherein a travel agency (12) functions as a central hub, receiving a travel request from a customer (16), evaluating that request based on stored data relating to a business entity profile (18) and an individual customer profile (20), communicating with one or more travel service providers (14), receiving data from the various travel service providers consulted, and subsequently making proposed travel arrangements and then communicating such arrangements to the customer. As noted by appellants on page 4 of the reply brief, the Flake patent does not teach or suggest an interaction over a second transmission means or data link in which the customer receives a travel preparation message directly from the computer of a service provider (14). Thus, the centralized system of Flake differs markedly from the distributed system required in claims 5 and 10 on appeal. Moreover, the examiner has provided no explanation as to how or why the system in Flake can in any way be considered to be an equivalent of the distributed system

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defined in appellants' claims 5 and 10 on appeal. We have also reviewed the patents to Robertson and Vance relied upon by the examiner, however, we find nothing therein which makes up for or otherwise supplies (i.e., renders obvious) that which is lacking in Flake.

We additionally note that claims 1 and 5 on appeal require a method and system wherein a computer associated with a given travel service provider is configured to determine whether a given organization member was identified in a previously received travel notification message and to make a selection between a first travel preparation message comprising a complete list of travel services available to the member and a second travel preparation message comprising only a list of updating travel services available dependent upon whether the given member was or was not identified in a previously received travel notification message, and send a complete list if no prior identification is found and only an updating list of services if the member was identified in a previously received travel notification message. As indicated on page 3 of appellants' specification, this selection of which list of services a given service provider will send to a given member minimizes redundancies. No such system

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and method for selecting alternative travel preparation messages is present in Flake. The examiner's attempt to somehow analogize the selection of different travel preparation messages of the type required in appellants' claims 1 and 5 on appeal with the travel arrangement "recap" mentioned in Flake column 11, lines 61-67, is wholly unavailing and attempts to compare entirely different and unrelated aspects of a member's travel preparation arrangements.

Like appellants, our review of the applied patents to Flake, Robinson and Vance, leads us to conclude that the examiner has attempted to reconstruct appellants' claimed subject matter using a patchwork of unrelated bits and pieces of information from a collection of patents having disparate goals or objectives relating to travel planning, based upon impermissible hindsight gleaned only from the present application and appellants' own teachings.

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For the foregoing reasons, the examiner's rejection of claims 1, 4, 5, 8 through 13, 16 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Flake in view of Robertson and Vance will not be sustained, and the decision of the examiner is reversed.

REVERSED

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
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)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

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