

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM Z. GOLDSTEIN

Appeal No. 2005-0823
Application No. 10/300,895

HEARD: June 7, 2005

Before RUGGIERO, LEVY, and SAADAT, Administrative Patent Judges.
LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-3, 7-15, 19, 20, 37-39, 43-46, 48-51, 55, 56, 62-66, 70-74, 78-82, 86-90, 94-98, 102-106, 110-114 and 118-122¹.

¹ We observe that although page 2 of the final rejection (mailed July 13, 2004) lists claims 13 and 49 as being rejected, no rejection of these claims appears in either the final rejection or the examiner's answer. Accordingly, we consider these claims to not be before us for decision on appeal. (see brief, pages 25, 26).

BACKGROUND

Appellant's invention relates to a method and system for reporting of issued airline tickets. In particular, the invention relates to transmitting a report of a ticket sale from a travel agent to an intermediate agent at a prescribed rate and imposing a fee for exchanging the ticket if, after the report has been sent, the customer determines that the ticket is unacceptable (specification, page 5). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced as follows:

1. A method of purchasing a travel ticket from a travel agent, comprising:

issuing the travel ticket by the travel agent to a customer;

reporting the issuance of the travel ticket externally and by the following day after the issuance of the travel ticket, the reporting occurring via a computer and an electronic communications device; and

imposing a fee for effecting changes to the travel ticket made after the issuance has been reported.

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

Brice et al. (Brice) 5,764,981 Jun. 9, 1988

Cogswell, David, "ARC Automates Agents," Travel Agent, pg. 81, Dec. 15, 1997.

"IATA to Fuse Back-Office Functions of 60 BSP Sites,"
(hereinafter IATA) Inside IT; Aug. 26, 1998.

"Industry Agents' Handbook" (hereinafter IAH), Sections 8.6 and
10, 1/2002.

Claims 64, 72, 80, 88, 96, 104, 112 and 120 stand rejected
under 35 U.S.C. § 112, second paragraph as being indefinite.

Claims 1-3, 7-12, 14, 15, 19, 20, 37-39, 43-46, 48, 50, 51,
55, 56, 62-66, 70-74, 78-82, 86-90, 94-98, 102-106, 110-114, and
118-122 stand rejected under 35 U.S.C. § 103(a) as being
unpatentable over Industry Agents Handbook in view of Brice,
IATA, and Cogswell².

Rather than reiterate the conflicting viewpoints advanced by
the examiner and appellant regarding the above-noted rejections,
we make reference to the examiner's answer (mailed October 19,
2004) for the examiner's complete reasoning in support of the
rejections, and to appellants' brief (filed September 3, 2004),
the reply brief (filed November 29, 2004), as well as the

² We observe that in the final rejection, claims 66, 74, 82, 90, 98,
106, 114 and 122 were additionally rejected under 35 U.S.C. § 103(a) as being
unpatentable over IAH in view of Brice, IATA, Cogswell and "applicant's
disclosure." In addition, claims 66, 74, 82, 90, 98, 106, 114 and 122 were
additionally rejected under 35 U.S.C. § 103(a) as being unpatentable over IAH
in view of Brice, IATA and "applicant's disclosure." As these two rejections
have not been repeated in the examiner's answer, we presume that these
rejections have been withdrawn by the examiner. See Ex parte Emm, 118 USPQ
180, 181 (Bd. App. 1957).

Declarations and Exhibits presented, for appellant's arguments thereagainst. Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered. See 37 CFR § 41.37(c)(1)(vii).

OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the rejections advanced by the examiner, and the evidence of indefiniteness and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellant's arguments, Declarations and Exhibits, set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

Upon consideration of the record before us, we affirm-in-part. We note at the outset that appellant (brief, page 7) has divided the claims into nine groups. As appellant's arguments are consistent with these groupings, we will address the nine groupings as denoted by appellant. We begin with the rejection

of claims 64, 72, 80, 88, 96, 104, 112 and 120 under 35 U.S.C. § 103(a) as being indefinite (Group 1).

Claims are considered to be definite, as required by the second paragraph of 35 U.S.C. § 112, when they define the metes and bounds of a claimed invention with a reasonable degree of precision and particularity. See In re Venezia, 530 F.2d 956, 958, 189 USPQ 149, 151 (CCPA 1976).

The examiner's position (answer, page 3) is that the claims use the trademark/trade name ARC. The examiner asserts (id.) that the scope of the claims is uncertain because a trademark or trade name is used to identify the source of goods, not the goods themselves, and (answer, page 4) "because of the dynamic nature of corporations, in that their names and composition can change over time."

Appellant's position (brief, page 8) is that "[t]he Examiner provides no evidence that one of skill in this art would not fully understand the recitation of 'reporting the issuance to Airline Reporting Corporation' or the scope of the rejected claims." It is argued (reply brief, page 3) that the claims do not use "ARC" in the trademark sense to identify goods or

products, but rather, ARC identifies the entity receiving the reporting. We agree.

Upon our review of the specification and claims, we find from page 19 of the specification that ARC refers to the Airline Reporting Corp. Although the examiner is correct that a trademark is used to identify the source of goods, not the goods themselves, the fact that the ARC corporation can change over time does not make the claims indefinite. We find the examiner's reliance on Ex Parte Simpson, 218 USPQ 1020, 1021 (footnote 2) (Bd. App. 1982) to be misplaced, because this is not a situation where the physical or other properties of a material are being described by mere reference to a trademark, as in Simpson. Moreover, as noted by appellant (reply brief, pages 3 and 4), ARC is not a trademark, but rather is a service mark.

The issue before us is whether an artisan would have understood, as of the time of the filing of the application, what ARC stood for. Because the examiner does not dispute that an artisan would have known that ARC referred to Airline Reporting Corporation at the time of filing, we find the claims to be definite within the meaning of 35 U.S.C. § 112, second paragraph.

Accordingly, the rejection of claims 64, 72, 80, 88, 96, 104, 112 and 120 under 35 U.S.C. § 112, second paragraph, is reversed.

We turn next to the rejection of claims 1-3, 7-12, 14, 15, 19, 20, 37-39, 43-46, 48, 50, 51, 55, 56, 62-66, 70-74, 78-82, 86-90, 94-98, 102-106, 110-114 and 118-122 under 35 U.S.C. § 103(a) as being unpatentable over IAH in view of Brice, IATA and Cogswell. We begin with claims 1, 7, 11, 12, 20, 37, 43, 48, 56, 62, 63, 65, 70, 71, 73, 78, 79, 81, 86, 87, 89, 94, 95, 97, 102, 103, 105, 110, 111, 113, 118, 119 and 121 (appellant's Group 2). The only claim argued by appellant with respect to this group is claim 1. We turn first to independent claims 1, 7, 12, 20, 37, 43, 48 and 56, which form part of this group, and select claim 1 as representative of the Group.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or

to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole. See id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

The examiner's position (answer, page 4) is that IAH discloses an automated system issuing a ticket by a travel agent

to a customer, reporting the issuance of the ticket to an intermediate agent on Tuesday night, and imposing a fee for changes made after the issuance of the ticket has been reported. The examiner notes that IAH does not disclose that "the prescribed rate minimizes the amount of time between issuance and reporting." We consider the examiner's statement to mean that IAH does not disclose reporting the issuance of the ticket by the following day. To make up for this deficiency of IAH, the examiner turns to Brice for a teaching of "the SABRE system which retrieves the reports from the intermediate agent as a batch process that can be scheduled to occur alternately on Monday at 1 am, or daily, monthly or periodically." The examiner notes that Brice also does not teach "the motivation more frequent reporting." The examiner's statement is not very clear. However, we consider the examiner to be attempting to say that Brice also does not disclose reporting the issuance of the travel ticket by the following day. To overcome the deficiencies of IAH and Brice, the examiner (answer, page 4) turns to IATA for a teaching of a "suggestion by Bruce Bishins, President of U.S. Travel Agency [sic] Registry" that "'the airlines alleged that ARC would soon 'enhance' IAR to move the world to daily reporting

with daily cash sweeps against agent bank accounts; so-called 'interactive reporting' functions would become involuntary and mandatory with all ticketing activity reported as it occurs; and that IAR would facilitate airlines amending the vast majority of ticketing time limits to instant or 24-hour ticketing.'" "

The examiner asserts (id.) that it would have been obvious "to modify the reporting schedule for the benefit of consolidating its billing and settlement plan functions." Although the examiner does not specifically refer to Cogswell in the rejection of the independent claims, the examiner adds, in the remarks, (answer, page 6) that "[t]he articles of Cogswell and IATA, demonstrate that the concept of daily reporting was known before applicant's invention, it was, in fact feared by agents (see Cogswell, pg 2 paragraph 14), and their trade group, U.S Travel Agent Registry (see IATA, Bruce Bishins concern 'that ARC would soon 'enhance' IAR,' paragraph 5)." The examiner additionally adds (answer, pages 6 and 7) that:

"IAH, which is the user's manual for the Interactive Agent Reporting (IAR) system, discloses issuing tickets, reporting issuance of tickets and imposing a fee. Even without Brice et al, IATA teaches U.S Travel Agent Registry's president, Bruce Bishins concern 'that ARC would soon 'enhance' IAR to move the world to daily... interactive reporting,' paragraph 5, that alone is suggestion to shorten the reporting period.

Brice et al clearly shows the ease with which batch reporting can be changed, with a simple click of the mouse, see figure 5 and figures 6 and 8 [which] show Daily reports."

Appellant asserts (brief, page 11) that the examiner has failed to establish a prima facie case of obviousness and that even if IAH, Brice and IATA were combined, they do not teach all of the limitations of the independent claims. It is argued (brief, page 12) that "[t]he examiner has unfortunately fallen prey to the trap of using a hindsight view of the invention to oversimplify the problem faced and the solution to it."

Appellant asserts (brief, page 13) that "the invention lies, not just in the solution, but also his discovery of a problem that no one else in the industry appreciated. The inventor realized that weekly reporting cost the airlines a huge source of revenue."

Appellant adds (id.) that "[e]ven a simple solution is entitled to patent protection if it results from the discovery of a hitherto unknown defect," and that "if generating over \$1 billion of new revenue annually was so obvious from the prior art, certainly the airlines would have done it before the invention. But they did not."

With respect to the applied prior art, appellant asserts (brief, page 14) that IAH discloses ARC's practice of weekly

reporting and does not disclose or suggest anything other than weekly reporting. With respect to Brice, appellant asserts (id.) that although Brice discloses an accounting system that can generate reports, it does not suggest that the reports have anything to do with CRS, and (brief, page 15) that nothing in Brice suggests that the reports serve any function other than internal management. Appellant adds that Brice does not teach running daily reports because customized reports are not daily reports. Turning to IATA, appellant asserts (brief, page 16) that the IATA article expressly states that ARC had no plans to move to daily reporting, and that daily reporting would only occur if IATA consolidated its Billing and Settlement Plans (BSPs) and chose ARC to run its operations.

It is further argued (brief, page 17) that not only is there no motivation for combining IAH with Brice, but that IATA teaches away from being combined with IAH and Brice because there is no reason to combine a reference related to reporting ticket instances with one for back-office internal reporting. Appellant adds (brief, page 18) that there were no plans to move away from weekly reporting. It is further asserted (id.) that the statements in IATA are double and triple hearsay.

Turning to the Cogswell reference, appellant asserts "[t]he Examiner never alleges that the Cogswell article has anything to do with the independent claims (Office Action, pp. 3-4), but we address it because it also teaches away from the combination the Examiner suggests." Appellant argues (brief, page 14) that the Cogswell article explains the introduction of the Interactive Agency Reporting (IAR) which is now in its first stage, which automates almost all of the agent's weekly sales report to ARC. Appellant acknowledges the statement of an agent (brief, page 19) that "[t]hey're still doing weekly reporting, but when will they start requiring daily reporting. Daily reporting would take away our flexibility and change our workload." Appellant adds (id.) that the next paragraph also expresses the opinion of an agent that the reporting is still weekly, and daily reporting would be bad. Appellant argues (id.) that"

"not only does the Cogswell article teach away from daily reporting as the claims require, it conflicts with the IATA article in reporting the interests of agents. To the extent that IATA article expressed any positive reason for combining the IATA article with the others to show more frequent reporting, the Cogswell article destroys that reason."

We note at the outset that the issue before us with respect to claim 1 is whether the prior art suggests the overall

combination set forth in the claim, including 'reporting the issuance of the travel ticket externally and by the following day after the issuance of the travel ticket" as recited in claim 1, or as substantially recited in each of the independent claims.

From our review of appellant's specification, we note that the specification, including the originally filed claims, does not specifically recite that the reporting is done by the following day. However, from the disclosure (specification, page 7) that "[a]fter recording the transaction (Step S5) periodic sales reporting is performed electronically or manually. (Step S11) For example, but not by way of limitation, the sales may be reported electronically or manually and the period of reporting may be fixed (e.g., hourly or daily) or variable (e.g., random, or otherwise" (underlining added). We find that the "e.g., hourly or daily" language of the specification provides basis for the language "by the following day." From the disclosure of, for example, daily reporting, we find that daily reporting, in contrast to weekly reporting that was done in the past, provides a suggestion of reporting the following day.

Turning to IAH, we make the following findings of fact from Section 8.6:

"ECCB was introduced into the manual ASP system in 1989 as a weekly process and changed to a daily process in December 1994. ECCB is a critical component of ARC's current processing activities and is a harbinger of the planned conversion to electronic processing embodied in the Interactive Agent Reporting (IAR) project" (page 1, left column).

"Failure to electronically void invalid or canceled credit card sales by midnight on the day of sale will result in clients being billed for the invalid or canceled transactions" (page 1, left column).

"Utilize CRS or ISR void formats following the day of sale, but no later than midnight Monday following the close of the sales week to electronically reverse credit card sales that are returned by clients. When Monday is a federal or legal holiday recognized by ARC in Section 12 of this Handbook, the deadline is extended until midnight Tuesday following the close of the sales week.

Reversal transactions will post as credits, i.e., negative (-) amounts, on credit card statements" (page 1, left column).

"ECCB was designed, and extensively tested, to remove from the ARC database any transaction that had been electronically voided through a CRS" (page 1, right column).

We make the following findings of fact from Section 10 of IAH:

"IAR INTERACTIVEplus (IAR) is an electronic Sales Reporting system that was developed by Airlines Reporting Corporation (ARC) with input from advisory groups made up of Travel Agents. The IAR core product was released in January 1997" (page 2, left column).

"Your daily ticket sales are transmitted from your reservation system(s) to IAR nightly so that you can view and reconcile your report the following day. IAR collects the data and electronically prepares your weekly ARC Sales Report on a daily basis. IAR will verify each transaction, as it is received, identify specific errors, and allow you to make corrections prior to the Sales Report submission deadline of Tuesday midnight Eastern Time" (page 2, left column).

"Although a back office accounting system is not necessary to use IAR, an optional tool is available so that IAR can send the ticket information to your back office system using an Internet file" (page 2, right column).

"It is recommended that voids be processed in your GDS/CRS whenever possible. However, in IAR you have the ability to void sales" (page 5, left column).

"Your client's account is charged if you void after midnight the day of sale. You have until Monday midnight following the close of the sales week to use the void format in your GDS/CRS. A credit reversal is sent to the credit card contractor and the void appears on your IAR report the next day" (page 5, left column).

"In IAR you may recall and make changes to an already submitted report up until the deadline time and date (Tuesday midnight Eastern time)" (page 6, left column).

From the disclosure of IAH, we find that the reference teaches all of the limitations of independent claim 1, with the exception of reporting the issuance of the ticket by the following day. Although the examiner takes the position (answer, pages 4 and 6) that IAH imposes a fee for changes made after the issuance has

been reported, the examiner does not point out where the teaching of this is found in IAH, other than a brief reference to Sections 8.6 and 10.

From our review of IAH, we find a teaching of charging a fee for changes after the reporting period on page 5, right column, where it states that in assembling the (weekly) report, the agent should "[v]erify that all exchanges and refund transactions have penalty information, if applicable." Although this portion of IAH states that penalties will be charged for changes or exchanges after the report period had ended, it does not state whether the penalty fees are charged to the travel agent or the customer. However, claim 1 does not specify who the fee is charged to.

Turning to Brice, we make the following findings of fact:

Brice relates "to a data management method and architecture allowing user-absent execution of scheduled batch tasks and administration of accounting information in environments that typically involve multiple users requiring access to centrally stored data such as the travel industry " (col. 1, lines 11-17);

"while back-office systems for the travel provider have existed for several years, . . . "none of the prior art back-office accounting and reporting systems are easily ported to other architectures or used in

connection with other vendor's hardware products" (col. 2, lines 11, 12, and 15-18);

"The present invention, however, provides an integrated 'real-time' CRS to back-office system that works on any industry supported architecture and is independent of the particular hardware system used" (col. 2, lines 23-26);

"Thus, a user can work with a client (the frontend) on his workstation and use resources of the server (the back-end) only when data needs to be accessed" (col. 2, lines 53-56);

"The invention has a report generator system that allows a non-programmer end user to create customized and formatted reports" (col. 3, lines 21-24);

"In particular, the present invention comprises a centralized host computer having means for mass storage of data" (col. 3, lines 54-56);

"In one of the preferred embodiments, the centralized host computer is one of several central reservation systems (CRS) such as SABRE" (col. 3, lines 58-60);

"Typically a UNIX or equivalent based process receives, manipulates, and stores the data stream on the travel provider's back-office platform" (col. 4, lines 1-3);

"FIG. 1 shows an overall system architecture 10 comprising of either a single central host computer or central reservation system (CRS) 20 or a plurality of CRS's 30. In one of the preferred embodiments, the CRS 20 or CRS's 30 are the various travel reservation systems or their equivalent. CRS 20 or CRS's 30 connects to a gateway or communications server 40" (col. 4, line 63 through col. 5, line 1);

"Attached to the LAN 50 of FIG. 1 is database server 80 ... It is at the database server 80 that the data stream from the CRS 20 or CRS's 30 is parsed, validated, verified, and otherwise manipulated before being accessible on LAN 50" (col. 6, lines 8 and 14-17),

"FIG. 2 illustrates a plurality of the centralized reservation systems (CRS) 32, 34, 36, and 38 that maintain 'real time' databases including present availability, fares, city pairs, bookings, destinations, city guides and other travel related information necessary in the travel industry for booking, purchasing, and ticketing passengers for air travel" (col. 7, lines 38-43).

From the disclosure of Brice, we find that the reference is directed to an integrated CRS to back-end system which allows a user to create customized and formatted reports. From the disclosure of IAH regarding IAR sending ticket information to the back-office system, we find that an artisan would have been motivated to provide the IVR system of IAH with the CRS to back-office system of Brice. However, we find no teaching or suggestion of reporting the issuance of the travel ticket by the following day.

Turning to IATA, we make the following findings of fact:

"International Air Transport Association's plans to consolidate its billing and settlement plan (BSP) functions could lead to a mandate that travel agents settle their accounts daily, if IATA chooses Airlines Reporting Corporation and its Interactive Agency

Reporting (IAR) function as its back-office BSP supplier says Bruce Bishins, president of U.S. Travel Agent Registry;"

"Bishins said the airlines 'alleged that ARC would soon 'enhance' IAR to move the world to daily reporting with daily cash sweeps against agent bank accounts; so-called 'interactive reporting' functions would become involuntary and mandatory with all ticketing activity reported as it occurs; and that IAR would facilitate airlines amending the vast majority of ticketing time limits to instant or 24-hour ticketing'" and

"the KPMG study recommended retaining BSP presence in 60 worldwide markets to ensure customer service, but to consolidate back-office functions with six suppliers in six regional groupings. IATA currently uses 45 data processing suppliers and 65 separate banks for its BSP functions.

'KPMG said if you shrink it down to six, you can produce substantial economies of scale and reduce operating costs to airlines,'."

From the disclosure of IATA we find that IATA's plans to consolidate its BSP functions could lead to a mandate that travel agents settle their accounts daily, if IATA chooses ARC and its IAR as its back-office BSP supplier. In addition, we find that even though ARC says it has no plans to make all reporting daily, that the airlines alleged that ARC would soon enhance IAR to move the world to daily reporting, and that agents would want daily reporting. We additionally find that IATA currently has 45 data processing suppliers and 65 separate banks for its BSP functions,

but that, according to Tom Murphy, IATA Managing Director-Distribution Services, "KPMG said that if you shrink it down to six, you can produce substantial economies of scale and reduce operating costs to airlines." Thus, we find from IATA that moving to daily settling of accounts by agents can come as a result of consolidation of IATA's BSP functions. From the airlines alleging that ARC would soon be enhanced to move the world to daily reporting, we find that artisans were aware of having daily reporting and were aware that daily reporting could be implemented at any time. Although IATA does not disclose any implementation of daily reporting, it is clear that daily reporting, instead of the current weekly reporting, was known to artisans. Thus, although IATA does not disclose daily reporting being implemented at the time of the article, we find that an artisan would have considered daily reporting to have been obvious. In addition, from the disclosure of ARC enhancing IAR, we find that an artisan would have been motivated to enhance the IAR of Section 10 of IAH.

Turning to Cogswell, we make the following findings of fact:

"Streamlining. IAR is designed to simplify the tedious once-a-week *ARC* reporting process for agents."

According to Gilpatrick, IAR is being released in phases. IAR is now in its first stage, which automates almost all of an agent's weekly sales report to *ARC*.

the second phase of the product, scheduled for completion in spring 1998, will automate those functions.

In addition to automating an extremely time-consuming process, *ARC* hopes IAR will make things easier for agents and increase productivity. To help make sure the product would help agents instead of replacing one cumbersome process with another, *ARC* created working groups for agents, CRSs, carriers and back-office systems. 'For the first time in its history, *ARC* actually went to the users of the product instead of creating the product in a vacuum, then telling agents what we know they need,' Gilpatrick says.

The IAR database interacts with each of the CRSs - each time an agent sells a ticket, the information from the sale is transferred to the IAR database as well as the agent's back-office system and the carrier's internal reservation system.

According to a SABRE spokeswoman, approximately 38 percent of the agents now using IAR are SABRE subscribers.

SABRE transmits data to IAR three times a day, which SABRE officials say is more than any other CRS.

IAR will eventually work with both CRS-supplied and third-party, back-office systems.

Not all agents are thrilled about the prospect of IAR. 'It just seems too Orwellian to me,' says one agent, who asked not to be identified. 'It's a great product and I know I'm going to use it eventually, but the whole thing makes me nervous. They're still doing weekly reporting now, but when will they start

requiring daily reporting? Daily reporting would take away our flexibility and change our workload.

ARC has really given the agency every advantage and not taken anything away in terms of flexibility and functionality.' Ahlsmith says he too was worried *ARC* would move to daily reporting, but so far IAR is sticking to the weekly reporting model.

From the disclosure of Cogswell, we find that streamlining IAR was designed to simplify the tedious once-a-week ARC reporting process for agents. IAR is being released in phases.

In the first phase, which was occurring as of the date of the article, almost all of the weekly sales report to ARC were being automated. In the second phase, scheduled for completion in spring 1998, RENs and TAADs functions would be automated. To make things easier for agents and increase productivity, ARC created working groups for agents, CSRs, carriers and back-office systems. The IAR database interacts with each of the CSRs. Each time an agent sells a ticket, the information from the sale is transferred to the IAR database, as well as the agent's back-office system and the carrier's internal reservation system. IAR will eventually work with both CSR supplied and third party, back-office systems.

We further find from Cogswell that not all agents are thrilled about the prospect of IAR. One agent stated that "the whole thing makes me nervous. They're still doing weekly reporting now, but when will they start requiring daily reporting? Daily reporting would take away our flexibility and change our workload." Cogswell additionally quotes a travel agency owner as stating that "he too was worried *ARC* would move to daily reporting, but so far IAR is sticking to the weekly reporting model." Thus, from the disclosure of Cogswell that some agents were apprehensive of the prospect of having daily reporting implemented, we find that an artisan would have considered daily reporting to have been obvious. The fact that some agents were not thrilled about the prospect of daily reporting does not detract from the fact that daily reporting was known to them. Nor does the fact that daily reporting had not yet been implemented, detract from the fact that daily reporting was known to those in the travel reservation industry.

In addition, from the disclosure of Cogswell of enhancing IAR, we find that an artisan would have been motivated to enhance IAR by implementing the automation of IAR as taught by Cogswell.

We additionally find from the disclosures of IATA and Cogswell taken with the disclosure of Brice, that from the knowledge by artisans of daily reporting, that an artisan would have been taught to enhance IAR by moving to daily reporting, and reporting the following day.

From the background of the invention found in appellant's specification, we make the following findings of what was known in the prior art. Our findings of fact are as follows:

"There are two different types of airline tickets issued in the airline industry: fully refundable tickets and non-refundable tickets. Travel agencies, on behalf of their clients, may refund fully-refundable tickets without any airline fee imposed. This is not the case for non-refundable tickets, however. Instead, the same passenger can use non-refundable tickets for future travel on the same airline, but airlines currently charge a change fee of about \$100 to change such tickets.

Travel agencies issue airlines tickets and report sales of tickets and remit payments on a weekly reporting cycle (e.g., Mon-Sun) to the Airline Reporting Corporation ("ARC"), a company that is wholly-owned by the member airlines."

Because the travel agent does not release the report until the end of the sales week, however, a travel agent may void a ticket sale at no airline-fee cost to the passenger because the ARC or airlines will not know the ticket ever issued.

Travel agents may void tickets at the customer's request prior to the end of the current reporting period (i.e., one week).

Figure 1 illustrates a conventional process of issuing a ticketing transaction involving a client wishing to change or cancel travel on a nonrefundable issued

ticket. First, a customer calls a travel agent to purchase a ticket for air travel. (Step S1) Next, the agent makes a reservation for the customer. (Step S2) The customer then purchases the ticket from the agent (Step S3), and a paper or electronic ticket is issued to the purchaser. (Step S4)

The ticketed transaction is recorded in the GDS only for validating the reservation. (Step S5) Reporting cannot occur at this stage due to the format and information collected by the GDS, so airlines are not informed of the sale at the time of the sale.

If the end of the weekly reporting cycle has not been reached (Step S6), then the agent may void the ticket (Step S7) and the original sale of the ticket to the airline is never reported to the airline. Since the airline carrier was never aware of the sale, it cannot charge a change fee, resulting in a tremendous loss of potential revenue for the airlines.

It is clear from the Background Of The Invention that travel agents were voiding tickets for customers before the end of the reporting period, even though the tickets had been purchased.

In addition, although not found in the Background Of The Invention, we find that the specification discloses, as traditional,

"[s]ince travel agencies have traditionally reported and remitted sales weekly, they have consistently offered their customers the courtesy of voiding airline tickets issued in a given week. By voiding airline tickets in this manner, travel agencies do not report the original sale to the airlines. Travel agencies void or change approximately 10% of all airline tickets, or about 17-19 million tickets annually. Of all airline tickets issued annually, about 65% are non-refundable."

Because this disclosure is listed as being "traditional," we find it to represent admitted prior art.

This evidence supplements our findings, as the evidence makes clear that while travel agents traditionally reported sales weekly, they consistently offered their customers the courtesy of voiding airline tickets issued in a given week, without reporting the original sale to the airlines.

Turning to the Declaration under 37 CFR § 1.132 of Ms. Vivian Pommier, dated October 13, 2003, we find from the Declaration that travel agencies conduct transactions according to the IAH, which is prepared and distributed by ARC. As stated on page 2, reporting of issued ticket to the airlines happened on a weekly batch basis, and that even though the data for the ticket sales was sent daily to ARC, that ARC did not report the issuances to the airlines until the end of the weekly reporting period. Travel agents could, up until the end of the weekly reporting period, make changes to a ticket without collecting any airline-imposed change fees. The Declaration additionally states that under this practice, which was in place until June of 2003, a ticket sale was essentially non-permanent until the end of the weekly reporting period. In November of 2003, ARC notified

travel agencies of plans to change its established practice of weekly reporting. On March 19, 2003 ARC issued a notice that it intended to implement its new practice on June 4, 2003.

The Declaration additionally states that under ARC's current practice, agents are still required to report each day's sales to ARC by midnight, but ARC now reports those ticket issuances to the airlines by midnight the following day. On page 3 of the Declaration, it is asserted that under the new policy (of following day reporting) airlines are collecting substantial new fee-based revenue, which was lost under the old practice of allowing weekly reporting.

We have also considered the Exhibits that accompany the Declaration. However, although the Declaration addresses the implementation of following day reporting, the Declaration is silent as to when those in the travel agency or airline industry were aware of the idea of going from weekly reporting to a shorter period of daily or following day reporting. The issue is not when the change from weekly reporting to daily reporting was implemented, but rather when artisans were aware of going from weekly reporting to a shorter period, such as daily or following day reporting, as in IATA and Cogswell. Thus, while the

Declaration and Exhibits have been considered for the information provided, it is given little weight as to the issue of when artisans were aware of the idea of going from weekly reporting to a shorter reporting period.

We turn next to the Declaration under 37 CFR § 1.132 of Mr. William Goldstein, filed October 16, 2003. The Declaration of Mr. Goldstein, is a summary of an interview that took place with the examiner on June 11, 2003. It is stated that in the interview, the Brice patent '981 was discussed by Mr. Goldstein as being a real-time back-end accounting system. Mr. Goldstein explained to the examiner that the Brice patent had no relevance as the reporting it described involved reporting of accounting data/ticket sales to the accounting system, not of the issuance of tickets. When Travelocity issues tickets, real-time, electronically, it creates a record in the GDS, that is maintained in the GDS until the GDS is interfaced with the accounting system. Issuance of the ticket, however, is not reported to the airline or ARC in real-time, but rather as would any other travel agent. The Declaration, on page 2, additionally states "I further explained that one of the examples I described in the application involved a system that performs batch

processing (e.g., daily reporting), and any reporting sooner than a week, the reporting period ARC required up until a few months ago, would be an improvement on the then-current system."

From our review of Brice, we agree with the Declarant that Brice is directed to a real-time, back-end accounting system, and that the patent is assigned to Travelocity. We note that the patent appears silent as to when reporting to the airlines or ARC takes place. Although the Declaration has been considered and given weight for what it discloses regarding Brice and appellant's disclosed invention, the Declaration is silent as to when artisans were aware of the idea of moving from weekly reporting to a shorter period, such as daily or following day reporting, as in IATA or Cogswell.

We turn next to a second Declaration of Mr. William Z. Goldstein under 37 CFR § 1.132, filed on October 16, 2003. The Declaration declares and states that between July and September of 2002, the Declarant met with representatives of several of the ARC-owned airlines, and that prior to meeting with Mr. Goldstein, each of the representatives executed a "Non-disclosure" or "Confidentially" Agreement. During the meetings, Mr Goldstein "described aspects of the invention as disclosed and claimed in

the above captioned application, explaining the disadvantages of maintaining the airline's then-current practice of a weekly reporting period during which changes to issued tickets could be made without imposition of any airline-imposed fees. A redacted copy of an exemplary business proposal for implementation presented during my meetings is attached hereto as Exh. A."

Declarant further states that "in November of 2002, ARC announced its intention to discontinue its long-standing policy practice of weekly reporting of issued tickets to the airlines and begin reporting more frequently." It is further declared that ARC's original plan was to go to a five times a week reporting, and that thereafter, ARC altered its original plan and on March 13, 2003 announced a revised plan that would be implemented on June 4, 2003. Under ARC's current practice, reporting must be done by midnight of the following day. Thus, under current practice a ticket sale becomes "permanent" by the end of the day after it was issued.

We find this Declaration to be problematic, as it raises more questions than it answers. Before we address the problems with the Declaration, we will discuss the contents of the November 15, 2002 ARC announcement, as well as the March 19, 2003

Announcement, the March 3, 2003 Communication, and the Redacted Business Plan.

In the November 15, 2002 article, David Collins, President and CEO of ARC announces plans to engage travel agents in a consultative dialog surrounding the need to introduce and implement various BPIs in the ARC settlement process. The article states that "[a]lthough we have truthfully said on a number of occasions in the past that ARC had no plans for instituting daily reporting, that situation has now changed as a result of the prolonged crisis in our industry." Although ARC will not be talking about daily remittance, they will be talking about the disparity between the billing of credit transactions daily and the settlement of cash transactions 10-17 days later. Management needs to get daily data of what transpired in the business the day before. Under ARC's proposal, based on a standard workweek, transaction data would be sent to each ticketing carrier five times a week. The article further discloses that the voiding system, which was set up to cancel out erroneous transactions, was now being abused because the functionality was being used to cancel out transactions that did take place. The article adds that ARC has been experiencing

increased fraud associated with the use of this (voiding) function.

We find from the article that ARC was planning on having reporting done five times a week based on a standard work week, which we consider to mean Monday through Friday. The reason given for the change from weekly reporting is listed as being the prolonged crisis in the industry. There is no mention of any meetings with Mr. Goldstein, or that the meetings with MR. Goldstein played any role in the decision to move away from weekly reporting. In addition, from the statement that ARC was experiencing increased fraud, we find that before the increased fraud, there was some fraud transpiring with respect to the voiding function. In the NEWS-AGENT ISSUES article dated March 3, 2003 the article states that ARC's Board was ready to approve a system that would allow voids up until midnight of the day following the transaction, and that ARC developed the plan in consultation with agency and corporate travel representatives after announcing last fall that it intended to restrict the "voiding window" sometime this year to reduce fraud and abuse. The article additionally recites that "[w]e shouldn't lose sight

of the fact that this initiative is driven by the identification of ongoing losses." However, the article does not specify how the losses were being identified or when they were identified.

We turn next to the March 19, 2003 announcement by ARC of the ARC Board approving a BPI initiative for implementation on June 4, 2003, after review of ARC's industry dialog by ARC management. In the initiative, the void function will remain available on the day of sale plus an additional 48 hours. The announcement additionally states that: "[m]anagement's report to the Board referenced the four month long dialog with travel agents, corporate travel departments (CTDs), and carriers along with feedback and proposals for changes to the initial ARC proposal first introduced on November 15, 2002. 'The engagement by the travel agent and CTD communities was significant and fruitful,' said ARC President and CEO, David Collins. 'We learned quite a bit about the agent business process and we were persuaded to alter the initial proposal to limit the voiding window in a number of areas. This is something that could not have accomplished without productive engagement in a cooperative dialog with our principal stakeholder communities,' he added."

From the disclosure that the initiative came as a result of a four month dialog with travel agents, corporate travel departments and carriers, along with feedback and proposals for changes to the November 15, 2002 initial proposal, and the lack of any reference to any input from Mr. Goldstein, we find that from the evidence before us, we would have to resort to unfounded speculation to conclude that a recognition of the problem of abuse of the voiding system came about from the meetings between appellant and unnamed members of several of the ARC-owned airlines.

Turning to the redacted New Business Methodology Proposal, we find that the document discloses that ARC was established in 1984, and that "[s]ince travel agencies only report and remit sales weekly, they have historically offered their customers the courtesy of voiding (negating the sale) airline tickets issued in a given week. This practice has been in existence since the creation of the agency reporting system. By voiding an airline ticket, agencies are not required to report the sale to ARC, and therefore, the airline" (Underlining added). From the disclosure that travel agencies have offered their customers the

courtesy of voiding airline tickets issued in a given week, since the creation of ARC in 1984, we find that the voiding of issued tickets by travel agencies was a problem that existed in the art for a very long time. From the disclosure in the November 15, 2002 article that ARC has been experiencing increased fraud with respect to this matter, we find that the airline industries were aware, at least to some extent, of the problem with the voiding system. From the disclosures of IATA that ARC would soon enhance IAR to move the world to daily reporting, and the disclosure of Cogswell that some members in the industry were nervous or worried about when ARC would start requiring daily reporting, we find that artisans were aware of daily reporting being put into place. From this, we find that an artisan would have considered daily reporting to have been obvious, even though it had not been implemented by ARC.

Turning back to the second Declaration by appellant, Mr. Goldstein, we note that the Declaration does not provide the exact dates of the meetings. Nor does the Declaration state who attended the meetings on behalf of the ARC airlines. Nor does the Declaration disclose what specifically was disclosed to the airlines during the meeting. The Declaration makes broad

reference to aspects of the claimed invention being discussed, but does not state what these aspects were. It is not disclosed if the implemented reporting by the next day or next 48 hours after the day of the ticket issuance was discussed. The Redacted Proposed New Business Methodology does not disclose, nor does the Declaration explain, how the airlines should be "inhibiting an agency's ability to void an airline ticket," as recited on page 2 of Section 2 of the Proposed New Business Method. Moreover, the Declaration is silent as to how the airline representatives received the information provide by Mr. Goldstein. For example, were they astonished to find out how much money they were losing? Did they express an indication that they weren't being told anything they didn't already know? etc. We don't know the answer to any of these questions because this information has not been provided to us in the Declaration, even though appellant is in a position to know the answers to these questions because he was present at all of the meetings. This case must be decided on the evidence of record.

Based on our analysis, supra, we find that the moving from a weekly voiding system to a reduced time for voiding the issuance of tickets, resulted from ongoing industry automation of IAR,

consideration of consolidation of the industries's BSP functions, and the knowledge among artisans that the industry at some time was going to move to a daily or next day reporting system. From the evidence of record, we fail to find a nexus between the November 15, 2002 ARC announcement of its intention to move from weekly reporting to daily reporting, and the meetings with appellant. If the move from a weekly reporting system came as a result of appellant's meetings with members of the airline industry from June through September 2002, it is not supported by the evidence in this record.

We are not persuaded by appellant's assertion (brief, page 11) that the examiner has failed to establish a prima facie case of obviousness of the independent claims because even if the references were combined, they do not teach all of the limitations of the independent claims. From our findings, supra, with respect to the teachings of the prior art, we find that the references would have suggested to an artisan the claimed invention, particularly in view of the teachings of IATA and Cogswell.

Nor are we persuaded by appellant's assertion (brief, page 13) that the prior art does not appear to have recognized the

problem solved by appellant. From the disclosures of IATA, Cogswell and the statement the airlines were experiencing increased fraud with respect to the voiding system (which implies that there was fraud before the increase in fraud), we find that an artisan was aware of the obviousness of having daily or next day reporting, i.e., reporting that was more frequent than once a week.

Nor are we persuaded by appellant's assertion (id.) that "if generating over \$1 billion of new revenue annually was so obvious from the prior art, certainly the airlines would have done it before the invention. But they did not." Appellant's assertion implies that if the invention were so obvious, someone would have invented it by now. The assertion blurs the distinction between 35 U.S.C. § 103 and 35 U.S.C. § 102 by essentially asserting that if the invention were so obvious, it would have been anticipated by the prior art; but since the invention was not anticipated by the prior art before appellant's invention, it is therefore non-obvious; See Tokyo Shibaura Electric Co. Ltd., et al. v. Zenith Radio Corp., 548 F.2d 88, 95, 193 USPQ2d 73, 79-80 (USCA 1977). With regard to appellant's arguments (brief, page 15) with respect to Brice, we make reference to our findings, supra, with

respect to the obviousness of combining the teachings of Brice with IAH.

With regard to appellant's assertions regarding IATA (brief, pages 16 and 17) and Cogswell (brief, page 18) we make reference to our findings, supra, with regard to why an artisan would have been motivated to combine the teachings of IATA and Cogswell with IAH and Brice. We add that we are not persuaded by appellant's assertion that IATA teaches away from modification of IAH. The reference discloses that IATA plans to consolidate its BSP functions, which could lead to a mandate to settle accounts daily if IATA chooses ARC and its IAR as its back-office supplier. The fact that IATA could go to daily reporting shows that daily reporting was known, even if it was not yet implemented. In addition, the reference additionally discloses that even though ARC says it has no plans to make all reporting daily, that the airlines alleged that ARC would soon enhance IAR to move the world to daily reporting. This also teaches and suggests that daily reporting was known to artisans. In addition, we find that the amount of reduction from weekly reporting to daily reporting, next day reporting, etc. to have been obvious from the disclosure of IATA of having all ticketing activity reported as it occurs."

Nor are we persuaded by appellant's assertion (brief, page 18) that the assertions of IATA are double and triple hearsay. The statements in the reference appear on their face to be accurate and reliable and no evidence has been offered to demonstrate that they are not; see In re Epstein, 32 F.3d 1559, 1565, 31 USPQ 2d 1817, 1821 (Fed. Cir. 1994). In addition, the court stated "[t]he general rule is that administrative agencies like the PTO are not bound by the rules of evidence that govern judicial proceedings. see 2 Am. Jur. 2d Administrative Law Section 345, at 350 (1994): Ernest H. Schopler, Annotation, Comment Note. --Hearsay Evidence in Proceedings Before Federal Administrative Agencies, 6 A.L.R. Fed. 76 (1971); see also Fed. R. Evid. 1101 (omitting administrative proceedings as coming within the applicability of the Federal Rules of Evidence). Agencies may provide for the application of evidence rules, as the PTO has so provided in patent interference proceedings, 37 C.F.R. Section 1.671(b)(1993), and patent public use proceedings, *id.* Section 1.292(a), both of which are *inter partes* in nature. Since, the PTO has not, however, provided for the application of evidence rules during *ex parte* examination and [d]uring *ex parte* PTO examination, applicants are free to investigate hearsay

assertions relied upon by an examiner during the three to six month period available to respond to an office action. They also have the right to introduce rebuttal evidence under 37 C.F.R. Section 1.132 (1993). Moreover, if applicants wish to cross-examine the authors of written hearsay assertions, under 35 U.S.C. Section 145 (1988) they may bring a civil action in the United States District Court for the District of Columbia seeking adjudication that they are entitled to receive a patent. In such an action, testimony could be compelled by subpoena under Federal Civil Procedure Rule 45. See Gould v. Quigg, 822 F.2d 1074, 1076, 3 USPQ2d 1302, 1303 (Fed. Cir. 1987)."

We turn next to appellant's assertion (brief, page 19) that "[t]he next paragraph also expresses the opinion of an agent that the reporting is still weekly, and daily reporting would be bad." From our review of Cogswell, we do not agree with appellant that the agents referred to expressed an opinion that daily reporting would be "bad." From our review of the reference, we find that the first agent said that daily reporting would take away flexibility and change their workload because the staff knows they have to get their work done by the end of the week, not by the end of the day. The second quoted agent stated that he too

was worried that they would move to daily reporting, but so far IAR is sticking to the weekly reporting model. While the agents may have been apprehensive about IAR moving to daily reporting, we would not characterize their comments as a statement that the change from weekly reporting was "bad." For these same reasons, we do not agree with appellant that Cogswell teaches away from IATA.

We are not persuaded by appellant's assertion (reply brief, page 6) that "the IATA article does not say a change to daily reporting is imminent." The issue is not whether a change to daily reporting was imminent, but rather whether an artisan would have considered a move to daily or next day reporting to have been obvious, irrespective of when it was to be implemented.

Nor are we persuaded by appellant's assertion (reply brief, page 7) that the examiner is inappropriately picking and choosing interesting snippets from IATA to support the rejection. From our analysis, supra, we find that considering IATA as a whole, the reference suggests the obviousness of moving to daily or next day reporting. With regard to appellant's assertion (reply brief, page 9) that Brice is not relevant to daily ticket reporting, we agree with appellant that Brice does not appear to

teach or suggest daily reporting of issued tickets to the airlines. However, for the reasons supra, we find that it would have been obvious to an artisan to combine the teachings of Brice with IAH by providing users of IAH with a back-office.

From all of the above, we find that upon consideration of all of the evidence before us, that the arguments, Declarations, Exhibits, etc., are insufficient to overcome the strength of the prima facie case of obviousness of the independent claims.

Accordingly, the rejection of independent claims 1, 7, 12, 20, 37, 43, 48 and 56, as well as dependent claims (which stand or fall with the independent claims, brief, page 7) 11, 62, 63, 65, 70, 71, 73, 78, 79, 81, 86, 87, 89, 94, 95, 97, 102, 103, 105, 110, 111, 113, 118, 119 and 121 under 35 U.S.C. § 103(a) is affirmed.

We turn next to claims 2, 3, 14, 15, 38, 39, 50 and 51 (Groups 3 and 4; see brief, page 7). Although these claims are listed in the brief as being in two groups, they are essentially argued together in the brief. With respect to claims 2, 14, 38 and 50, appellant asserts (brief, page 20) that these claims recite a rate of reporting dependent on network traffic. With regard to claims 3, 15, 39 and 51, appellant asserts that these

claims recite that the rate of reporting is dependent on ticket sales volume. Accordingly, we select claim 2 as representative of the first group, and select claim 3 as representative of the second group. With respect to both claims, it is argued by appellant that Brice only teaches that system architecture can be changed based on the volume of tickets or the amount of traffic, and that Brice says nothing about the reporting rate. The examiner's position (answer, page 4) is that "Brice et al teaches [that] the processing rate can be modified by the system architecture to take system traffic into account to adjust for reporting rates." We note at the outset that the examiner's broad reference to col. 4, line 60 to col. 7, line 35 is not helpful as it is not very specific as to exactly what portions of Brice are being relied upon.

From our review of Brice, we find that col. 6, lines 35-40 discuss the scalability of the systems's architecture which allow the system to be used by both small travel companies that have less than 2000 ticket transactions each month, to large global agencies that have over 100,000 ticket transactions per month, per database server. Table 1 contains a general description of examples of the system architecture configurations based on

tickets and volumes. Claim 2 recites that "wherein a rate of said reporting is dependent on traffic of a network that is used for said method." Claim 3 contains similar language but is directed to the rate of reporting being directed to the volume of sales. From the disclosure of Brice that different system architectures are needed for different sales volumes, we find that the larger the volume of ticket sales, the larger the system architecture that is needed. Appellant is correct that Brice does not disclose reporting to the airlines or IAR. We find from Brice (col. 4, lines 54-60) that the centralized host computer is one of several central reservation systems (CRSs) or a plurality of CRSs configured to perform a plurality of back-office functions (col. 4, lines 62-65 and col.8, lines 56-58). Thus, although Brice implies (from the disclosure of larger architectures being needed for larger volumes of sales) that larger architectures prevent loss of network speed that would occur if the network was congested from large sales volumes or other reasons, we find no disclosure in Brice that network transmission speed slows down when the network is congested, such

as from high sales volumes. However, we find from the textbook Computer Networks and Their Protocols³, by D.W. Davies, et al, © 1979, by John Wiley & Sons, Ltd., that network congestion is defined in part as "[t]he condition of a communications network beyond the limit of the traffic which it can readily handle, where there is a reduced quality of service" (page 461). We further find from the textbook that "[t]he relationship between offered load and network throughput for a network subject to congestion is shown in Figure 4.7. As the offered load increases up to the point of onset of congestion the throughput increases uniformly with offered load. As congestion becomes noticeable the rate of increase of the throughput falls." From the disclosure of the prior art that ticket issuance is reported to the airlines, and the disclosures of Brice and the textbook, we find that the prior art suggests that the rate of reporting, i.e., the rate of transmission, is dependent upon the traffic in the network as well as the volume of sales of travel tickets. Accordingly, the rejection of claims 2 and 3, and claims 14, 15, 38, 39, 50 and 51 under 35 U.S.C. § 103(a) is affirmed.

³ Pertinent pages from the Textbook are enclosed with our decision.

We turn next to the rejection of claims 19 and 55 (Group 5). Appellant asserts that these claims require that the time of reporting can be adjusted automatically. The examiner's position (answer, page 5) is that the limitations of claims 19 and 55 would have been obvious to an artisan from the disclosure of Brice (abstract) that "Brice et al teaches automatically distributing the executable, see abstract, for the benefit of load efficiently among available processing resources." Appellant asserts (brief, page 21) that the abstract of Brice refers only to spreading the processing load over available resources, and that Brice says nothing about varying the reporting rate, nor of doing so dynamically and automatically. We agree. From our review of Brice, and in particular, the portions of Brice relied upon by the examiner, we find that the distribution of executable load efficiently among available processing resources, is not a teaching or suggestion of automatically dynamically adjusting the reporting time. Because there is no evidence of record to support the obviousness of dynamically and automatically adjusting the reporting time, the rejection of claims 19 and 55 under 35 U.S.C. § 103(a) is reversed.

We turn next to claims 8-10 and 44-46 (Groups 6-8, brief, page 7). Although these claims are listed in the Grouping of Claims as being in separate groups, they have been bundled together in the arguments section of the brief (pages 21 and 22) and in the reply brief, pages 10 and 11). However, since appellant provides separate arguments for each of claims 8, 9, and 10, we consider these claims to be representative of the claims in these three groups. We begin with claim 8. Claim 8 recites that the debit memo is for the full value of the travel ticket. The examiner's position (answer, page 5) is that IAH discloses penalties for changes. Appellant asserts that Section 10, page 3, paragraph 7 of IAH only teaches issuing a debit memo for failing to submit proper information. From our review of Section 10, page 3, paragraph 7 of IAH, we find that submission of a discounted transaction without the supporting certificate information (Type A Certificate) may subject the travel agency to a debit memo. While this suggests that billing of the travel agency is done by debit memo, it does not refer to billing of penalties after the close of the reporting period. However, from the disclosure of IAH (Section 10, page 5, right column) that before submitting the report, the agent should "verify that all

exchanges and refund transactions have penalty information, as applicable" we find that after the report is submitted, and exchanges or refunds are subject to a penalty. Although this portion of IAR does not state that the penalty is paid by the customer (as opposed to being paid by the agency), we find from both of these teachings of IAH that the penalty will be charged by way of a debit memo. We therefore agree with the examiner that claim 8 is suggested by the prior art. Accordingly, the rejection of claim 8 and claim 44, which falls with claim 8 is affirmed.

We turn next to claim 9. The claim recites that the debit memo is for the full value of the ticket. The examiner's position (answer, page 5) is that this is taught by IAH's disclosure of the \$306 void report amount. Appellant asserts (brief, pages 21 and 22) that the words "debit memo" do not appear in the portion of IAH relied upon by the examiner, and that the \$306 only reflects the sale amount of the original ticket or the refund/add collect amount for the exchange or refund. From our review of IAH, we agree with appellant's interpretation of the voids Report, and find no evidence in the record for the examiner's assertion that the \$306 refers to a penalty for change or voiding of a ticket. Accordingly, the

rejection of claims 9 and 45 under 35 U.S.C. § 103(a) is reversed.

We turn next to claim 10. The claim recites that the penalty is in the form of an airline imposed fee. From the disclosure of IAH that the agent should "verify that all exchanges and refund transactions have penalty information, as applicable" we find that the penalty fee is imposed by the airline. Accordingly, the rejection of claim 10, and claim 46 which falls with claim 10, under 35 U.S.C. § 103(a) is affirmed.

We turn next to claims 66, 74, 82, 90, 106, 114, and 122 (Group 9). Appellant presents a single argument for the group. Accordingly, we select claim 66 as representative of the group. The examiner's position (answer, page 6) is that this feature is disclosed by ARC, and refers us to page 1, paragraph 6. Appellant asserts (brief, page 22) that "[p]aragraph 6 states only that information is transferred 'each time an agent sells a ticket,' but does not indicate when that transfer occurs. Appendix J, ¶6. To the contrary, the Cogswell article several times discloses only that reporting occurs weekly, and not even daily (*id.*), let alone 'along with' the issuance of a ticket as claimed."

We note at the outset that the language of claim 66 that the reporting is done electronically along with the issuance of the

ticket is construed by us as meaning that the reporting is done at the same time the ticket is issued. We do not find this to be inconsistent with claim 1, from which claim 66 depends because the language "reporting the issuance of the travel ticket externally and by the following day" provides for reporting before the day following the issuance of the ticket.

From the disclosure of IATA of having "all ticketing activity reported as it occurs", we find that moving to reporting at the time of issuance of the travel ticket would have been obvious to an artisan. Accordingly, the rejection of claim 66, and claims 74, 82, 90, 98, 106, 114 and 122 under 35 U.S.C. § 103(a) is affirmed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 64, 72, 80, 88, 96, 104, 112 and 120 under 35 U.S.C. § 112, second paragraph, is reversed. The decision of the examiner to reject claims 1-3, 7, 8, 10-12, 14, 15, 20, 37-39, 43, 44, 46, 48, 50, 51, 56, 62-66, 70-74, 78-82, 86-90, 94-98, 102-106, 110-114, and 118-122 under 35 U.S.C. § 103(a) is affirmed. The rejection of claims 9, 19, 45 and 55 under 35 U.S.C. § 103(a) is reversed.

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 September 13, 2004; Fed. Reg. 49960 (August 12, 2004); 1286 Off. Gaz. Pat. and TM Office 21 (September 7, 2004)).

AFFIRMED-IN-PART

JOSEPH F. RUGGIERO)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
STUART S. LEVY)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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MAHSHID D. SAADAT)	
Administrative Patent Judge)	

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