

1 The opinion in support of the decision being entered today was *not* written  
2 for publication and is *not* binding precedent of the Board  
3

4 UNITED STATES PATENT AND TRADEMARK OFFICE  
5

---

6  
7 BEFORE THE BOARD OF PATENT APPEALS  
8 AND INTERFERENCES  
9

---

10  
11 *Ex parte* DAN EDWARD CURTIS, DOREEN LYNN GALLI, and  
12 CHRYSTINE MARIE RAHEB  
13

---

14  
15 Appeal 2006-2085  
16 Application 09/810,629  
17 Technology Center 3600  
18

---

19  
20 Decided: March 22, 2007  
21

---

22  
23 *Before* STUART S. LEVY, ROBERT E. NAPPI, and  
24 ANTON W. FETTING, *Administrative Patent Judges*.

25  
26 LEVY, *Administrative Patent Judge*.  
27

28  
29 DECISION ON APPEAL  
30

31 STATEMENT OF CASE

32 Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection  
33 of claims 1-42. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

34 Appellants invented a method for characterizing a service provider  
35 such as an application service provider (ASP) or an Internet service provider  
36 (ISP). (Specification 2).

1 Claim 1 is representative of the claims under appeal and reads as  
2 follows:

3 1 A method for characterizing a service provider, comprising the  
4 acts of:

5 a) gathering information on characteristics of a service  
6 provider;

7  
8 b) analyzing the information to provide an outcome;

9  
10 c) generating a report responsive to the outcome; and

11  
12 d) providing the report to at least two clients of the service  
13 provider, wherein the acts of analyzing, generating, and providing are  
14 performed by a management service.

15  
16 The Examiner rejected claims 1 to 42 under 35 U.S.C. § 103(a)  
17 (2004).

18 The prior art relied upon by the Examiner in rejecting the claims on  
19 appeal is:

20	Gershman	US 6,199,099 B1	Mar. 6, 2001
21	Brockman	US 2002/0123919 A1	Sep. 5, 2002
22		(effectively filed Mar. 2, 2001)	
23			

24 Appellants contend that the claimed subject matter would not have  
25 been obvious because Gershman in view of Brockman does not teach each  
26 and every feature of claims 1, 7, 11, 15, 19, 23, and 25<sup>1</sup> because the applied  
27 prior art does not teach or suggest ““generating a report responsive to the  
28 outcome; and . . . providing the report to at least two clients of the service

---

<sup>1</sup> We note that these claims represent all of the independent claims before us for decision on appeal.

1 provider; wherein the acts of analyzing, generating, and providing are  
2 performed by a management service’, wherein the report is responsive to the  
3 outcome derived from analyzing the information on the service provider’s:  
4 1) characteristics (claim 1); 2) performance (claims 7 and 19); 3) security  
5 (claims 11 and 23); and 4) availability (claims 15 and 27).” (Br. 4.)

6 The Examiner contends (Answer 3) that Gershman does not  
7 specifically disclose that the service providers are ASPs and/or ISPs. To  
8 overcome this deficiency of Gershman the Examiner turns to Brockman for  
9 a suggestion of a management service that targets a telecommunications  
10 service provider. The Examiner asserts that it would have been obvious to  
11 adapt Gershman's system to telecommunications vendors such as ISPs, as  
12 taught by Brockman. The Examiner adds (Answer 7) that Gershman's use of  
13 the Internet and networked computing environment innately discloses  
14 multiple customers.

15

16 We AFFIRM.

17

### ISSUE

18 Have Appellants shown that the Examiner has failed to establish that  
19 the combined teachings and suggestions of Gershman and Brockman would  
20 have suggested “generating a report responsive to the outcome; and . . .  
21 providing the report to at least two clients of the service provider; wherein  
22 the acts of analyzing, generating, and providing are performed by a  
23 management service”, wherein the report is responsive to the outcome  
24 derived from analyzing the information on the service provider’s:

1 1) characteristics (claim 1); 2) performance (claims 7 and 19); 3) security  
2 (claims 11 and 23); and 4) availability (claims 15 and 27). (Br. 4.) The  
3 issue turns on whether the combined teachings and suggestions of Gershman  
4 and Brockman would have fairly suggested to an artisan (Br. 4) that the  
5 report is responsive to the outcome from analyzing information on the  
6 service provider's characteristics (claim 1); performance (claims 7 and 19);  
7 security (claims 11 and 23), and availability (claims 15 and 17). The issue  
8 additionally turns on whether the combined teachings and suggestions of  
9 Gershman and Brockman would have taught or suggested providing the  
10 report to at least two clients of the service provider. Moreover, with respect  
11 to claims 31-42, the Examiner contends that the limitations (Answer 5-6) are  
12 not expressly taught or suggested by the combination of Gershman or  
13 Brockman. However, the Examiner asserts (*id.*) that these limitations recite  
14 non-functional descriptive material, that is not functionally involved in the  
15 steps recited, and that accordingly, the subjective interpretation of the data  
16 does not patentably distinguish the claimed invention from the applied prior  
17 art.

18  
19

#### FINDINGS OF FACT

- 20 1. Appellants invented a system for providing information about the  
21 characteristics of a service provider, such as an ASP or ISP  
22 (Specification 2).  
23
- 24 2. A third party management system gathers information about  
25 characteristics of the service provider, analyzes the information,  
26 generates a report based on the outcome of the analysis, and provides  
27 the report to more than one client of the service provider (*id.*).  
28

1           3. Gershman relates to a mobile computing environment that accesses  
2 the Internet to obtain product information for a user using a  
3 distributed communication network. (Gershman, col. 1, ll. 8-11).  
4

5           4. The wireless device prompts a user to input information of interest  
6 to the user. This information is transmitted as a query to a service  
7 routine (running on a Web server). The service routine then queries  
8 the Web utilizing a distributed communication network to find price,  
9 shipping and availability information from various Web suppliers.  
10 The information is formatted and displayed on the handheld device's  
11 screen. (Gershman, col. 2, ll. 56-67).  
12

13           5. Gershman states “[t]he Supplier Profile Database 1050 contains  
14 information about the product and service providers integrated into  
15 the intention. The information contained in this database provides a  
16 link between the intention framework and the suppliers. It includes  
17 product lists, features and descriptions, and addresses of the suppliers'  
18 product web sites. The Customer Profile Database 1060 contains  
19 personal information about the customers, such as name, address,  
20 social security number and credit card information, personal  
21 preferences, behavioral information, history, and web site layout  
22 preferences. The Supplier's Web Server 1070 provides access to all of  
23 the supplier's databases necessary to provide information and  
24 transactional support to the customer. The Product Information  
25 Database 1080 stores all product-related information, such as features,  
26 availability and pricing.” (Gersham, col. 31, ll. 6-21).  
27

28           6. Gersham states “FIG. 16 describes the algorithm for determining  
29 the personalized product ratings for a user. When the user requests a  
30 product report 1610 for product X, the algorithm retrieves the profiles  
31 1620 from the profile database 1630 (which includes product ratings)  
32 of those users who have previously rated that product.” (Gersham,  
33 col. 34, ll. 21-26).  
34

35           7. Gersham states “[t]he integrator manages a network of approved  
36 suppliers providing products and services, both physical and virtual,  
37 to a user based on the user's preferences as reflected in the user's  
38 profile. The integrator manages the relationship between suppliers and

1 consumers and coordinates the suppliers' fulfillment of consumers'  
2 intentions. It does this by providing the consumer with information  
3 about products and suppliers and offering objective advice, among  
4 other things.” (Gershman, col. 35, ll. 38-45).

5  
6 8. Gersham states “[t]he user accesses a Web Browser 1810 and  
7 requests product and pricing information from the integrator.”  
8 (Gersham, col. 35, ll. 47-49).

9  
10 9. Gersham states “[t]he product and pricing information is then  
11 formatted into a Web Page 1860 and returned to the customer's Web  
12 Browser.” (Gersham, col. 35, ll. 58-60).

13  
14 10. FIG. 24 is a block diagram of an active knowledge management  
15 system in accordance with a preferred embodiment of Gershman.  
16 (col. 38, ll. 2-4).

17  
18 11. Business Data Stores and retrieves data provided by the  
19 business. Calculation Performs complex business  
20 calculations. (Gershman, col. 43, ll. 32-34).

21  
22 12. Brockman’s field of the invention is that of comparative  
23 evaluation of telecommunications data. (Brockman, p. 1, ¶ [0002]).

24  
25 13. Brockman states “[c]onventional telecommunications rating and  
26 analysis is performed by the telecommunications services provider, or  
27 by a third party vendor using data from the telecommunications  
28 services provider's billing data.” (Brockman, p. 1, ¶ [0009]).

29  
30 14. Brockman’s invention involves obtaining telecommunications  
31 data of a business entity from its telecommunications vendors and  
32 providing access to that business entity for aggregated and uniform  
33 telecommunications detail data. After obtaining from multiple vendors  
34 both the detailed information of a business entity's  
35 telecommunications usage of network services and/or the  
36 accompanying costs for those services, the present invention  
37 aggregates the detailed information into a uniform structure to allow  
38 the business entity to manage its telecommunications assets and

1 analyze the aggregated detail information. (Brockman, p. 1, ¶  
2 [0010]).

3  
4 15. Brockman states “[i]n one form, the usage aggregation criteria  
5 may include location usage data, such as site data and region data. In  
6 another form, usage aggregation criteria may include service usage  
7 data, such as service provider data, service type data and component  
8 data. In still another form, usage aggregation criteria may include time  
9 usage data, such as time of month data and length of call data.”  
10 (Brockman, p. 1, ¶ [0012]).

11  
12 16. The method and system of Brockman’s invention provides the  
13 business entity with the aggregated telecommunications usage and/or  
14 cost data by being made accessible to the business entity by a  
15 telecommunications management service provider (“telco  
16 management service”) over a network, or alternatively by the telco  
17 management service providing a network portal which allows the  
18 business entity to query the database in which the aggregated usage  
19 and/or cost data is stored. (Brockman, p. 2, ¶ [0016]).

20  
21 17. Brockman states “[o]nce the query result is presented to the telco  
22 management service, the telco management service delivers the result  
23 over a network to the business entity.” (Brockman, p. 2, ¶ [0016]).

24  
25 18. The system of Brockman’s invention requests the performance  
26 data from the file, retrieves the performance data from the file, and  
27 returns the performance data from the file in the form of a search  
28 result. The search result is then presented to an end user. (Brockman,  
29 p. 2if , ¶ [0017].

30  
31 19. Brockman states “[t]he present invention analyzes a business  
32 entity's telecommunications usage and/or cost data by first obtaining  
33 the telecommunications data from multiple telecommunications  
34 providers and then aggregating the usage and/or cost data for analysis  
35 purposes.” (Brockman, p. 5, ¶ [0047].

36  
37 20. Brockman states “business resource data includes  
38 telecommunications orders, repair tickets, inquiries, service levels,

1 and credits, and also information segregated or sorted by a region,  
2 organization, or department. This list is not meant to be exhaustive.”  
3 (Brockman, p. 5, ¶ [0051].  
4

5 21. Brockman states “[t]he system may further include software  
6 capable of verifying the billing costs based on the telecommunications  
7 usage data, the billing cost, and the rate plan. As depicted in FIG. 3,  
8 the system includes customer billing 14, customer information  
9 database 15, customer information billing consolidation 16, savings  
10 and credit databases 12, and work flow tracking 13. The invoices for  
11 all sites the client receives are logged and tracked by the computer  
12 system of the present invention.” (Brockman, p. 7, ¶ [0063].  
13

14 22. Brockman states “[t]he telecommunications usage analysis  
15 system may report data to customers in standard reports that show  
16 cost by site with vendor, service, charge code, etc. The system also  
17 may have several standard reports.” (Brockman, p. 7, ¶ [0067].  
18

19 23. Brockman states “[s]uch telecommunications providers may  
20 include national incumbent local exchange carriers (ILEC's),  
21 competitive local exchange carriers (LEC's), regional Bell operating  
22 companies (RBOC's), such as AT&T, MCI, WorldCom, Bell South,  
23 Verizon, Sprint, and Qwest--as well as interexchange carriers (IXC),  
24 regional and local telecommunications carriers.” (Brockman, p. 9, ¶  
25 [0083].  
26

27 24. Brockman states “[i]n another form, performance data may  
28 include bonus sales data, sales leads generation data, or other relevant  
29 business information.” (Brockman, p. 12, ¶ [0106].  
30

31 25. Brockman states “[b]usiness entity 100 may access both data  
32 associations and analyze how its successful sales in the Midwest  
33 compare to its successful sales in the Northeast. If business entity's  
34 100 successful sales in the Northeast are significantly more than its  
35 successful sales in the Midwest, this may indicate that business entity  
36 100 needs to increase its use of telecommunications network assets in  
37 the Midwest region.” (Brockman, p. 12, ¶ [0108]).  
38



1 Gershman fails to teach or suggest the claimed invention. In the Reply  
2 Brief, the only reference to Brockman is a general allegation (Reply Br.  
3 14-15) that the Examiner's Answer has not supplied a legally persuasive  
4 argument as to why a person of ordinary skill in the art would modify  
5 Gershman by the alleged teachings of Brockman, because the Examiner has  
6 not cited any suggestion or incentive in the prior art for the proposed  
7 modification of the prior art.

8 We additionally note at the outset that with respect to the Examiner's  
9 assertion (Answer 3) that Gershman does not specifically disclose that the  
10 service providers are ASPs or ISPs, we observe that independent claim 1  
11 does not recite that the service provider is an ASP or ISP.

12 From the description in fact 4 that a query is transmitted to a service  
13 routine to find price, availability, and shipping information, we find that the  
14 service routine operating on the web is a management service. From the  
15 disclosure in fact 4 that the system obtains price information and availability  
16 and the disclosure of fact 5 that database 1050 includes information about  
17 the service provider, we find that the pricing information about a product  
18 from a service provider meets the claimed gathering and analyzing  
19 characteristics of a service provider. From fact 6, which relates to Fig. 16,  
20 relied upon by the Examiner, we find that information about products from a  
21 service provider also provides characteristics about the service provider. In  
22 addition, from facts 7-9 we find that by providing the customer with  
23 information about products and suppliers, as well as objective advice, etc.,  
24 formatting the information into a Web page, and returning the page to the  
25 customer, we find that a report is generated and forwarded to the customer.

1 From the description in fact 4 of providing the information to a user, we find  
2 that in at least some instances, the information will be provided to a client of  
3 the service provider. In the event that the same information is not  
4 communicated to at least two clients, we find that an artisan would have  
5 considered it obvious to have provided the information to at least two clients  
6 where two clients (system users who are clients of the service provider)  
7 share the same e-mail address, such as a husband and wife who are clients of  
8 a service provider and share an e-mail address on a personal computer.

9 Turning to Brockman, we find from fact 12 that Brockman is directed  
10 to comparative evaluation of telecommunications data. We note the  
11 description found in fact 14 that the information obtained is aggregated and  
12 made accessible to the business entity. From the description in fact 14 that  
13 the data obtained is service provider data, we find that the business entity of  
14 Brockman is a service provider. From the description in fact 16 that the  
15 aggregate data is provided by telco management service, we find that telco  
16 is a management service. We find from fact 19 that the aggregated usage  
17 and cost data is analyzed. From the description in fact 20 that the recited list  
18 of types of data is not exhaustive and the description in fact 24 that the listed  
19 types of data can include other relevant business data, we find that the data is  
20 not limited to characteristics of the service provider. From the description in  
21 fact 21 that the invoices the client receives are logged in and tracked by the  
22 user, and the description in fact 22 that there are standard reports sent to  
23 customers, we find a teaching or suggestion that the generated reports are  
24 provided to more than one client of the service provider. In addition, from  
25 the description in fact 25 that data is obtained and analyzed for different

1 divisions of a service provider, we find that the different divisions, such as  
2 the described Northeast and Midwest entities may each be considered to be  
3 clients of the service provider.

4 In addition, because both references obtain data regarding a service  
5 provider and analyze the data to generate reports, we find that an artisan  
6 would have been motivated to combine the teachings and suggestions of  
7 Gershman and Brockman to arrive at the subject matter of claim 1. From the  
8 lack of any persuasive arguments by Appellants regarding the teachings and  
9 suggestions of Brockman, we are not convinced of any error on the part of  
10 the Examiner in rejection claim 1 under 35 U.S.C. § 103(a) as being  
11 unpatentable over Gershman in view of Brockman. From all of the above,  
12 we hold that the combined teachings of Gershman and Brockman would  
13 have suggested the limitations of claim 1. The rejection of claim 1 is  
14 sustained, along with claims 2-6 which have not been separately argued and  
15 fall with claim 1.

16 Turning to claims 7 and 19, these claims refer to performance of a  
17 provider instead of characteristics of a provider. From the description in  
18 facts 3 and 4 of obtaining product availability information, and the  
19 description in fact 6 of obtaining product ratings for a user, we hold that  
20 Gershman suggests gathering, analyzing, and generating reports relating to  
21 performance of the service provider. Accordingly, we will sustain the  
22 rejection of claims 7 and 19, along with claims 8-10 and 20-22 which fall  
23 with claims 7 and 19.

24 Turning to claims 11 and 23, these claims refer to security instead of  
25 characteristics or performance. From the description in Gershman that the

1 user can set security permissions on and preferences for interface elements  
2 and content (Gershman, col. 30, ll. 34 and 35); the description (facts 2, 24,  
3 and 27) that the listed types of data is not exhaustive and can include other  
4 types of relevant business data, and the description (fact 27) that Thin Client  
5 results in enhanced security, we find that Gershman and Brockman suggest  
6 obtaining data on the service provider's security performance. Accordingly,  
7 we hold that the combined teachings of Gershman and Brockman would  
8 have suggested the language of claims 11 and 23. The rejection of claims 11  
9 and 23 under 35 U.S.C. § 103(a) is sustained, along with claims 12-14 and  
10 24-26, which fall with claims 11 and 23.

11 Turning to claims 15 and 27, these claims refer to the availability of  
12 the service provider. From the description in Gershman (facts 4 and 5) of  
13 the database storing information regarding the availability of products, we  
14 find that the availability of products of the service provider provides  
15 information about the availability of the service provider itself. We  
16 additionally find from fact 27 that the use of Thin Client results in reduced  
17 down time. From these teachings of Gershman we find a suggestion of  
18 obtaining information relating to reduced down time, which affects  
19 availability of the service provider. Accordingly, we hold that the combined  
20 teachings and suggestions of Gershman and Brockman would have  
21 suggested the language of claims 15 and 27, and are not convinced of any  
22 error on the part of the Examiner is rejecting these claims under 35 U.S.C.  
23 § 103(a). The rejection of claims 15 and 27, and claims 16-18 and 28-30,  
24 which fall with claims 15 and 27 is sustained.

1           We turn next to claims 32-41. The Examiner's position (Answer 5- 6)  
2 is that the differences between the prior art and the language of these claims  
3 is found only in non-functional descriptive material because the data does  
4 not functionally relate to the steps in the method. These claims have not  
5 been argued by Appellants with respect to the teachings and suggestions of  
6 the applied prior art. Rather, Appellants argue why they consider the claims  
7 to be directed to non-functional descriptive material. At the outset, we agree  
8 with the Examiner that the particular service provider information is non-  
9 functional descriptive material because the fact that the information gathered  
10 includes information as to the responsiveness, susceptibility to failure, or  
11 security vulnerability of the service provider does not functionally relate to  
12 the steps of the method. In any event, we find, for the reasons that follow,  
13 that the teachings and suggestions of Gershman and Brockman would have  
14 suggested to an artisan the limitations of claims 31-42.

15           We begin with claims 31 and 37. Gershman describes (fact 4)  
16 obtaining information about shipping of products. We find that shipping  
17 information provides information as to the responsiveness of the service  
18 provider because how quickly or slowly a company ships products indicates  
19 the responsiveness of the company to its customers. Accordingly, we hold  
20 that the combined teachings of Gershman and Brockman would have  
21 suggested to an artisan the language of claims 31 and 37. The rejection of  
22 claims 31 and 37 under 35 U.S.C. § 103(a) is sustained.

23           We turn next to claims 32 and 38. These claims relate to the  
24 responsiveness of the service provider being statistically characterized.  
25 From the description of Gershman (fact 4) of gathering information and

1 using an algorithm to determine the product ratings for a user, we find that it  
2 would have been obvious to statistically characterize the responsiveness of a  
3 service provider. Accordingly, we hold that the teachings and suggestions of  
4 Gershman and Brockman would have suggested the limitations of claims 32  
5 and 38. The rejection of claims 32 and 38 under 35 U.S.C. § 103(a) is  
6 sustained.

7 We turn next to claims 33 and 39. We sustain the rejection of these  
8 claims for the same reasons as we sustained the rejection of claims 11 and  
9 23, and add that in view of the description in Gershman of setting security  
10 permissions, we find that an artisan would have been motivated to include  
11 data regarding the vulnerability of the service provider. Accordingly, we  
12 hold that the combined teachings of Gershman and Brockman would have  
13 suggested the language of claims 32 and 38. The rejection of claims 33 and  
14 39 under 35 U.S.C. § 103(a) is sustained.

15 We turn next to claims 34 and 40. We sustain the rejection of claims  
16 34 and 40 because the description of Gershman of using algorithms to  
17 analyze product ratings would have suggested statistically characterizing the  
18 security data as we found for claims 33 and 39. Accordingly, we hold that  
19 the combined teachings and suggestions of Gershman and Brockman would  
20 have suggested the language of claims 34 and 40. The rejection of claims 34  
21 and 40 is sustained.

22 We turn next to claims 35 and 41. The claims recite that the  
23 availability data includes susceptibility to failure. From the description (fact  
24 28) of Thin Client resulting in reduced downtime, we find that reduced  
25 downtime provides data regarding susceptibility of the service provider to

1 failure. Accordingly, we hold that the teachings and suggestions of  
2 Gershman and Brockman would have suggested the language of claims 35  
3 and 41. The rejection of claims 35 and 41 under 35 U.S.C. § 103(a) is  
4 sustained.

5 We turn next to claims 36 and 42. These claims relate to how the  
6 failure of the service provider is measured. From the description (fact 27)  
7 relating to reduced system down time, we find a suggestion in Brockman of  
8 measuring failure of the system provider based on minutes per month that  
9 the system provider was unable to respond to a request from a client.  
10 Accordingly, we hold that the combined teachings and suggestions of  
11 Gershman and Brockman would have suggested the language of claims 36  
12 and 42. The rejection of claims 36 and 42 under 35 U.S.C. § 103(a) is  
13 sustained.

#### 14 CONCLUSION OF LAW

15 On the record before us, we agree with the Examiner, as amplified by  
16 our comments, *supra*, that the combined teachings and suggestions of  
17 Gershman and Brockman would have suggested to an artisan the language of  
18 claim 1-42 and are not convinced of any error on the part of the Examiner in  
19 rejecting these claims under 35 U.S.C. § 103(a) . The decision of the  
20 Examiner to reject claims 1-42 is affirmed.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16

DECISION

The Examiner's rejection of claims 1-42 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

hh

*SCHMEISER, OLSEN & WATTS*  
*22 CENTURY HILL DRIVE*  
*SUITE 302*  
*LATHAM, NY 12110*