The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 LOUIS BOUCHARD

Appeal No. 2006-2890
Application No. 09/842,747

HEARD: November 15, 2006

Before THOMAS, SAADAT, and HOMERE, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION

Appellant has appealed to the Board from the examiner's final rejection of claims 1 through 24.

Representative independent claim 1 is reproduced below:

1. A method of utilizing a push model to provide access to a message list in one or more of a voice, a fax, an e-mail and a unified mailbox through a wireless network, the method comprising the steps of:

a. automatically receiving an updated mailbox content list from a server through a wireless network;

b. scrolling through the updated mailbox content list and selecting a message therefrom with a wireless device;

c. forming a communication link through the wireless network thereby linking the wireless device and the server;

d. selectively receiving the message on the wireless device from the server over the communication link; and

e. providing the message to a user.

The following references are relied on by the examiner:

Stein et al. (Stein)	6,289,212	Sept. 11, 2001 (Filed October 13, 1998)
Cloutier et al. (Cloutier)	6,535,586	Mar. 18, 2003 (Filed December 30, 1998)

Claims 1 through 24 stand rejected under 35 U.S.C. § 103. As evidence of obviousness as to claims 1, 2, 4 through 7, 9 through 14, 16 through 20 and 22 through 24, the examiner relies upon Cloutier in view of Stein, with the addition of appellant's admitted prior art as to claims 3, 8, 15 and 21.

Rather than repeat the positions of the Appellant and the Examiner, reference is made to the brief (no reply brief has been filed) for appellant's positions, and to the answer for the examiner's positions.

OPINION

For the reasons set forth by the examiner in the answer, as expanded upon here, we sustain the rejections of all claims on appeal under 35 U.S.C. § 103. It is noted that appellant has presented no arguments as to any dependent claims on appeal but has asserted separate positions with respect to each independent claim 1, 7, 14 and 19, even though we recognize they have substantially similar limitations. Among these independent claims argued at pages 8 through 11 of the brief, essentially the same arguments are presented which also repeat the essence of the arguments of topics 1 through 3, at pages 6 through 8 of this brief. Lastly, as to the separate rejection of dependent claims 3, 8, 15 and 21, appellant's remarks at page 11 of the brief do not argue that the applied prior art is not properly combinable within 35 U.S.C. § 103 and argue for patentability the subject matter of the parent independent claims. It is noted further here that appellant admits that low data-bandwidth and high data latency networks were known in the art.

The examiner's statement of the rejection of independent claims 1, 7, 14 and 19 at pages 4 and 5 of the answer has been expanded upon in the Responsive Argument portion of the answer beginning at page 8, which addresses each of the arguments presented in topics 1 through 3 at pages 6 through 8 of the brief. Even though appellant's arguments at topics 2 and 3 at pages 7 and 8 of the brief essentially argue that the references to Cloutier and Stein are not properly combinable within 35 U.S.C. § 103, the examiner's corresponding remarks in the answer have persuaded us that the teachings and suggestions of both references would have led the artisan to have combined their respective teachings into a single system as argued by the examiner.

The feature of the so-called "push model" in the first line of the preamble of independent claim 1 not only bears no operative relationship to the body of this claim, it is not additionally recited in any of the remaining independent claims 7, 14 and 19. The disclosed feature of the invention of being able to access mailboxes over a low bandwidth high latency wireless network is not recited in any independent claim on appeal as well. The references applied by the examiner contain substantial teachings as to the alternative usability of their respective systems with voice or fax or email or unified mailbox networks to the extent

recited in the independent claims on appeal. These are merely alternative recitations.

Appellant's disclosed invention uses as a wireless device a Wireless Application Protocol (WAP) phone of the type generally disclosed in both references relied upon by the examiner. The sending or so-called "pushing" of a new message notification and an updated mailbox content list to the wireless devices disclosed is done by SMS or Short Messages Services, which is specifically taught in the last paragraph of the Summary at column 2 of Cloutier. Although we recognize that the emphases in Cloutier is upon the sending of a high priority message notice to the user to the wireless device 170 in figure 1 and the apparent accessibility by use of an access device 190 to the actual message content as the principle teaching value of Cloutier, it appears to us from our study of this reference's portion relied upon by the examiner in the answer that it would have suggested to the artisan the same capabilities as would be entirely contained within wireless device 170 alone. This conclusion is buttressed by the clear teachings of Stein as argued by the examiner to do this very thing. The nature of the communication link between the access device 190 in figure 1 of Cloutier to the messaging system server 120 in figure 1 of this reference is not specifically taught

to be a conventional hardwired link and is not so illustrated either in figure 1. The examiner's reliance upon the various teachings at columns 7 and 8 buttress the conclusion of the artisan that access device 190 itself maybe a wireless device. These conclusions are buttressed by the entire teachings of Stein which relate to wireless devices and wireless networks per se. Figures 1, 2 and 14 of Stein show the overall arrangement and the nature of the wireless devices, some of which are taught at column 6, lines 46 through 49, which appear completely compatible with the broad teachings in Cloutier.

Thus, the features in each independent claim of a wireless device operating within a wireless network is clearly taught within the teachings of each/both references relied upon by the examiner.

At pages 11 and 12 of the answer, the examiner has recognized appellant's argument:

> that Cloutier in view of Stein does not result in a viably functioning system because the mailbox content list of Stein is obtained by a wireless device using pull technology, but the message alert of Cloutier, which the mailbox content list is proposed to replace, functions according to push technology.
>
> Examiner submits both pull technology and push technology were well known means, at the time of the present invention, for obtaining remote information. Contrary to Appellants interpretation of the prior art, Stein discloses using both pull and push technology to obtain remote information. As previously discussed, Stein uses push technology so that a mobile device

> can automatically receive a mailbox content list from a mail server, (Stein, col. 3, lines 8-23, col. 7, line 48-col. 8, line 7, col. 8, lines 41-48). Stein further teaches pulling the mailbox content list if the list has not already been pushed and stored, (Stein, col. 3, lines 8-23).

Even though this so-called "push model" feature is recited only in the preamble of independent claim 1 on appeal, it is the substance of the nature of the arguments presented by appellant in the brief. From our perspective, figure 2 of Stein shows as element 222, a push manager. Note also, the teachings and showings in figure 4, figures 12 through 14 (in particular figure 13) and the teachings at column 7, lines 31 through 36; the teachings beginning at line 41 of column 8 and the middle of column 13 to the end of the patent. In a manner corresponding to the disclosed and claimed invention, the server in Stein does a pushing function such as to automatically send or otherwise permit the wireless device to "automatically receive" information, including current mailbox content lists.

The nature of the information automatically pushed or sent by the server includes a mailbox list in Stein such as shown in figure 3 according to the preloading teachings, the showings in figure 5, figure 14 and the discussion of element 1418 at column 17, lines 1 through 15. The ability of the system to operate overall in a wireless environment with scroll and select capabilities has

been identified by the examiner according to the teachings in the Summary of the Invention, particularly those at the middle of column 3. Figure 7A shows the ability of the user to separately retrieve a message body from an already received message header to the extent the message body has not already been stored within the wireless device itself. The feature of providing the message to a user is only recited in independent claims 1 and 19 on appeal which is clearly taught as element 714 in figure 7A of Stein. Moreover, Stein as system appears to work with and without a network availability to the extent recited in the independent claims on appeal.

Lastly, we note in passing that the artisan may well consider the teachings and showings in Stein as being substantially anticipatory of the subject matter of the independent claims on appeal since this reference appears to have the capability of automatically receiving at a wireless device by a pushing operation of a server an updated mailbox content list over a wireless network, permitting the user to scroll through and select a message, the ability to selectively retrieve the body of the message from the server when needed by means of a communication link with this server and to optionally “provide” a message to the user by means of a display within the wireless device.

In view of the forgoing, the decision of the examiner rejecting claims 1 through 24 under 35 U.S.C. § 103 is affirmed.

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

AFFIRMED

JAMES D. THOMAS Administrative Patent Judge	)	
	)	BOARD OF PATENT APPEALS
MASHSHID D. SAADAT Administrative Patent Judge	)	AND
	)	INTERFERENCES
JEAN R. HOMERE Administrative Patent Judge	)	

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