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 JACKIE L. HUFFMAN

Appeal No. 2007-0673
Application No. 09/847,794
Technology Center 3600

ON BRIEF

Before TERRY J. OWENS, ANITA PELLMAN GROSS and ROBERT E. NAPPI, **Administrative Patent Judges**.

NAPPI, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 1 through 18. For the reasons stated *infra* we will not sustain the Examiner's rejection of these claims.

Invention

The invention is directed to a system to motivate cashiers and provide them with ongoing feedback as to their level of performance. See page 1 of Appellant's specification. Claim 1 is representative of the invention and is reproduced below:

> 1. A point of sale (POS) terminal for providing feedback to a cashier operating the POS terminal, the POS terminal comprising:
>
> a display for displaying information to the cashier operating the POS terminal, the display displaying a performance goal screen at the start of a work session to indicate to the cashier a performance goal for the work session, the work session beginning at the time the cashier logs onto the POS terminal and ending at the time the cashier logs off the POS terminal; and
>
> the POS terminal operating to measure the cashier's performance of tasks during the work session, the tasks comprising the number of items scanned per unit time, the display displaying at the end of the work session a performance report screen including the cashier's measured performance and the performance goal to provide performance feedback directly to the cashier.

References

The references relied upon by the Examiner are:

Nashner	US 5,980,429	Nov. 09, 1999
Berkson	US 6,049,779	Apr. 11, 2000
Latimer	US 6,857,567	Feb. 22, 2005 (effectively filed Oct. 17, 2000)

Rejection at Issue

Claims 1 through 18 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Latimer in view of Berkson and Nashner. The Examiner's rejection is set forth on pages 3 through 14 of the Answer. Throughout the opinion we make reference to the Brief (received February 9, 2006) and the Answer (mailed April 3, 2006) for the respective details thereof.

Issues

Appellant argues that the combination of the references does not teach or suggest displaying, to a cashier, a performance goal for a work session or displaying the cashier's measured performance over the work session, as recited in independent claims 1 and 11.

The Examiner in response contends that the rejection is proper. The Examiner states that Latimer teaches a system and method for providing real time performance feedback to cashiers. Further, the Examiner states that it is well known to provide people with a performance goal prior to performance of the operation for which the target goal has been set.

Thus, the issue presented to us is whether the art applied by the Examiner teaches or suggests displaying, to a cashier, a performance goal for a work session or displaying the cashier's measured performance over the work session.

Findings of Fact.

Latimer teaches a system for training a point of sale operator (cashier) to use the proper scanning technique. The system also monitors the scanning technique of a point of sale operator (cashier). See abstract and column 1, lines 37 through 56. The system provides two modes of operation, a training mode, shown in figure 4, and a monitoring mode, shown in figure 5. See also column 3, line 26 through 60. The training mode makes use of feedback to the cashier as part of the training. The monitoring mode is used when the cashier is scanning items for customers. The monitoring mode generates a report of the cashier's performance which is provided to management. See column 3, line 51 through column 4, line 7. The scanners of the point of sale terminal may also include displays such as a series of LED's (shown in figures 8 and 9) which identify the effectiveness of the operator's scanning technique. These displays operate during the monitoring mode and are used to provide feedback to the cashier. These displays operate on a real time basis and provide an indication of the most recent scan. See figures 7 through 9 and column 7, lines 27 through 51. We do not find that Latimer teaches providing a report of performance goals when the cashier starts a work session or when the cashier ends a work session providing the cashier with a report of the cashier's measured performance.

Berkson teaches a system for providing incentives to call center agents. See abstract. The system measures the performance of the call center agent against goals. If the agent meets or exceeds the goals, the agent is permitted to play a game or is provided another incentive. See column 3, lines 41 through 55. Berkson teaches that the assessment of agent meeting goals can be determined on a call by call basis or can be assessed on an aggregate of calls over a period of time. See column 9, lines 40 through 47. Berkson also teaches that the goals can be changed. See column 9, lines 24 through 30. Berkson teaches that the agents are notified if they meet or exceed the goal when it is administered on a call by call basis, i.e., the agents knows that the performance goal has been met if they are allowed to play the game. However, Berkson is silent as to whether a report of the agents' performance toward the goal is provided when the assessment is over a period of time. Further, we find no teaching in Berkson that the agents are presented with a report of the goals when they log on.

Nashner teaches a system for monitoring the physical rehabilitation training program for a person. See abstract and column 8, lines 6 through 10. The system allows the practitioner, who sets up the training program, to remotely access the measuring equipment at the patient's training site. Thus, the practitioner, from a remote location, can asses the patient's progress. See column 4, lines 61 through 67. We do not find that Nashner teaches displaying to patients, a report of their performance goals or a report of their measured performance.

Principles of Law

Office personnel must rely on Appellant's disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995). "[I]nterpreting what is *meant* by a word *in* a claim 'is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.'" (emphasis original) *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1348, 64 USPQ2d 1202, 1205, (Fed. Cir. 2002) (citing *Intervet America Inc v. Kee-Vet Laboratories Inc.*, 12 USPQ2d 1474, 1476 (Fed. Cir. 1989). It is the burden of the Examiner to establish why one having ordinary skill in the art would have been led to the claimed invention by the express teachings or suggestions found in the prior art, or by the implications contained in such teachings or suggestions. *In re Sernaker*, 702 F.2d 989, 995, 217 USPQ 1, 6 (Fed. Cir. 1983).

Analysis

Independent claim 1 recites a point of sale terminal with a display for "displaying a performance goal screen at the start of the work session to indicate to the cashier a performance goal for the work session" and "displaying at the end of the work session a performance report screen including the cashier's measured performance and the performance goal." Claim 1 also recites that the work session starts at the time the cashier logs on and ends when the cashier logs off. Independent claim 11 includes similar limitations.

As discussed *supra* we find that Latimer teaches displaying cashier performance as the cashier scans items. The display of Latimer displays the performance after each scan, and Latimer does not discuss displaying a goal or a measured performance when the cashier logs off. We do not consider either Berkson or Nashner to provide a teaching or suggestion to modify Latimer to include such a display. As discussed *supra* Berkson teaches a system which monitors the performance of a call center agent (sales person). Though Berkson teaches that the performance monitoring period may be variable, either on a per call basis, or over a time period, we do not find that Berkson teaches that a report should be provided to the call agent at the beginning and end of the evaluation period (i.e., beginning and end of the work period). Further, we do not find that Nashner's teaching of remotely monitoring a patient's training progress teaches or suggests displaying performance goals to a patient at a beginning and end of a training (work) period and displaying a measure of performance at the end of the training (work) period. Thus, we do not find that the combined teachings of Latimer, Berkson and Nashner suggest the invention as claimed in independent claims 1 and 11.

Conclusion

We consider the Examiner's rejection of claims 1 through 18 under 35 U.S.C. § 103 (a) to be in error as we do not find that the combination of Latimer, Berkson and Nashner teaches or suggests the limitations in independent claims 1 and 11 which relate to displaying goal or a measured performance.

Order

For the forgoing reasons, we will not sustain the Examiner's rejection, under 35 U.S.C. § 103. The decision of the Examiner is reversed.

REVERSED

TERRY J. OWENS Administrative Patent Judge	)	
ANITA PELLMAN GROSS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
ROBERT E. NAPPI Administrative Patent Judge	)	

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