

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 JOHN H. YOAKUM

Appeal No. 2006-2574
Application No. 10/331,706

ON BRIEF

Before KRASS, SAADAT, and HOMERE, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

This is a decision on appeal from the final rejection of claims 36-53.

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The invention pertains to controlling the allocation of resources in a queue management system based on presence information.

Representative independent claim 36 is reproduced as follows:

36. A method for handling resources comprising:

defining a plurality of skill sets for a queue management system;

registering individual resources of a plurality of resources for one or more of the plurality of skill sets;

receiving a request at the queue management system for provision of a response to an inquiry related to one of the plurality of skill sets;

determining whether any of the resources are registered for the one of the plurality of skill sets;

placing the request into a queue associated with the one of the plurality of skill sets; and

removing the request from the queue and assigning the request to a resource based on information from a presence system associated with the queue management system.

The examiner relies on the following references:

Kinshinsky et al (Kinshinsky) 6,067,357	May 23, 2000
Busey et al (Busey) 6,377,944	Apr. 23, 2002
Mengshoel et al (Mengshoel) 2003/0059029	Mar. 27, 2003
Zmolek 2003/0154293	Aug. 14, 2003

Claims 36-53 stand rejected under 35 U.S.C. § 103. As

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evidence of obviousness, the examiner offers Kishinsky and Zmolek with regard to claims 36-38, 43-47, 52, and 53, adding Mengshoel with regard to claims 41, 42, 50, and 51, but adding Busey with regard to claims 39, 40, 48, and 49.

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

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, 61 USPQ2d at 1433-34. 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

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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, 1316-17 (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.

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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, 1040, 228 USPQ 685, 687 (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, 1051, 189 USPQ 143, 146-147 (CCPA 1976). 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 and are deemed to be waived [see 37 CFR § 41.37(c) (1) (vii) (2004)].

Regarding the independent claims 36 and 45, the examiner asserts that Kishinsky teaches the instant claimed subject matter, either explicitly or inherently, but for "a presence system that provides presence information, wherein that information regards resource devices each capable of different communications capabilities, and that presence information includes an indication as to available capabilities for each of the resources" (answer-page 5). The examiner then turns to Zmolek for this deficiency, citing paragraphs 0004, 0013-0023, 0035, 0056, and 0069 of the reference.

The examiner concludes that it would have been obvious to have enhanced the presence functionality of Kishinsky with the presence system of Zmolek because of Zmolek's teaching of providing a better way of ascertaining the presence and

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availability of contacted or to-be-contacted persons and because of Zmolek's teaching that this enhanced presence system can be used in a myriad of differing distributed networks.

Appellant does not question the combinability of the applied references, nor does appellant argue many of the features alleged by the examiner to be taught by the references. The only argument presented by appellant with regard to the independent claims is that these claims recite a "registering" of individual resources for one or more of the plurality of skill sets and, contrary to the examiner's position, this feature is not "inherent" in Kishinsky.

After careful consideration of the evidence before us, we conclude that the examiner has established a *prima facie* case of obviousness that has not been successfully rebutted by appellant.

It is the examiner's view that "registering" of individual resources for a plurality of skill sets is "inherently" disclosed by Kishinsky because a management system determines availability of an agent by a query to a database, and a placement of a call to an agent who has the skill set that matches the call request. The examiner concludes, reasonably in our view, that in order for the system to know the skill set applicable to a particular agent, the skills/skill set of each agent must have been previously "registered."

Appellant argues that while Kishinsky admittedly contemplates that different call agents have different skill sets, "registration is not the process through which Kishinsky's call center distinguishes between these differences" (principal brief-page 7). Rather, argues appellant, Kishinsky uses a Petri Net which is pre-programmed and that it is this programming that determines what skill sets are assigned to the agents.

We are unpersuaded of any error in the examiner's reasoning since no programming, *per se*, can determine an agent's skill or skill set. Either an agent has a particular skill or he/she does not. Those particular skills or skill sets of individual agents must be determined beforehand so that any programming scheme knows how to make appropriate assignments. A program cannot change the skills of an agent and it may only make assignments based on already known skills of particular agents. Accordingly, we think that the examiner is reasonable when the examiner asserts that these skills must have been pre-registered with the management system of Kishinsky.

Appellant argues that while skill sets must be defined, "there is no inherent requirement that the skill sets are registered, as that term is used in the specification, or as someone skilled in the art would reasonably interpret the term..." (principal brief-page 7).

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Again, we view it as reasonable to find that these defined skill sets must be registered vis a vis the individual resources, or agents, somewhere in the system if an agent having the particular skills called for is to be assigned to a particular task. Otherwise, how would the management system know which agents, or resources, had the particular skills sought?

Moreover, while appellant strongly asserts that we must interpret the term "registered" as it is used in the specification, or as someone skilled in the art would reasonably interpret the term, yet appellant never identifies a particular portion of the specification wherein this term is defined, and appellant does not identify what specific meaning is to be given this term that is any different from the broad, yet reasonable, interpretation of the examiner. Exactly what interpretation, consistent with the instant specification, does appellant wish us to give the term "register"? Appellant has not specifically said.

Appellant does argue that "register" should not be confused with "programming," citing dictionary definitions at page 8 of the principal brief, but the examiner has never asserted that Kishinsky's programming is equivalent to a "registration" and it is unclear as to exactly which definition of "register" appellant

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would have us apply to the instant claims and why any such definition would not be applicable to Kishinsky's inherent disclosure that an agent's skills or skill sets must be "registered."

While appellant again makes the argument, at page 3 of the reply brief, that Kishinsky teaches that a programmer uses known programming techniques to assign skill sets to agents with the Petri Net, we again ask, how does the programmer make the assignment unless there is some previous "registration" of the skills of the agents?

Since the examiner has presented a *prima facie* case of obviousness with regard to the claimed subject matter and appellant's arguments have not convinced us of any error in that case, we will sustain the rejection of claims 36 and 45, and therefore of claims 37, 38, 43, 44, 46, 47, 52, and 53, under 35 U.S.C. § 103.

We will also sustain the rejection of claims 39-42 and 48-51 under 35 U.S.C. § 103 because appellant argues only that Mengshoel and Busey do not provide for the deficiencies of the combination of Kishinsky/Zmolek in providing for a "registration." Since we have found no such deficiencies in the Kishinsky/Zmolek combination, appellant's argument in this regard is not persuasive.

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The examiner's decision 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).

AFFIRMED

ERROL A. KRASS)
Administrative Patent Judge)
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) BOARD OF PATENT
MAHSHID D. SAADAT)
Administrative Patent Judge) APPEALS AND
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) INTERFERENCES
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JEAN R. HOMERE)
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