

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 SEDTA BOORANANUT, TOAPONG ROJANARIDPICHED,
and CHIEWCHARN SUNAWONG

Appeal No. 2006-1753
Application No. 09/732,037

ON BRIEF

Before JERRY SMITH, RUGGIERO, and BLANKENSHIP, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 2-6, 8-11, and 13-16, which constitute all the claims pending in this application.

The disclosed invention pertains to updating a quality system having at least one specification. After receiving a specification change, users are automatically notified of the change electronically. Such a system increases

efficiency over conventional notification methods utilizing paper distribution and collecting written acknowledgements of the changes.

Representative claim 2 is reproduced as follows:

2. A method for updating a quality system having at least one specification, the method comprising the steps of:

(a) receiving a change of the at least one specification of the quality system;

(b) automatically providing electronic notification of the change to a plurality of users of the quality system, the plurality of users requiring knowledge of the change;

(c) determining whether any of the plurality of users have acknowledged the electronic notification within a particular period of time;

(d) providing an electronic alert to any of the plurality of users who have not acknowledged the electronic notification if any of the plurality of users have not acknowledged the electronic notification; and

(e) providing an electronic update to a specification coordinator for any of the plurality of users that has acknowledged the electronic notification if any of the plurality of users has acknowledged the electronic notification.

The examiner relies on the following references:

Eaton et al. (Eaton)	5,920,576	Jul. 6, 1999
Meunier et al. (Meunier)	6,681,369	Jan. 20, 2004 (filed May 5, 1999)
Hass et al. (Hass)	6,725,255	Apr. 20, 2004 (filed Aug. 25, 1999)

The following rejections are on appeal before us:

1. Claims 2, 4-6, 8, 10, 11, 13, 15, and 16 stand rejected under 35 U.S.C.

§ 103(a) as being unpatentable over Meunier in view of Eaton.

2. Claims 3, 9, and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Meunier in view of Eaton and further in view of Hass.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments 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.

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 have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in the claims on appeal. Accordingly, we affirm.

We first consider the examiner's rejection of claims 2, 4-6, 8, 10, 11, 13, 15, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Meunier in view of Eaton. 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). The examiner must articulate reasons for the examiner's decision. In re Lee, 277 F.3d 1338, 1342, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). In particular, the examiner must show that there is a teaching, motivation, or suggestion of a motivation to combine references relied on as evidence of obviousness. Id. at 1343. The examiner cannot simply reach conclusions based on the examiner's own understanding or experience - or on his or her assessment of what would be basic knowledge or common sense. Rather, the examiner must point to some concrete evidence in the record in support of these findings. In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Thus the examiner 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 examiner's conclusion. However, a suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. In re Kahn, 441 F.3d 977, 987-88, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) citing In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313 (Fed. Cir.

2000). See also In re Thrift, 298 F. 3d 1357, 1363, 63 USPQ2d 2002, 2008 (Fed. Cir. 2002). 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 and the relative persuasiveness of the arguments. 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). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the briefs have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)(2004)].

Regarding the independent claims, the examiner's rejection essentially finds that Meunier teaches every claimed feature except for (1) determining if any user has acknowledged the electronic notification after a period of time; (2) electronically reminding users that have not acknowledged the notification; and (3) electronically updating a specification coordinator to indicate that any user acknowledged the message. The examiner cites Eaton as teaching a communication system that (1) transmits messages to users and determines whether the user acknowledges the message after a period of time, and (2)

updates the specification coordinator (i.e., message originator) of the acknowledgement. In view of Eaton, the examiner finds that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Meunier's document change notification system to electronically update the message originator and electronically alert users that have not acknowledged sent messages. According to the examiner, such a modification would efficiently alert users regarding unread messages via reminder messages and provide message originators with tracking and status information [answer, pages 4 and 5].

In addition to the differences noted above, the examiner adds that the claims differ from Meunier in calling for the document to be a specification document of a quality system [answer, page 6]. The examiner, however, notes that Meunier discloses that any document can be monitored for changes and users notified of such changes. The examiner further notes that a specification is a document that outlines an organization and the products or services offered. The examiner then concludes that because an agent can monitor documents for changes, it would have been obvious to the skilled artisan at the time of the invention to extend such monitoring and notification regarding document changes to specification documents since they are merely types of documents [answer, pages 6 and 7].

Appellants argue that the examiner failed to provide objective evidence or a proper source of motivation for modifying Meunier with Eaton, but rather merely

relied on his subjective opinion [brief, pages 7 and 8]. Appellants contend that Meunier does not teach sending reminder messages [brief, page 8]. Moreover, according to appellants, simply stating that Meunier teaches monitoring documents for changes does not address why the skilled artisan would modify Meunier to receive a change of at least one specification of a quality system as claimed [brief, page 9].

The examiner responds that in addition to the motivation to combine the references stated in the rejection, the Eaton reference itself provides ample motivation to modify Meunier. According to the examiner, because users register to receive notifications regarding document changes or updates, they are particularly interested in such documents [answer, page 16]. These interested users, however, may postpone reading or responding to received messages. Therefore, sending electronic messages to these interested users would efficiently remind them to read or respond to document changes or updates [id.].

Appellants also argue that no evidence exists that the skilled artisan would reasonably expect success in combining Meunier with Eaton [brief, pages 9 and 10]. In this regard, appellants note that Meunier relates to a document recommendation system including a document change monitoring agent, but Eaton relates to a system providing reminder messages [brief, page 10]. The examiner responds that the skilled artisan would reasonably expect success in combining the two references since the Meunier/Eaton combination provides an

efficient, quality, real-time, and automated method of sending reminder messages to the user [answer, page 13].

Appellants also argue that the cited prior art does not teach nor suggest “providing an electronic update to a specification coordinator for any of the plurality of users that has acknowledged the electronic notification if any of the plurality of users has acknowledged the electronic notification” as claimed in claims 2, 8, and 13 [brief, pages 11 and 12; reply brief, pages 7-11].¹ Specifically, appellants contend that Eaton teaches determining if the READ ACK is received and, if not, determining whether a reminder should be sent to the transceiver [brief, page 11]. Eaton, however, does not teach electronically updating a specification coordinator if the READ ACK has been received [brief, pages 11 and 12; reply brief, page 9].

The examiner responds that Meunier sends electronic notifications to multiple users interested in a certain document when changes occur, and Eaton alerts users that fail to acknowledge sent notifications [answer, page 15]. Therefore, the combined Meunier/Eaton system would notify any users that received Meunier’s sent notifications but have not acknowledged such notifications [id.]. The examiner further notes that the broadest reasonable interpretation of the limitation “specification coordinator” does not preclude the message originator disclosed in the cited prior art [answer, pages 15 and 16].

¹ Although appellants included claim 7 in this argument, claim 7 was previously cancelled and is therefore not pending. See also page 12 of the brief (including cancelled claim 12 in the argument of subheading (b)).

We will sustain the examiner's obviousness rejection of the independent claims. We agree with the examiner that the skilled artisan would find ample motivation on this record to modify Meunier's document change notification system to electronically update the message originator and electronically alert users that have not acknowledged sent messages essentially for the reasons stated by the examiner. We add, however, that Meunier's system is ultimately an electronic communication system – a system that electronically communicates document changes to a community of interested users [see Meunier, col. 3, lines 59-61].² As with any electronic communications system, there is always a concern that the intended recipient will not receive a sent communication for a variety of reasons (system failures, technical issues, etc.). Electronically updating the message originator and electronically reminding intended recipients would, in our view, provide a convenient way to electronically verify that the communication was, in fact, received. At a minimum, such electronic updates would verify that the communications link remained viable. We see no reason why the skilled artisan would not reasonably refer to teachings of Eaton to enhance the electronic document communication system of Meunier to ensure that messages sent electronically to intended recipients (e.g., changed documents) were actually received by the intended recipients. For at least these reasons, ample motivation exists on this record to modify Meunier with the teachings of Eaton.

² See also Meunier, col. 5, lines 49-52 (“The monitoring agent 102 notifies the user 101 about the [document] change, typically by sending an email describing the detected change.”).

We also conclude that the examiner's interpretation of "specification coordinator" is reasonable. As the examiner indicates, even a web document reasonably constitutes a "specification" since the underlying HTML code of the document specifies the layout and structure of the page itself when rendered in a web browser [see answer, page 15]. Since the documents in Meunier are web documents,³ they each contain specifications that are "coordinated" by the message originator. We further note that anything governed by rules reasonably constitutes a "quality system specification" giving the term its broadest reasonable interpretation.

The examiner's obviousness rejection of independent claims 2, 6, 8, and 13 is proper and is therefore sustained. Since appellants have not separately argued the patentability of dependent claims 4, 5, 10, 11, 15, and 16 with particularity, these claims fall with independent claims 2, 8, and 13. See In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987). See also 37 CFR § 41.37(c)(vii).

We next consider the examiner's rejection of claims 3, 9, and 14 under 35 U.S.C. § 103(a) as being unpatentable over Meunier in view of Eaton and further in view of Hass. The examiner's rejection essentially finds that the combination of Meunier and Eaton teaches every claimed feature except that the receiver of the second notification is a supervisor [answer, page 9]. The examiner cites Hass as teaching a system for tracking and reporting receipt of an

³ See, e.g., Meunier, col. 3, lines 62 – col. 4, line 18.

email message including sending a second notification to a supervisor if a notification of successful receipt of the original message was not received [id.].

In view of Hass, the examiner finds that it would have been obvious to the skilled artisan at the time of the invention to alert a supervisor in the Meunier/Eaton system to inform all necessary individuals that messages were received [id.].

Appellants argue that there is no reasonable expectation of success in combining Meunier with Hass. According to appellants, Meunier pertains to a document recommendation system including a document change monitoring agent, whereas Hass relates to a system for tracking data transmission [brief, pages 13 and 14]. Appellants contend that the examiner has not evidenced how such systems would be combined [id.].

We will sustain the examiner's obviousness rejection of claims 3, 9, and 14. Hass discloses a system for tracking and reporting various types of electronic data transmissions within the context of "push" technologies such as email (i.e., the sender controls when the email message is sent while the recipient user passively receives the message) [Hass, col. 1, lines 23-30 and 55-63]. Such data transmissions include documents, images, email messages, data, etc. [Hass, col. 2, lines 45-48].

As shown in Fig. 2, data transmissions are sent from a server to a client (step 3), and if the recipient client fails to notify the server agent that the data transmission was successfully received within a predetermined time period, then the server agent electronically notifies the recipient user via a "notification action"

(step 5a) [Hass, col. 5, lines 7-38]. If, however, the server agent still does not receive the notification of successful receipt after a second predetermined time period, a second notification action (step 6a) is sent to an alternative user including “an individual who is in authority over the intended recipient user in an organization” [Hass, col. 5, lines 50-61]. This individual with authority over the intended recipient in Hass, in our view, is reasonably considered a supervisor.

We find ample evidence on this record that the skilled artisan would reasonably expect success in combining the teachings of Hass with Meunier. As we noted previously, Meunier’s document change notification system is ultimately an electronic communication system – a system that electronically communicates document changes to a community of interested users.⁴

Because both Meunier and Hass pertain to electronic communications systems, we see no reason why the skilled artisan would not reasonably refer to teachings of Hass to modify Meunier to ensure that messages sent electronically to intended recipients (e.g., changed documents) were actually received by the intended recipients. In our view, notifying a supervisor electronically of the intended recipient’s failure to acknowledge the sent transmission as taught by Hass would, at the very least, alert a higher-level official to a possible problem with the communication system. With such a timely alert, the higher-level official could then promptly initiate appropriate corrective measures. Thus, electronically notifying a supervisor would only enhance the ability of Meunier’s system to

⁴ See page 9, supra, of this opinion.

perform its intended function – namely to electronically communicate document changes to intended recipients. For at least these reasons and since the art is predictable, we see no reason why the skilled artisan would not reasonably expect success if such an automatic supervisory notification feature was provided in Meunier's system.

In short, the examiner's combination of the teachings of Hass with Meunier and Eaton is reasonable. The examiner's rejection of claims 3, 9, and 14 is proper and therefore sustained.

In summary, we have sustained the examiner's rejections with respect to all claims on appeal. Therefore, the decision of the examiner rejecting claims 2-6, 8-11, and 13-16 is affirmed.

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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

JERRY SMITH)	
Administrative Patent Judge)	
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JOSEPH F. RUGGIERO)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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