

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EVA T. KLIVINGTON and
MARGIT E. KLIVINGTON

Appeal No. 2006-3365
Application No. 10/329,921
Technology Center 3600

ON BRIEF

Decided: December 21, 2006

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

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134 from the examiner's final rejection of claims and, which are all of the claims pending in this application.

We AFFIRM.

BACKGROUND

The appellants' invention relates to a real estate business process, and specifically to a web-based electronic real estate and transaction system and methods therein that operate to streamline, bundle together and make available online many aspects, including relevant forms, involved in executing a real estate transaction. (Spec 1). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A method of generating on line a contract for a real estate transaction for a particular real estate property comprising:
collecting, on line and in electronic form, transaction specific information for a real estate contract including identifying a plurality of parties and agents involved with the real estate transaction;
providing, in an electronic format, a real estate contract form;
automatically populating, in a computer, the real estate contract form with the transaction specific information and data in an existing listing for a particular real estate property;
automatically generating online, in the computer, responsive to populating the real estate contract form, an electronic file corresponding to the real estate contract for the real estate transaction;
and
sending concurrently, using a web-based service, a notice of the generating online the electronic file corresponding to the real estate contract to at least one of the plurality of parties and agents involved with the real estate transaction.

PRIOR ART

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Raveis, Jr. US 2001/0047282 A1 Nov. 29, 2001

Broerman US 6,594,633 B1 Jul. 15, 2003
(Jul. 7, 1999)

Virginia Regional Sales Contract, 1999

REJECTIONS

Claims 1 through 10 and 13 through 26 stand rejected under 35 U.S.C. § 103(a) as obvious over Broerman and Raveis, Jr..

Claims 11 and 12 stand rejected under 35 U.S.C. § 103(a) as obvious over Broerman, Raveis, Jr. and the Virginia Regional Sales Contract.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the examiner's answer (mailed Apr. 28, 2006) for the reasoning in support of the rejection, and to appellants' brief (filed Apr. 6, 2006) and reply brief (filed Jul. 6, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations that follow.

Claims 1 through 10 and 13 through 26 rejected under 35 U.S.C. § 103(a) as obvious over Broerman and Raveis, Jr.

We note that the appellants argue these claims as a group. Accordingly, we select claim 1 as representative of the group.

The examiner applies Broerman for the details of completing a real estate contract using a computer system and data base and applies Raveis, Jr. for the specific claim limitation of automatically populating the contract with information from a real estate listing.

The appellants argue that Broerman fails to show automatically populating the contract with information from a real estate listing, which the examiner admits, and then argues that Raveis, Jr. is equally lacking.

To the contrary, according to Raveis, data in a database can be populated from sources including the MLS, and summary reports of the database can be prepared. However, there is no discussion of populating a form, let alone a real estate contract form. Importantly, there is no discussion in Raveis of populating a real estate contract form from an existing listing. For example, Raveis paragraphs [0108] - [0113] discuss how "primary inputs are put into the databases according to functional requirements, security, business rules and user actions," with respect to Sale Transactions. (Paragraph [0079].) Raveis, paragraphs [0204] - [0229] discusses "Reports and Forms," such as New Listing Report, Listing Expiration Report, New Sales Transaction Report, Void Sales Transaction Report, Projected Closings Report, Closed Sales Transaction Report, Deposit Verification Report, Agent Transaction Report, Agent Roster Report, Agent Goal Analysis Report, Contact Report, Trustee Account Detail Report, and Pending Referral Report. Nothing in Raveis teaches or suggests populating a particular form from an existing listing.

Therefore, Broerman and/or Raeviis, alone or in combination, fails to teach or suggest automatically populating, in a computer, the real estate contract form with both the transaction specification information and data in an existing listing for a particular real estate property. Moreover, Broerman and/or Raeviis fails to teach or suggest automatically generating online, in the computer, responsive to populating the real estate contract form, an electronic file corresponding to the real estate contract for the real estate transaction.

(Answer 7-8).

The examiner responds

In response to applicant's argument that Raeviis fails to teach or suggest "populating a real estate contract form from an existing listing" (Brief; page 7), it is noted that Raeviis explicitly teach said feature. Specifically, Raeviis teaches:

"Still further, it is envisioned that standard development software tools will be utilized in connection with the subject system and method Microsoft Word 97 or an equivalent thereof is used for development of some form templates such as contracts within the application." [0042].

"Further examples include Adobe Acrobat version 3.0.1 and the Adobe PDF Writer version 3.0.2 for creating PDF files for the form templates. The Acrobat Forms Author Plug-In version 3.5 is used in concert with Acrobat Exchange version 3.0 to create PDF files with form fields which are then populated with data retrieved from the database. Adobe Acrobat Reader version 3.0.1 is used for viewing the final form via the application." [0043].

Further, Raeviis defines various databases used, including:

"Listing databases preferably relate to listings, listing agent, listing MLS, lock boxes, MLS, MLS data, open house requests, picture references, garages, new home referral fees and showing information." [0071].

(Answer 11-12).

The appellants then respond

Based on Raveis' use of standard software tools to develop form templates, paragraphs [0042] and [0043], and Ravels' use of databases relating to "listings ... MLS, MLS data," paragraph [0071], the examiner argues that Ravels specifically teaches "populating a real estate contract form from an existing listing" for a particular real estate property. The reasoning relies on the improper application of hindsight. As stated in *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed.Cir.1983), "[t]ie imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." Here, the only reason to combine the teachings of the applied references in the manner proposed by the examiner results from a review of appellants' disclosure and the application of impermissible hindsight.

Raveis' ability to create a generic form with data populated from an unspecified database, together with Raveis' discussion era multiplicity of databases, fails to teach or suggest specifically "populating a real estate contract from an existing listing."

(Reply Br. 4).

We note that Raveis actually states

[0109] Sale Transactions are contracts for the proprietor customers to purchase homes listed by the proprietor or other agencies. Sale transactions may or may not be associated with a proprietor listing. Commissions are a significant part of the sale transaction.

[0110] The business rules for sale transaction will be as follows. Property Address including: address, city, state and zip code, Valid MLS # (or "None" for a non-MLS entry), at least one buyer but not more than five (must be a valid contact) and at least one seller but not more than five (must be a valid contact) must be entered to save a sale transaction. Listing Agency values can come from the MLS, can be entered by hand, or in the case of a proprietor listing are taken from

the Listing Transactions. Selling Agency values are manually entered, or in the case of a proprietor sale they are the current office. Listing Agents equal at least one agent but no more than five. If the circumstances are a proprietor listing, then the associated listing is default information. If the circumstances are a co-broker listing, at least one listing agent with complete information must be provided. There must be at least one Selling Agent but no more than five. If sold by a proprietor agent, selecting from a list of agents defaults this information. If a co-broker, must select at least one listing agent and provide complete information including Contract Date, Contract Price rounded to the nearest dollar and greater than zero, Listing and Selling Share of commissions, Listing Type and Projected closing date.

[0111] The following fields are autopopulated from the MLS data: MLS Status, Expiration Date, Property Type, Sub Division Name, Sale ID, Created By, Created Date, Last Changed By, and Last Changed Date. A listing agent can be listed only once on the Sale. A selling agent can be listed only once on the sale. A seller and buyer can each be listed only once on the sale. Sale transactions cannot be deleted, but the status can be changed. When a sale transaction is created, if it is linked to a Listing record, the status of the listing record changes from Open to Under Contract. If the sale transaction is canceled, the corresponding listings status is changed to open.

(Paragraphs 0109 through 111).

On its face, this teaches that sales contract fields are automatically populated by MLS (Multiple Listing Service) data. Whether the sales contract is in the form of a database or form is purely a matter of semantics and is a difference without a distinction in the database arts, because forms are merely a characterization of different ways of displaying the exact same data that is in the database, which database management systems (DBMS) routinely provide as inherent functions for ease of display. We note that most widely used database management systems, such as Microsoft Access and Corel Paradox, provide this inherently within their

standard suite of menu options. Thus, when populating the database, the DBMS is inherently populating the forms, including sales contract forms, and *vice versa*. To the extent the appellants are arguing that a person of ordinary skill in the art would not know or be motivated to push a form view menu button that is standard within such database suites, we must respond that database programmers have both the motivation and technical capacity to perform much more difficult and targeted views of the data when creating forms. To tie down any remaining question of motivation, as the appellants acknowledged, *supra.*, Raveis, Jr. at paragraphs 224-229 directly teach creating forms to present contracts.

Therefore, we find the appellants' argument to be unpersuasive. Accordingly we sustain the examiner's rejection of claims 1 through 10 and 13 through 26 under 35 U.S.C. § 103(a) as obvious over Broerman and Raveis, Jr.

Claims 11 and 12 rejected under 35 U.S.C. § 103(a) as obvious over Broerman, Raveis, Jr. and the Virginia Regional Sales Contract.

The appellants argue

Broerman fails to teach automatically creating additional electronic files in response to the modifying. The portion of Broerman cited as teaching the automatic creation of additional files in response to the modifying states "Generation of the electronic real estate documents (e.g., electronic purchase contract 96 and electronic disclosure document 98) shown in FIGS. 3, 5B and 5C may be accomplished by storing a word processing template on a computer in the real estate computer network 10. Information supplied by the buyer party 13 or the seller party 12 may be merged with the word processing template and stored as a document or the mutable terms may be stored separately as a record in a database." (Broerman Col. 1, lines 44 - 52.) Clearly, Broerman fails to teach or suggest automatically creating any additional electronic file in response to the modifying. Building on this lack of a teaching, the examiner argues that it would be obvious to

modify Broerman so that the additional electronic file is an addendum or disclaimer. The office action admits that Broerman and Raveis fail to teach that the form is an addendum or disclaimer, and cites Virginia Regional Sales Contract to remedy these deficiencies.

Even if Broerman, Raveis and Virginia Regional Sales Contract are combined and modified as proposed, the proposed combination/modification fails to provide for the additional electronic file (addendum or disclaimer) being created automatically in response to the modifying.

(Br. 14-15).

As the examiner argues (Answer 14-15), Broerman (col. 11 lines 43-55) teaches merging mutable terms with the contract, with standard word processing merge operations, which is an automatic creation of a new version of the contract which is an online additional file corresponding to the existing listing and the mutable terms, e.g. addendum or disclosure, as claimed. Further, Raveis, Jr. teaches that

It is also envisioned that a plurality of forms can also be generated by the subject system and method. In one embodiment, the standard forms tool is a combination of Caere's OmniForm version 3.0, Microsoft's Word 97 and Adobe's Acrobat version 3.0.1. Preferably, form templates are constructed for all forms. The summary data sought will determine the list of available forms. In one embodiment, the following forms are provided: Open Buyer or Tenant Authorization; Exclusive Right to Represent Buyer to Tenant; Dual Agency Consent Agree; Dual Agency/Single Agent Consent; Standard Form Real Estate Contract; Release and Hold Harmless; Exclusive Right to Sell Listing Contract; Exclusive Right to Lease Listing Contract; Exclusive Agency Listing Contract; Sign Request; Exceptional Properties Division Listing Information; State Department of Consumer Protection--Residential Property Condition Disclosure Report; Rider--Real Estate Contract; Addendum to Sales Contract; Order Entry Form; New Listing Input Form; Property Status Change Form; and Disclosure Format for Target Housing Sales--Disclosure of Information on Lead-Based Paint.

(Paragraph 221).

Clearly Raveis, Jr. teaches creating additional contract files automatically by operation of the system. Therefore, we find that both Raveis, Jr. and Broerman suggest the limitation of adding files automatically for contract addenda or disclaimers, and find appellants' argument to be unpersuasive.

Accordingly we sustain the examiner's rejection of claims 11 and 12 under 35 U.S.C. § 103(a) as obvious over Broerman, Raveis, Jr. and the Virginia Regional Sales Contract.

CONCLUSION

To summarize,

- The rejection of claims 1 through 10 and 13 through 26 under 35 U.S.C. § 103(a) as obvious over Broerman and Raveis, Jr. is sustained.
- The rejection of claims 11 and 12 under 35 U.S.C. § 103(a) as obvious over Broerman, Raveis, Jr. and the Virginia Regional Sales Contract is sustained.

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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).

AFFIRMED

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

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POSZ LAW GROUP, PLC
12040 SOUTH LAKES DRIVE
SUITE 101
RESTON, VA 20191

AWF/lg