

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 GRANT GRIFFIN and JEREMY K. LANCE

Appeal No. 2005-0903
Application 10/170,305

ON BRIEF

Before BARRY, MACDONALD, and NAPPI, **Administrative Patent Judges.**
MACDONALD, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-38.

Invention

Appellants' invention relates to a computerized method and system for generating reports and diagnostics which measure effectiveness of an event or product or service promoted at the event wherein attendee opinions and answers can be monitored in "real-time" to enable event "tweaking" on specific areas, especially for multi-day events. Also, such feedback can be quickly used to balance specific quotas from respondents (*i.e.*, the need for more opinions from women, minority/diverse groups, etc.) The diagnostics may included an event consumer purchase funnel profile. Appellants' specification at page 4, lines 15-21, and page 6, lines 10-11.

Claim 1 is representative of the claimed invention and is reproduced as follows:

1. A computerized method for generating event attendee customer profile reports and diagnostics which measure effectiveness of at least one of an event, a product and a service promoted at the event, the method comprising:

obtaining demographic, and at least one of product, service and event data from attendees of the event using a plurality of interactive, attendee-accessible data entry devices;

storing the obtained data in an attendee database; and

processing the stored data using a processor to generate the event attendee customer profile reports and diagnostics which measure effectiveness of at least one of the event, the product and the service, wherein the diagnostics comprise an event funnel

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profile having an upper stage that provides long-term strategic diagnostics, and having a lower stage that provides short-term tactical diagnostics.

References

The references relied on by the Examiner are as follows:

West et al. (West)	US 2002/0049628	Apr. 25, 2002 (Filed May 15, 2001)
Kesel	6,574,614	Jun. 3, 2003 (Filed February 4, 2000)

Rejections At Issue

Claims 1-38 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of West and Kesel.

Throughout our opinion, we make references to the Appellants' briefs, and to the Examiner's Answer for the respective details thereof.¹

¹ Appellants filed an appeal brief on June 1, 2004. Appellants filed a reply brief on August 25, 2004. The Examiner mailed an Examiner's Answer on August 5, 2004.

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OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of the Appellants and the Examiner, for the reasons stated **infra**, we reverse the Examiner's rejection of claims 1-38 under 35 U.S.C. § 103.

Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants could have made but chose not to make in the brief have not been considered. We deem such arguments to be waived by Appellants [see 37 CFR § 41.37(c)(1)(vii) effective September 13, 2004 replacing 37 CFR § 1.192(a)].

Appellants have indicated that for purposes of this appeal the claims stand or fall together. See page 5 of the brief. We will, thereby, consider Appellants' claims as standing or falling together, and we will treat claim 1 as a representative claim.

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**I. Whether the Rejection of Claims 1-38 Under
35 U.S.C. § 103 is proper?**

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 1-38. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a **prima facie** case of obviousness. **In re Oetiker**, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). **See also In re Piasecki**, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. **In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. **See also Piasecki**, 745 F.2d at 1472, 223 USPQ at 788.

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An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." **In re Lee**, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

With respect to independent claim 1, Appellants argue West "fails to provide obtaining event data or data related to a product or service promoted at the event." We find this argument unpersuasive. West clearly teaches at paragraph 0010 that the system is "seeking information associated with products, services, and/or other areas of sought-after information." We find that this meets the claim preamble limitation of "at least one of an event, a product and a service promoted at the event" for any one of the following three reasons.

Firstly, we find that as written the claim language "promoted at the event" only applies to the "service" and not to the "product", and as noted, West teaches a product at paragraph 0010.

Secondly, even if the preamble limitation "promoted at the event" were read to modify the "product", we find this limitation to be an intended use of the claimed process steps, i.e., to process a "promoted" product as opposed to an unpromoted product. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See **In re Hirao**, 535 F.2d 67, 70, 190 USPQ 15, 17-18 (CCPA 1976) and **Kropa v. Robie**, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Thirdly, Appellants' Background of the specification admits it is known that companies desire to know information about products promoted at an event. As we noted above, West teaches a system for seeking information on "products" and "other areas of sought-after information."

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With respect to independent claim 1, Appellants also argue the Examiner "fails to provide motivation to combine" and "has used impermissible hindsight." We find this argument unpersuasive. We have reviewed the applied references. Contrary to Appellants' position, we find that both West and Kesel are directed to solving the same consumer data gather problem being addressed by Appellants. See the titles of West and Kesel.

Finally, Appellants argue in the Reply Brief that "[n]owhere does Kesel disclose, teach or suggest an event funnel profile." We agree. To determine whether claim 1 is obvious over the references, we must first determine the scope of the claim. Our reviewing court states in **In re Zletz**, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) that "claims must be interpreted as broadly as their terms reasonably allow." Our reviewing court further states, "[t]he terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." **Texas Digital Sys. Inc v. Telegenix Inc.**, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002), **cert. denied**, 538 U.S. 1058 (2003).

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Upon our review of Appellants' specification, we fail to find any definition of the term "funnel profile" that is different from the ordinary meaning. We find the ordinary meaning of the term "funnel profile" or, as it is more commonly called in the art, a "purchase funnel" is the sequence of the purchase decision-making process. Thus, for products, marketers focus on moving consumers down the "purchase funnel" -- from awareness, to consideration, to intent, to purchase. In our review of Kesel we do not find anything that corresponds to a "funnel profile" or a "purchase funnel". We find that Kesel fails to teach this feature and the Examiner has not met the initial burden of establishing a **prima facie** case of obviousness.

Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103.

Other Issues

We strongly recommend the Examiner search the prior art literature for teachings directed to a "purchase funnel" and its uses.

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Conclusion

In view of the foregoing discussion, we have not sustained the rejection under 35 U.S.C. § 103 of claims 1-38.

REVERSED

LANCE LEONARD BARRY)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
ALLEN R. MACDONALD)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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