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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAYMOND MOORE

Appeal No. 2004-2198
Application 10/047,925

ON BRIEF

Before THOMAS, LEVY and SAADAT, ~~Administrative Patent Judges~~.

THOMAS, ~~Administrative Patent Judge~~.

~~DECISION ON APPEAL~~

Appellant has appealed to the Board from the examiner's final rejection of claims 1-27.

Representative claim 1 is reproduced below:

1. A method for managing a geographical distribution of business representative, the method comprising:

receiving a trace defining a closed geographical area;

identifying at least one geographical unit within the closed geographical area; and

receiving information regarding the at least one geographical unit in response to input from a user.

The following references are relied on by the examiner:

"CACI Information Solutions: (published Summer 2001 in Marketing Solutions Today and retrieved from <URL:http://www.caci.co.uk/pdfs/mst_Summer_2001.pdf > on May 17, 2003).

"CACI Limited Home Page" (dated June 2001 and retrieved from <URL:http://web.archive.org/web/20010610010807/www.caci.co.uk> on May 26, 2003)

Claims 1-3 and 7-27 stand rejected under 35 U.S.C. § 102(a) as being anticipated by CACI's Field Force Planning services and territory optimization software, which are commonly used together, as disclosed in:

"CACI Information Solutions" (published Summer 2001 in Marketing Solutions Today and retrieved from <URL:http://www.caci.co.uk/pdfs/mst_Summer_2001.pdf> on May 17, 2003); and

"CACI Limited Home Page" (dated June 2001 and retrieved from

URL:http://web.archive.org/web/20010610010807/www.caci.co.uk on May 26, 2003).

Claims 4-6 stand rejected under 35 U.S.C. § 103 based on the same applied prior art.

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

OPINION

For the reasons set forth by the examiner in the final rejection as better stated in the answer, we generally agree with the examiner's positions and therefore sustain the rejections of respective claims under 35 U.S.C. § 102 and 35 U.S.C. § 103.

At the outset, there are no arguments before us made by appellant in the brief and reply brief challenging the examiner's reliance upon two printed documents to allege anticipation within 35 U.S.C. § 102. Since the issue has not been argued before us, we consider it to have been waived. The examiner is permitted within MPEP § 2131.01 in a limited number of

circumstances to rely upon more than one document within 35 U.S.C. § 102. From our perspective, however, the examiner's positions would have been better stated by combining both references within 35 U.S.C. § 103.

Notwithstanding these considerations, the examiner's position basically outlined in the answer focuses upon the CACI Limited Home Page document. To the extent a single document is necessary here to show anticipation, we agree with the examiner's views that this is the document that does. The bottom of page 4 and the top of page 5 of the principal brief on appeal considers all the claims rejected under 35 U.S.C. § 102, claims 1-3 and 7-27, to comprise one group. The arguments presented in the subsequent pages in the principal brief focus only upon representative claim 1 as representative of all claims in this group. Correspondingly, appellant's second grouping of the claims lists claims 4-6, the claims set forth in the separately stated rejection under 35 U.S.C. § 103.

Even a brief study of the teachings at what appears to be the

examiner-labeled pages 4 and 5 at the top right corner of the CACI Limited Home Page reference shows the anticipatory nature of these pages to the subject matter of representative claim 1 on appeal. Therefore, we are not persuaded by appellant's two principal arguments that the CACI references do not receive a trace defining a closed geographical area and identifying at least one geographical unit within the closed geographical area as set forth in this claim.

Pages 4 and 5 of CACI Limited Home Page make clear that the claimed closed geographic area may comprise the maps mentioned in several locations in these two pages. The emphasis upon appellant's arguments against this rejection as to this feature relate to the reception of a trace not being taught within the reference. This argument is not well taken since the existence of a map as a starting point from which areas may be separately delineated, such as territories and regions, are clearly indicated at least at page 4 of this reference. Because a map is specifically taught, in the context of a trace of a mapped area, it necessarily must be present to the extent appellant argues inherency

at page 6 of the principal brief on appeal.

Furthermore, appellant's positions in the brief and reply brief as to this feature are not well taken to begin with. In paragraph 18 at page 6 of the appellant's own specification, appellant appears to utilize prior art mapping software to provide the claimed closed geographical area to the extent that is recited in representative claim 1 on appeal. Appellant appears to rely upon the well known windows-based operating system to provide a basis within which a special program called a map-generation program such as MapPoint operates. It is this prior art software that appears to us in the ensuing pages of the disclosure to provide the basis of the map 350 shown in Figures 3A-D.

The feature of "identifying at least one geographical unit within the closed geographical area" is next argued by appellant in the principal brief. In the context of the disclosure of pages 4 and 5 of the CACI Limited Home Page document, at least national/regional/territorial boundaries are therefore identified "within" the closed geographical area of the map. Additionally, the identifiable national and regional boundaries may be

viewed as well as comprising the traceable closed geographic area claimed. The second to the last paragraph at page 4 of the reference indicates that the mapping package allows the user to use “postal boundary sets” to define territories within a mapped area, a manner of identifying the claimed geographical units consistent with appellant’s definition at the top of page 4 of the specification as filed.

In any event, the last two paragraphs of page 4 of the reference also indicate that the user is capable of manipulating territories on screen, to manually allocate each individual portion of a territory, to build territories and further, as disclosed at page 5, that territories are stored as computerized maps with each territory shaded a different color. Lastly, it is indicated in the last paragraph of the CACI Limited Home Page document at page 5 that map files of the whole structure or individual territories may be sent for printing, which is obviously a reference to an entire trace of the whole set of map files that further comprises a closed geographic area. The ability of the user to otherwise edit or change the nature of the territories defined at pages 4 and 5 of the reference allows the user

through computer input devices to provide information for the system to receive this information to the extent recited at the end of representative claim 1 on appeal.

The positions set forth by the appellant and the examiner in the brief and answer, to the extent they relate to various definitions, over complicate the basic plain teachings of the reference as we have just emphasized. The reference plainly teaches that the system has the capability "to map" (top of page 5) and to therefore produce "a map." In an analogous manner, appellant argues at the top of page 7 of the principal brief that the examiner has provided a definitional analysis "to trace" rather than to produce "a trace." This argument is misplaced since the result of a tracing action in a verb form yields "a trace." Correspondingly, the examiner's reliance upon mathematical set theory to argue that a geographical area and geographical unit, as claimed, may be spatially coextensive also over complicates the simple, straightforward teachings of the reference.

We do, however, agree with the examiner's view expressed at the

bottom of page 4 of the answer that representative method claim 1 does not specify what type of trace is received to define a closed geographical area. The claim merely recites that it is received. The software of the CACI Limited Home Page clearly receives a map-trace of a closed geographical area. We therefore agree with the examiner's further analysis that any input that delineates a closed geographical area meets the claimed trace. The back-and-forth arguments regarding the reference's use of the terms "bricks" is not persuasive of patentability since the examiner's position is bottomed upon the view that bricks in the reference as discussed at page 5 of the reference merely identify structures within a given territory.

Based upon our understanding of the reference and the analysis of it we present here, appellant's arguments in the reply brief urging patentability of representative independent claim 1 are clearly unpersuasive. The nature of the positions presented here end up presenting arguments about arguments rather than focusing on the issue of whether the reference anticipates the subject matter of the claims.

Nevertheless, we do agree with appellant's observation at the bottom of page 3 of the reply brief that the reference's description of the term bricks is not at all clear. Lastly, we observe that the reply brief makes no arguments with respect to the rejection of claims 4-6 under 35 U.S.C. § 103.

We now turn to the rejection of claims 4-6 under 35 U.S.C. § 103. Notwithstanding our view that the examiner's reliance upon Official Notice is generally to be strongly discouraged, we agree with the views expressed by the examiner at pages 8 and 9 of the final rejection and repeated at pages 8 and 9 of the answer that the subject matter of claims 4-6 would have been obvious to the artisan within the teaching value of CACI Limited Home Page.

We agree with the examiner's views expressed at pages 7 and 8 of the answer that appellant has essentially not challenged the facts asserted by Official Notice as required by MPEP 2144.04(C) as printed at page 7 of the answer. We read appellant's arguments in the same manner as does the examiner that appellant has merely challenged the motivation to

combine Official Notice. It appears to us that the examiner has not set forth any classic type of motivation to modify anything, merely that the CACI fails to ~~expressly~~ teach the subject matter of claims 4-6.

The teachings at pages 4 and 5 of CACI Limited Home Page themselves teach the modifiability of the subject matter referred to in claims 4-6 recited in claim 1 on appeal, that is, the generation of the tracing. Even though we recognize that the examiner's position would have been better expressed within 35 U.S.C. § 103 by the citation of an additional reference, claims 4-6 identify methodologies and structural elements to provide the tracing operation of ~~method~~ claim 1 on appeal. The manner in which the examiner has chosen to articulate a rejection within 35 U.S.C. § 103 of claims 4-6, although highly disfavored by us, is coextensive with the manner in which appellant has chosen to disclose his reliance upon prior art personal computers and well known prior art input devices of these claims for the entry of the tracing operations that are only generally taught in the reference. More specifically, maps are specifically taught at pages 4 and 5 of the reference and even at the top of page 4

"the art of territory planning has moved on a long way from lines on maps." The ability of the user to "manipulate territories on screen" and to "manually allocate each individual brick to a territory" as expressed in the second to the last paragraph at the bottom of page 4 of the reference clearly would have indicated the touch screen of claim 6, the free hand tracing of claim 4 and to utilize pen and digitizing tablets, well known as a prior art input devices to computerized systems, as required in claim 5. It is thus seen that the reference itself teaches fairly strongly to the artisan the use of well-known devices such as those recited in claims 4-6 to enter information into the software territory planning system of CACI.

In view of the foregoing, we have sustained the examiner's rejections of certain claims under 35 U.S.C. § 102 and 35 U.S.C. § 103. Therefore, the decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(effective Sept. 13, 2003; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat., Office 21 (Sept. 7, 2004)).

AFFIRMED

James D. Thomas	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
Stuart S. Levy	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
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