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 MAURICE W. HAFF and CHRISTOPHER FAHEY

Appeal 2007-1554
Application 10/844,387
Technology Center 3600

Decided: July 27, 2007

Before FRED E. McKELVEY, *Senior Administrative Patent Judge*, ANTON W. FETTING, and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants, Maurice W. Haff, et al. seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 34-50. Claims 1-33 have been withdrawn. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim an electronic commerce method conducted over public computer networks which is said to create and validate digital receipts for third-party electronic transactions (Specification 3:3-5).

Claim 34, reproduced below, is representative of the subject matter on appeal (reference numerals and Figure numbers added).

34. A method for providing a digital receipt as a Web Service **[Fig. 1, 1.3]** for a third-party electronic transaction carried out over a public network, the receipt validating details of the electronic transaction and comprising a transaction record identifying transaction details, the method comprising:

creating the transaction record based upon details of a completed transaction **[Fig. 1, service 1.2]**;

sending the transaction record to a computer that digitally signs and encrypts the record **[Fig. 1 1.2 to 1.3,1.4]**;

forming a digital receipt comprising the encrypted transaction record **[Fig. 3, 3.1]**;

configuring the digital receipt to enable display in a Web page **[Fig. 9]**; and returning the digital receipt to at least one party to the completed transaction **[Fig. 4, 4.8]**, wherein details in the transaction record are protected from modification by the parties to the transaction.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Robinson	US 5,915,022	Jun. 22, 1999
Ginter	US 6,185,683 B1	Feb. 06, 2001

The following rejection is before us for review.

1. The Examiner rejected claims 34-50 under 35 U.S.C. 103(a) as being unpatentable over Robinson in view of Ginter.

ISSUE

A first issue on appeal is whether Appellants have sustained their burden of showing that the Examiner erred in rejecting the rejected claims on appeal as being unpatentable under 35 U.S.C. § 103(a) over the prior art.

According to Appellants, the first issue turns on (1) whether there is a teaching, suggestion, or motivation to combine Ginter and Robinson, and (2) if so, whether the combination of Ginter and Robinson "teaches" the claimed invention.

FINDINGS OF FACT

The following findings of fact are believed to be supported by a preponderance of the evidence. To the extent that a finding of fact is a conclusion of law, it may be treated as such. Additional findings as necessary may appear in the Discussion portion of the opinion.

Robinson discloses a method for providing a digital receipt as a service offered on the web for a third-party electronic transaction carried out over a public network, the receipt describing details of the electronic transaction so as to comprise a transaction record identifying transaction details (Robinson, col. 5, ll. 53-64).

Robinson describes an object of the invention is to resolve disputes between a merchant and a customer where “neither the merchant nor the customer trusts the accuracy of the other's private records” (Robinson, col. 2, ll. 11-13).

Robinson discloses its invention applicable to electronic transactions, e.g., the sale of goods over the World Wide Web (Robinson, col. 6 ll.56-58).

The Specification describes that at time of the invention, independent web payment options existed for e-commerce transactions provided by, e.g., “credit card accounts, debit card accounts, a PayPal account, or another method of transferring funds electronically” (Specification 3:18-20).

The merchant in Robinson who is connected to a customer via the customer’s internet service provider (ISP) offers its merchant services, including the digital receipt services, to another internet application, namely the customer’s ISP, thereby meeting the example of “web services” posed on page 3 of the Specification.

No explicit definition for the term “web service” is found in the Specification.

The Examiner found the definition of “web service” to be: a modular collection of Web protocols-based application that can be mixed and matched to provide business functionality through an Internet connection. Web services can be used over the Internet or an intranet to create products, business processes, and B2B interactions. Web services use standard protocols such as HTTP, XML, and

SOAP to provide connectivity and interoperability between companies. *Microsoft Computer Dictionary, Fifth Edition*, 564 (2002). We thus understand that a "web service" could be any service that is conducted on the web, including the sale of goods over the World Wide Web as described by Robinson at col. 6, ll. 56-58.

Robinson discloses creating the transaction record based upon details of a completed transaction (Robinson, col. 4, ll. 25-33).

Robinson discloses sending the transaction record to a computer that digitally signs (Robinson, col. 5, ll. 37-38) and encrypts the record (Robinson, col. 5, ll. 11-20).

Robinson discloses forming a digital receipt comprising the encrypted transaction record (Robinson, col. 5, ll. 66-67, col.6, ll. 1-5).

Robinson discloses configuring the digital receipt page (step 118) on the internet e.g., a web page, to enable display in a Web page (steps 124,125) (Robinson, col. 6 ll. 23-36); and returning the digital receipt to at least one party e.g., the merchant, to the completed transaction.

Robinson discloses using public key infrastructure (PKI) as part of the receipt encryption process (Robinson, col. 5, ll. 40-52, col. 8, ll. 1-17).

Robinson discloses that although the merchant is in control of the computer **98** responsible for generating the digital receipt through exclusive access using a personal secret key (Robinson, col. 5 ll. 42-50), the customer, rather than the merchant, may present the digital receipt to the receipt generating computer **98** using the merchant's key (Robinson, col. 5, ll. 46-50) to retrieve the transaction data but cannot alter the data (Robinson, col. 8, ll. 38-45).

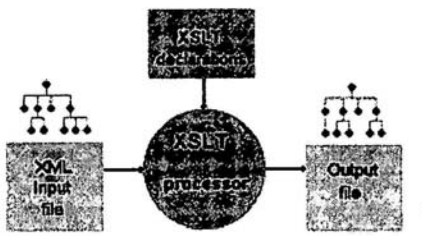
Robinson discloses verification of the receipt contents by verification comprising extracting the digital receipt, decrypting the transaction record and returning details of the transaction to the presenting party (Robinson, col. 8, ll. 45-57), and wherein the presenting party, e.g., one of the merchant or customer, may then compare the transaction details to any previously stored version of the transaction details that the presenting party possesses (Robinson, col. 8, ll. 58-61).

Claim 34 recites only that the transaction record be protected from modification by the parties to the transaction, but says nothing about prohibiting viewing of transaction data by any party to the transaction.

The Examiner found that in Robinson, the merchant computer **98** responsible for generating the digital receipt, "may in fact be operated not directly by the merchant but rather by an electronic transaction service provider in close cooperation with and under the authority of the merchant" (Robinson col. 7, ll. 39-42).

Robinson does not explicitly disclose protecting the details in the transaction record from modification by the parties to the transaction because the transaction record was originally encrypted under the direction of the merchant, e.g. a party to the transaction, and the merchant computer simply uses the same private key to extract the transaction data (Robinson col. 8, ll. 49-52) which may allow the merchant the opportunity to modify the transaction data during the original encryption process.

The Examiner found, as illustrated in the block diagram below, that XLST is an XML based language used for the transformation of XML documents that is well known in the art. (Answer P. 11)



Illustrated above is a block diagram of the XLST and XML relationship.

Ginter discloses a trusted electronic go-between 4700 used as an “impartial overseer ... [to] document [an electronic] transaction” (Ginter col. 22, ll. 52-53).

Ginter discloses a trusted electronic go-between 4700 used in an electronic transaction to maintain a secure archive of data, receipts, and other information about transmissions senders send to recipients (Ginter, col. 22, ll. 5-59).

Ginter discloses that the parties to the transaction delegate to the go-between 4700 the creation of a contract based on data entered by each party (Ginter, col. 23, ll.61-66) so that no one party can change the data entered by the other and so protect the transaction from un-agreed to modification. Thus, the details in the transaction record are protected from modification by the parties to the transaction.

Ginter discloses "[s]teganography can be used to encode electronic fingerprints and/or other information into an item to prevent deletion” (Ginter, col. 7, ll. 55-67).

Ginter discloses using the third party go-between to "provide a digital time stamp service to certify that a certain version of a certain document existed and was delivered to it at a certain day and time" (Ginter, col. 9, ll. 50-55).

PRINCIPLES OF LAW

A claimed invention is not patentable if the subject matter of the claimed invention would have been obvious to a person having ordinary skill in the art. 35 U.S.C. § 103(a); *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007); *Graham v. John Deere Co,* 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Facts relevant to a determination of obviousness include (1) the scope and content of the prior art, (2) any differences between the claimed invention and the prior art, (3) the level of skill in the art and (4) any relevant objective evidence of obviousness or non-obviousness. *KSR*, 127 S.Ct. at 1734, 82 USPQ2d at 1389, *Graham*, 383 U.S. at 17-18, 149 USPQ at 467.

A person having ordinary skill in the art uses known elements and process steps for their intended purpose. *Anderson's-Black Rock, Inc. v. Pavement Salvage Co.*, 396 U.S. 57, 61-62, 163 USPQ 673, 674-75 (1969) (radiant-heat burner used for its intended purpose in combination with a spreader and a tamper and screed); *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282, 189 USPQ 449, 452-53 (1976) (the involved patent simply arranges old elements with each performing the same function it had been known to perform); *Dunbar v. Myers*, 94 U.S. 187, 195 (1876) (ordinary mechanics know how to use bolts, rivets and screws and it is obvious that any one knowing how to use such devices would know how to arrange a deflecting plate at one side of a circular saw which had such a device properly arranged on the other side).

When multiple prior art references are used to reject a claim, then the prior art references should be "analogous." Prior art is "analogous" when a person having ordinary skill in the art would consider it relevant or related to the invention sought to be patented. *Dann v. Johnston*, 425 U.S. 219, 229, 189 USPQ 257, 261 (1976) (data processing system used in large business organization found to analogous to inventor's data process system used in banking industry); *Graham*, 383 U.S. at 35, 148 USPQ at 473 (1966) (where inventor was attempting to solve mechanical closure problem, liquid containers having pouring spouts found to be analogous to an inventor's pump spray insecticide bottle cap); *Cuno Engineering Corp. v. Automatic Devices Corp.*, 314 U.S. 84, 91-92, 51 USPQ 272, 275-76 (1941) (thermostat to break circuit in a electric heater, toaster or iron found to be analogous to a circuit breaker used in an inventor's cordless cigar lighter); *Mast, Foos & Co. v. Stover Mfg. Co.*, 177 U.S. 485, 493 (1900) (device used in mills other than windmills held to be analogous to inventor's use of same device in windmills); *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992) (if art is in the field of applicant's endeavor or is reasonably pertinent to the particular problem with which an inventor is concerned, then the art is "analogous").

ANALYSIS

The Examiner rejected the claims holding that a person having ordinary skill in the art would have found it obvious to use the third party digital receipt agent for electronic transactions disclosed by Ginter in the method of conducting electronic commerce transactions carried out by Robinson.

The Examiner found that using a trusted third party, such as taught by Ginter, to ensure that neither party to the transaction commits fraud in Robinson's two party receipt transaction verification method to be within the level of ordinary skill in the art, and that one skilled in the art would have known to use the trusted third party agent of Ginter with its attendant encryption mechanisms as part of the transaction process in Robinson (Final Office Action 4 (mailed Feb. 27, 2006)).

We accept the Examiner's use of Ginter to modify Robinson under 35 U.S.C. § 103(a), but rely on Ginter in a way different from that proposed by the Examiner in the Final Office Action.

We will thus affirm the Examiner's rejection of claims 34-50 under 35 U.S.C. § 103(a), but use a different analysis. Since our application of the references differs from that of the Examiner, our affirmance is designated as a new rejection. 37 CFR § 41.50(b) (2006).

Thus, our affirmance is of the Examiner's rejection under 35 U.S.C. § 103(a) based on the combined disclosures of Robinson in view of Ginter.

35 U.S.C. § 103(a) Rejection

The Robinson and Ginter Combination

Appellants argue that the limitation in claim 34 of the "details in the transaction record [being]… protected from modification by the parties to the transaction" is not found in the prior art and that this limitation further prohibits the combination of Robinson and Ginter (Br. 5, 8). Specifically, it is asserted that: 1. because the merchant in Robinson is capable of tampering with the transaction details against the interests of the purchaser, Robinson cannot meet this claim limitation, and 2. because Ginter would lessen merchant control in Robinson, it would destroy Robinson's teachings (Br. 5, 8).

We reject these arguments and find that the combination of Robinson and Ginter answers the limitations of the claim elements, and that a person with ordinary skill in the art person would have known to use the teachings of Ginter as part of the electronic transaction in Robinson.

In making the combination, the Examiner refers to Figs. 115-122 in Ginter to teach the known use of a third party digital receipt agent for electronic transactions to independently generate an electronic receipt for electronic commerce transactions (Final Office Action 4 (mailed Feb. 27, 2006)). We are not entirely sure that Figs. 115-122 in Ginter provide the necessary teaching for the stated modification made to Robinson. This is because Figs. 115-122 in Ginter relate to a created data object 300 and its subsequent down stream authentication and delivery (Ginter, col. 40, ll. 48-65) against tampering by third parties, and not against the parties to the transaction as claimed. We decline to accept this portion of the disclosure as one which describes protecting transaction details of Robinson against modification by either party to the transaction.

However, we do find other portions of Ginter that teach protecting inputted details of a transaction against modification by opposed parties to the transaction.

Specifically, Ginter describes a trusted electronic go-between 4700 used in an electronic transaction to maintain a "secure archive of data, receipts, and other information about transmissions senders … send to recipients ..." (Ginter, col. 22, ll. 55-59). In Ginter, the parties to the transaction delegate to the go-between 4700 the tracking of details to a transaction[1] based on data entered by each party (Ginter, col. 23, ll. 61-66) so that no one party can change the data entered by the other and so protect the transaction from un-agreed to modification. In that regard, no one party to the transaction brokered by the go-between 4700 has control over input of the transaction details, much in the same way as Appellants' Web Receipt Service 1.3 extracts transaction data from the Service 1.2. The Service 1.2 similarly locks in time against modification the transaction data at the point of sale, e.g., point of contract consummation, using such known processes as, e.g., a date stamping and digital signatures.

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[1] *Black's Law Dictionary Seventh Edition* defines "transaction" very generally as: *2. something performed or carried out, a business agreement or exchange*. Thus, the contract created by the go-between 4700 is read as a transaction carried out electronically answering the terms of claim 34.

Moreover, in Robinson, the merchant may not have direct control over the transaction. Robinson discloses that the merchant computer **98** responsible for generating the digital receipt, "may in fact be operated not directly by the merchant but rather by an electronic transaction service provider in close cooperation with and under the authority of the merchant" (Robinson, col. 7, ll. 39-42). This is an indication, if not a suggestion, that the merchant in Robinson may delegate to a third party the day to day operations of the transaction process.

Further, we find that at the time of the invention, independent web payment options existed for e-commerce transactions provided by, e.g., "credit card accounts, debit card accounts, a PayPal account, or another method of transferring funds electronically" (Specification 3:18-20).

From Ginter, a person with ordinary skill in the art knows the scope and content of the prior art to include a third party agent or go-between 4700 which collects data from a transaction as it is inputted.

The processes of digitally signing, encrypting, and forming a digital receipt were known at the time of the invention as described by Robinson as well as independent web based payment processes such as PayPal (Specification 3:18-20) .

"[P]roof of what was old and in general use at the time of the alleged invention…may be admitted to show what was then old, or to distinguish what is new…" *Dunbar*, 94 U.S. at 199.

Thus, a person with ordinary skill in the art person would have known to modify Robinson to include an independent go-between as taught by Ginter to protect the details of the transaction record from modification by the parties to the transaction.

Claim Element Analysis

Appellants separately argue that term “web service” recited in claim 34 is a feature not found in either Robinson and Ginter and that “ROBINSON and GINTER predate the advent of Web Services” (Br. 5). These arguments fail for three reasons.

1. Appellants seek the benefit of a meaning of the term “web service” which is more specific than that alluded to in their Specification.[2] Appellants’ Specification does not appear to make any expressed intent to define “web service” beyond the ordinary meaning of the terms web and service. As such, the Examiner did find the ordinary meaning of “web service”[3] to be within the context of Robinson and we agree. We thus hold that a “web service” may be any service having web protocols conducted on the web, including the sale of goods over the World Wide Web as described by Robinson at col. 6, ll. 56-58. *See Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1324-25, 63 USPQ2d 1374, 1380

[2] The (Specification 3:11-13) only recites by way of background and example “Web services are a new and rapidly expanding set of offerings on the World Wide Web. Web Services leverage the existing scalable web server infrastructure to provide a platform for offering services to other Internet applications.

[3] A modular collection of Web protocols-based applications that can be mixed and matched to provide business functionality through an Internet connection. Web services can be used over the Internet or an intranet to create products, business processes, and B2B interactions. Web services use standard protocols such as HTTP, XML, and SOAP to provide connectivity and interoperability between companies. *Microsoft Computer Dictionary, Fifth Edition*, 564 (2002).

(Fed. Cir. 2002). Alternatively, the merchant in Robinson who is connected to a customer via the customer's ISP offers his merchant services, including digital receipt services, to another internet application, namely, the customer's ISP, thereby meeting the example of "web services" posed on page 3 of the Specification.

2. The term "web service" is recited only once in the preamble of claim 34 and is not repeated or used as part of the claim thereafter to effect the recited process. Since the body of claim 34 fully and intrinsically sets forth the complete process without reference to web service, the term is not construed as if in the balance of the claim. *See, e.g., Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997); *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed.Cir. 1989).

3. Appellants list other independent web based payment options for e-commerce transactions (web services) as by, e.g., "credit card accounts, debit card accounts, a PayPal account, or another method of transferring funds electronically" (Specification 3:18-20). Thus, independent public network, web based services, such as PayPal, existed at the time of Appellants' filing.

Appellants argue the separate patentability of claim 35 reciting the feature of a party to the transaction being able to compare the transaction details to any previously stored version of the transaction details that that party possesses is allowable (Br. 12-13). However, nothing in Robinson prohibits the customer from reviewing the contents of the receipt. The restriction in claim 34 only applies to the altering of the receipt contents. That is, in Robinson, the customer may present the digital receipt to the receipt generating computer **98** using the merchant's key (Robinson, col. 5, ll. 46-50) to retrieve the transaction data, but cannot to alter it. Thus, Appellants' assertion by implication that the limitation of "details in the transaction record are protected from modification by the parties" (as recited in claim 34) would prevent viewing by the customer appears to be wrong. Claim 34 says nothing of the record being prohibited from being viewed by any of the parties which is what occurs in Robinson.

Appellants argue claims 40-41 are allowable because "[n]either ROBINSON nor GINTER teaches the use of XML or XSLT to create a digital receipt for 'postmarking' as per claim 40, nor the combination of 'transaction records and a time-stamped hash... into an XML document… protected through the use of standard PKI and the public key of a verification application' as per claim 41" (Br. 13). We reject these arguments and agree with the Examiner noting first that nothing novel or unobviousness can be drawn from the use of such conventional aspects of web security practices, such as, public key infrastructure (PKI) and XML languages. Notwithstanding, as found *supra*, the definition of web service includes protocols such as HTTP and XML, and Robinson discloses using PKI at column 5, lines 40-52 and column 8, lines 1-17. The Examiner found, and Appellants do not challenge the finding that XLST is an XML based language used for the transformation of XML documents that is well known in the art (Answer 11).

Appellants next argue relative to claims 44 and 45,

> neither ROBINSON nor GINTER teach a method

> wherein a Web Service "does not rely upon the issuance of certificates or private keys to the individuals for whom Web Receipts are created" as per claim 44 [and] …protection of transaction details through 'encryption to a single public key belonging only to the Web Receipt Service and only the Web Receipt Service can decrypt it' as per claim 45.

(Br. 13). The argument is a side show apart from the main event. Ginter discloses keeping the authentication keys under the control of the go-between 4700 (Ginter, col. 9, ll. 5-67) and not the parties to the transaction, hence answering these limitations. What Appellants' argument amounts to is a "divide and conquer" approach—since Ginter does show these features even though not found in Robinson. Sometime ago binding precedent made clear that an obviousness rejection cannot be overcome by attacking references individually—which is precisely what Appellants are doing. *In re Young*, 403 F.2d 754, 757, 159 USPQ 725, 728 (CCPA 1968).

Further, as found *supra*, the XLST limitation recited in claim 47 is an XML based language used for the transformation of XML documents that is well known in the art. Common sense dictates using XLST to style a XML document to redact portions when one uses XML. The use of common sense may control the reasoning to combine prior art teachings. *See KSR*, 127 S.Ct. at 1742, 82 USPQ2d at 1397. We therefore find nothing novel or unobvious in the limitations of claims 46 and 47.

We reject Appellants argument that claim 48 is allowable because although Ginter does teach employing stenography to hold a postmarked receipt, it does not allow same to be used as a graphic in web pages (Br. 14). Again common sense dictates that to insure that contents are not to be tampered with, a .GIF or graphic file is used to present the data in a manner which cannot be altered. *Id.*

Finally, we agree with the Examiner that claims 46 and 50 recite nothing more than what a person with ordinary skill in the art person would have known as industry standards and the common sense results of using such known programming languages, e.g., if data is not redacted by XSLT, then it is made opaque to the viewer.

Motivation to Combine

Appellants argue “there is no proper motivation to modify the teachings of ROBINSON with the teachings of GINTER or any other document to obtain the combination recited in claim 34” (Br. 8). To the extent Appellants argue that an *explicit* motivation, suggestion, or teaching in the art, the argument has been foreclosed by *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007). In *KSR*, the Court characterized the teaching, suggestion, motivation test as a “helpful insight” but found that when it is rigidly applied, it is incompatible with the Court’s precedents. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396. The holding in *KSR* makes clear that there is no longer, if it ever was, a rigid requirement for finding a reason to combine teachings of the prior art.

> Helpful insights, however, need not become rigid and mandatory formulas; and when it is so applied, the TSM test is incompatible with our precedents. The obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation, or by

> overemphasis on the importance of published articles and the explicit content of issued patents.

KSR, 127 S.Ct. at 1741, 82 USPQ2d at 1396. Rather, the application of common sense may control the reasoning to combine prior art teachings. *See KSR*, 127 S.Ct. at 1742, 82 USPQ2d at 1397.

Appellants further argue that “modifying ROBINSON so that ‘details in the transaction record are protected from modification by the parties to the transaction’ would destroy the teachings of ROBINSON which are directed to leaving such matters under the control of the merchant” (Br. 8). However we do not see how the process of Robinson would be destroyed by such a modification. In fact, it would be enhanced because Robinson describes as an object of the invention to resolve disputes between a merchant and a customer where “neither the merchant nor the customer trusts the accuracy of the other's private records” (Robinson, col. 2, ll. 11-13). The Robinson process as modified, *supra*, by Ginter which removes the issue of trust as between buyer and seller as to the specifics of the purchase, would answer the exact problem faced by Robinson.

Appellants do not provide arguments as to the separate patentability of claims 36-39, 42, 43 and 49 that depend from claim 34, which is the sole independent claim among those claims. Claims 36-39, 42, 43 and 49 thus fall with claim 34. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2004).

CONCLUSIONS OF LAW

Appellants have not sustained their burden on appeal of showing that the Examiner erred in rejecting the claims on appeal as being unpatentable under 35 U.S.C. § 103(a) over the prior art.

Claims 34-50 are unpatentable under 35 U.S.C. § 103(a) over the prior art.

On the record before us, Appellants are not entitled to a patent containing any of the pending claims in the application on appeal.

DECISION

Upon consideration of the record, and for the reasons given, it is

ORDERED that the decision of the Examiner rejecting claims 34-50 over the prior art is *affirmed*.

FURTHER ORDERED that since our application of the references may be viewed as differing from that of the Examiner, our affirmance and rejection of objected to and allowed claims are designated as a new rejection. 37 CFR § 41.50(b) (2006).

FURTHER ORDERED that our decision is not a final agency action.

FURTHER ORDERED that within *two (2) months* from the date of our decision Appellants may further prosecute the application on appeal by exercise one of the two following options:

1. Request that prosecution be reopened by submitting an amendment or evidence or both. 37 CFR § 41.50(b)(1) (2006).

2. Request rehearing on the record presently before the Board. 37 CFR § 41.50(b)(2) (2006).

FURTHER ORDERED that the time for taking action under either 37 CFR § 41.50(b)(1) or 41.50(b)(2) is not extendable under the provisions of 37 CFR § 1.136(a) (2006).

AFFIRMED - 37 CFR § 41.50(b)

hh

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