

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 George J. Gombar

Appeal No. 2006-1319
Application No. 10/307,045
Technology Center 3700

ON BRIEF

Before CRAWFORD, LEVY and NAPPI, **Administrative Patent Judges**.

NAPPI, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134(a) of the final rejection of claims 9, 13 and 17, which constitute all the claims in the application. For the reasons stated *infra*, we affirm the examiner's rejection of these claims.

Invention

The invention relates to a kit that contains a medical and emergency information card. The kit is meant to be given away as an advertising device for a sponsor, the sponsor's logo is printed on the kit and a redeemable coupon is part of the kit. See page

4 of appellant's specification. Claim 9 is representative of the invention and reproduced below:

9. An emergency health history kit, comprising:
 - a plastic case;
 - at least one medical and emergency information card associated with the case;
 - a sponsor's or distributor's identifying indicia imprinted on the case, or on a card disposed within the case so as to be viewable through the case; and
 - at least one redeemable coupon or printed offer associated with the case;
 - wherein the medical and emergency information card includes written prompts and spaces for personally identifying information and personal medical information, including at least one of personal medical history information, medical insurance information, and medical care provider information.

References

The references relied upon by the examiner are:

North et al. (North)	5,992,888	Nov. 30, 1999
Gee, Sr. (Gee)	3,958,690	May 25, 1976

Rejection at Issue

Claims 9, 13 and 17 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Gee Sr. in view of North. Throughout the opinion, we make reference to the briefs, the answer and the final Office action for the respective details thereof.

Opinion

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

With full consideration being given to the subject matter on appeal, the examiner's rejection and the arguments of appellant and the examiner, and for the

reasons stated *infra*, we sustain the examiner's rejection of claims 9, 13 and 17 under 35 U.S.C. § 103.

Appellant argues, on pages 6 and 7 of the brief that Gee and North are not analogous to each other. Appellant reasons that because Gee is directed to a medical information and emergency medication packet and North is directed to a method of advertising, they are not analogous to the claimed emergency health history card. See pages 7 and 8 of the brief. Appellant acknowledges that North teaches a medically related recording card but asserts:

the card is not meant as a medical information card to be used in emergency situations, but is meant for use by recording thereon the transactional data of medically related purchases made with the associated debit or credit card, such as prescriptions and doctor office visits.

Appellant thus asserts that as the references are non analogous, there is no motivation in either of the references to be combined in the manner asserted by the examiner. See page 10 of the brief. Appellant further argues that even if the references are combined, the combination does not:

disclose a medical and information card including written prompts and spaces for personally identifying information and personal medical information, including personal medical history information, medical insurance information and medical care provider information. Nor do Gee Sr., nor North et al. disclose utilizing a sponsor or distributor and redeemable coupons and printed offers to cover the cost of creating and distributing the emergency health history kits.

See pages 11 and 12 of the brief. Finally, appellant argues that the references do not appreciate the existence of the problem to be solved by appellant's invention.

In response, the examiner states, on page 5 of the answer:

[B]oth Gee Sr. and North et al. pertain to the employment of a personal health card to be carried by a user on their person and to be used when away from any health facility. Each card of Gee Sr. and North et al. pertains to keeping health information on one's person, the particular information pertaining to the **intended** printed matter. Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. (citing, *In re Ngai*, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004)).

Further, the examiner states that appellant's argument concerning North's card having a different use than the claimed card is not persuasive, as the recited difference in usage does not result in a structural difference between the claimed invention and the combination of the prior art. See page 6 of the answer.

We concur with the examiner and find appellant's arguments to be unpersuasive. Claim 9 recites "the medical and emergency information card includes written prompts and spaces for personally identifying information and personal medical information, including at least one of personal medical history information, medical insurance information, and medical care provider information." Independent claim 13 contains a similar limitation. We find, as the examiner states, the claimed information on the card is non-functional descriptive material. Our reviewing court has said if "the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability." *In re Ngai*, 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004) (citing *In re Gulack*, 703 F.2d 1381, 217 USPQ 401 (Fed. Cir. 1983)).

We find that Gee teaches an emergency health kit with a case, and a card. See Gee figures 1 through 4, and column 2, lines 60 through 68. The card contains medical information. Further, we note that Gee actually teaches the printed matter claimed. Specifically in figure 4, Gee teaches that the card includes written prompts and spaces for users to enter their medical insurance company and policy number (claimed medical insurance information), any allergies and their condition as having diabetes (claimed personal medical history information) and the physician's name (claimed medical care provider). We further note that Gee depicts in figures 2 and 4 that a logo with the words "MED EYE-D" is printed on the card in a location which is viewable through the case. We consider "MED EYE-D" to be either a sponsor or distributor's indicia imprinted on the card. North, similar to Gee, teaches a card that a person carries. The card contains written prompts and spaces for users to enter data, and, in figure 9, North teaches that the card can be configured to include medical data. North also teaches that such a card can

contain advertising and redemption coupons. Thus, contrary to appellant's arguments, we find that Gee teaches a card which contains the claimed emergency medical information and the combination of Gee and North teaches all of the limitations of the claimed invention.

Concerning the motivation to combine the references as stated by the examiner, both Gee and North are concerned with cards for users to carry, which have spaces for users to enter medical information. Thus, we find ample evidence to support the examiner's finding that the references are analogous art. Further, the examiner finds on page 5 of the answer that North provides motivation to include a coupon in the device of Gee, as it provides advertising for a sponsor of the card. We concur with this finding of the examiner. North teaches that the coupon provides advertising and a way of identifying demographics of users. See North, column 8, lines 30 through 35 and line 65 through column 9, line 8. Thus, we find that there is ample evidence in the record to support the examiner's finding of motivation to combine the references. Appellant's arguments that the purpose of North to provide a transaction record which displays advertisements to the user and others who view its use, differs from the purpose of the claimed invention are not well taken. We find no limitation in independent claims 9 and 13 directed to the purpose of the coupon, rather, only a limitation identifying that a coupon exists. Thus, appellant's arguments have not convinced us of error in the examiner's rejection and we sustain the examiner's rejection of claims 9, 13 and 17.

Conclusion

In summary, we sustain the examiner's rejection of claims 9, 13 and 17 under 35 U.S.C. § 103. 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).

AFFIRMED

MURRIEL E. CRAWFORD)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
STUART S. LEVY)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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