

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

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JASON LEE CLEMENT,  
KYOKO TAKEDA WIECK, THEODORE R. BOOTH III,  
and BRIAN JAMES MOON

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Appeal 2007-0148  
Application 10/964,939<sup>1</sup>  
Technology Center 2100

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Decided: May 23, 2007

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Before KENNETH W. HAIRSTON, LEE E. BARRETT, and  
JOSEPH F. RUGGIERO, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1-6 and 8-21. We have jurisdiction pursuant to 35 U.S.C. § 6(b).

We affirm-in-part.

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<sup>1</sup> Application for patent filed October 14, 2004, entitled "System and Method for Integrating Multiple Messaging Systems," published as US 2005/0210112 A1 on September 22, 2005.

## BACKGROUND

The claims are directed to computerized messaging services.

Claim 1 is illustrative:

1. A communication system, comprising:

at least a sender computer;

means at the sender computer for invoking a message input file, the message input file not being constrained to be associated with any particular messaging engine, a user of the sender computer being enabled to enter at least a recipient's identification and a message into the message input file; and

at least one dispatch server communicating with the sender computer and with a recipient computer associated with the recipient's identification, the dispatch server executing logic including:

receiving the input file from the sender computer;

determining which messaging engine to use from a plurality of messaging engines available to the dispatch server at least in part based on message content; and

sending the message to the recipient computer using the messaging engine identified during the determining act.

## THE REFERENCES

The Examiner relies on the following prior art references:

Wang	US 2003/0035412 A1	Feb. 20, 2003
Hullfish	US 2005/0114533 A1	May 26, 2005 (filed Nov. 26, 2003)

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## THE REJECTIONS

Claims 1-6 and 8-21 stand rejected under 35 U.S.C § 103(a) as unpatentable over Hullfish and Wang.

## DISCUSSION

*Only arguments raised are addressed*

Appellants raise three arguments, one for each independent claim. Each argument relates to a limitation that the Examiner found to be disclosed in Hullfish. Only these arguments are considered. Arguments not made are considered to be abandoned and have not been addressed. *Cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991) ("It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art."); *In re Watts*, 354 F.3d 1362, 1367, 69 USPQ2d 1453, 1457 (Fed. Cir. 2004) ("Just as it is important that the PTO in general be barred from raising new arguments on appeal to justify or support a decision of the Board, it is important that the applicant challenging a decision not be permitted to raise arguments on appeal that were not presented to the Board." (Footnote omitted.)).

*Claims 1-6 and 8*

Independent claim 1 recites "determining which messaging engine to use from a plurality of messaging engines available to the dispatch server at

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least in part based on message content," where the limitation "at least in part is based on message content" was added from original dependent claim 7. Appellants argue that the rejection relies on Hullfish, paragraphs 11 and 29, "but there is absolutely no teaching or suggestion in the relied-upon portions of Hullfish et al. that the messaging engine used to forward the message is selected based on content" (Br. 5) and the rejection should be reversed.

The Examiner finds that paragraph 58 of Hullfish teaches that the dynamic message control server determines whether to forward the SMS text message as an SMS message regardless of the availability of the IM (instant messenger) receiver based on user preference and paragraph 23, line 11, states that the identity of the telephone number in the message is maintained (Answer 11). The Examiner reasons that "Because the telephone number is part of the message content, therefore, the determination of the dynamic message control server where the message to forward based on telephone number, that is based on the message content" (Answer 11).

Appellants argue that paragraph 58 "says nothing about message content at all, much less using it to decide which messaging engine to use" (Reply Br. 1). Appellants argue that the Examiner's statement that the telephone number is part of the message is confused because the decision to forward is based on user preferences, not the telephone number, and is irrelevant because claim 1 requires determining which messaging engine to use, not whether to forward based on message content (Reply Br. 2).

Hullfish relates to the delivery of an electronic message addressed to a telephone number in a computer environment (§ 0002). Hullfish describes that a dynamic message control server 208 receives a Short Message Services (SMS) text message from an originator 202 and decides whether to forward the SMS text message as an SMS text message through the SMS server 204 or as an Instant Messenger (IM) message to destination receivers 214, 216 (§§ 0029-0035). The SMS system and the IM system are two types of "messaging engines"; compare Appellants' SMS engine 32 and IM engine 36 in Appellants' Figure 1. The dynamic message control server 208 maintains a database of information to map the telephone numbers for the SMS message to corresponding IM identifiers and user preferences, which are used to route the SMS messages (§ 0036). Thus, Hullfish discloses "determining which messaging engine to use from a plurality of messaging engines available to the dispatch server."

The issue is whether Hullfish determines which messaging engine "at least in part is based on message content." Hullfish describes that "[i]n one example, the determination of whether or not to forward [as an instant message] is further based on source information of the electronic message, such as: a source address of the electronic message, a user name of a sender of the electronic message, a telephone number of a sender of the electronic message, or an instant message identifier of a sender of the electronic message" (§ 0011). This is later described as selectively forwarding SMS text messages according to its source information of the electronic message

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(see ¶¶ 0072-0076). The source information is clearly "message content." Thus, the decision on whether to send by an SMS messaging engine or by an IM messaging engine is in part based on source content. The rejection of claims 1-6 and 8 is affirmed.

*Claims 9-16*

Independent claim 9 recites "plural messaging systems each having a format different than the file." Appellants argue that "Hullfish et al. repeatedly talks of 'forwarding' messages but never mentions 'reformatting' them in other formats" (Br. 5). It is argued that the Examiner's reliance on paragraphs 34 and 92 and elements 704 and 708 is misplaced because these paragraphs do not discuss reformatting.

The Examiner finds that paragraphs 60-62 teach that if the user wants to receive an SMS text message as an IM, the SMS server reformats the SMS text message as an IM message (Answer 11-12).

Appellants reply that the paragraphs do not mention reformatting. It is argued that paragraph 60 teaches forwarding an SMS text message based on user preferences (Reply Br. 2). It is argued that "paragraph 61 teaches only that a user can decide whether to receive an SMS message 'as an instant message' that is 'generated' in paragraph 62 without stating anything more about how this leap is accomplished" (Reply Br. 3) and is not enabling.

We agree with Appellants that paragraphs 60-62 do not appear to teach or suggest reformatting or, at least, the Examiner does not clearly

explain how these paragraphs teach reformatting. Nevertheless, Hullfish describes that an IM message is "converted" into an SMS message (¶ 0051), which implies that the SMS text messages must be reformatted to be sent as IM messages, for example, by at least adding an instant messenger identifier for routing in an IM system (¶ 0011; ¶ 0036).<sup>2</sup> This teaching of reformatting a message file (SMS text message) for a different messaging system (IMS) also would have suggested to one of ordinary skill in the art that the message file could be reformatted for use with other messaging systems to provide a "unified messaging system," which is a goal of Hullfish (¶ 0005). Therefore, we conclude that the limitation of "plural messaging systems each having a format different than the file" is suggested by Hullfish. The rejection of claims 9-16 is affirmed.

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<sup>2</sup> Hullfish discloses (¶ 0011):

In one example, the instant message is generated from the electronic message based on one or more predetermined rules. For example, the one or more predetermined rules may select one or more portions of the electronic message as the instant message and may selectively delete one or more portions of the electronic message to generate the instant message.

Although this sounds like reformatting, Hullfish is describing filtering to remove undesired words (¶¶ 0074-0081), which is not really "formatting."

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*Claims 17-21*

Independent claim 17 is argued to recite the particular heuristics for choosing the messaging engine:

. . . the means for selecting choosing, as the messaging engine:

if a recipient user indicates he is in a meeting, email;

if the recipient user indicates he is actively at work,  
instant messenger; and

if the message includes multimedia, multimedia  
messaging services; and

means for formatting the message from the sender computer as appropriate for use with the messaging engine selected by the means for selecting, for transmission thereof to the recipient computer using the messaging engine selected by the means for selecting.

The Examiner refers to paragraphs 10, 30, 39 and 79 of Hullfish (Final Rejection 9).

Appellants argue that paragraphs 10, 30, 39, and 79 relied upon by the Examiner do not teach the particular heuristics (Br. 6). Appellants note that the Examiner does not address this argument in the Answer (Reply Br. 3).

We do not find these specific steps in Hullfish in paragraphs 10, 30, 39 and 79 or elsewhere. Accordingly, the rejection of claims 17-21 is reversed.

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### CONCLUSION

The rejection of claims 1-6 and 8-16 is affirmed.

The rejection of claims 17-21 is reversed.

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-IN-PART

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