

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN R. GRABSKI, II

Appeal 2007-1631
Application 10/135,863
Technology Center 3600

Decided: June 12, 2008

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and
HUBERT C. LORIN, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

John R. Grabski II (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 16-18. Claims 1-15 and 19-20 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.¹

THE INVENTION

The invention relates to methods of optimizing the control of inventory items. Fig. 1 is reproduced below:

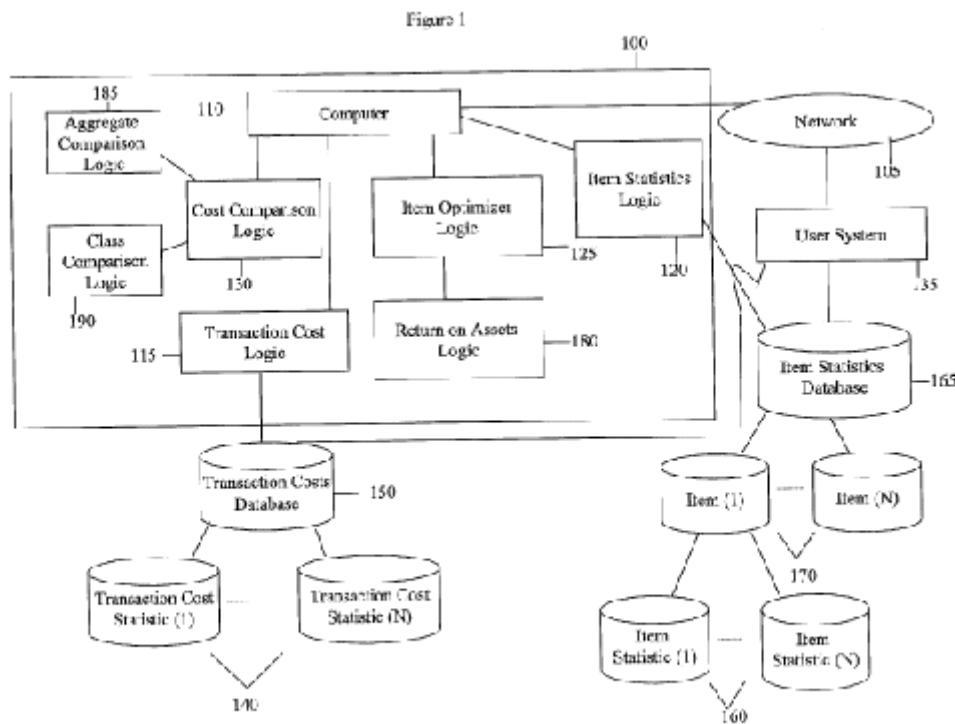


Fig. 1 of the Specification is said to depict an embodiment of a method according to the invention.

¹ Our decision will make reference to Appellant's Appeal Brief ("App. Br.," filed Oct. 25, 2006) and the Examiner's Answer ("Answer," mailed Mar. 8, 2007).

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In Fig. 1 above, element 100 can be, for example, a server. (Specification [0021]). The claimed method comprises obtaining (a) transaction costs statistics and (b) item statistics. These are obtained from databases 150 and 165, respectively, and provided to the system 100 via transaction cost logic 115 and item statistics logic 120, respectively. (Specification [0024] and [0027]). According to the Specification, “logic” is used generically and includes but is not limited to hardware, software and/or combinations of both to perform a function.” (Specification [0016]). An “item” can be, for example, a product. (Specification [0019]). “Transaction costs” include, e.g., cost of purchase orders. (Specification [0020]). “Transaction costs” include, e.g., average annual quantity of an item in inventory. (Specification [0020]). The claimed method further includes a step of determining an optimized parameter value for a class of items based on the transaction costs statistics, item statistics, and an optimization criteria.

Claim 16, reproduced below, is representative of the subject matter on appeal.

16. A method for controlling a plurality of items grouped into a plurality of classes in an inventory comprising:
 - obtaining a plurality of transaction costs statistics relating to the plurality of items;
 - obtaining a plurality of item statistics for each class;
 - determining at least one optimized parameter value for each class based upon the plurality of transaction costs statistics, the plurality of item statistics for each item and at least one optimization criteria; and
 - controlling each class of items by implementing the optimized parameter value for each class,

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wherein said at least one optimization criteria comprises one of an optimum inventory turns per item, an optimum inventory turns per class and a maximization of cash availability.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Usrey	US 6,366,890 B1	Apr. 2, 2002
Dulaney	US 6,341,269 B1	Jan. 22, 2002

The following rejection is before us for review:

1. Claims 16-18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Usrey and Dulaney.

ISSUES

The issue is whether the Appellant has shown that the Examiner erred in rejecting claims 16-18 as unpatentable over Usrey and Dulaney. This issue turns on whether Usrey discloses or suggests the optimization criteria claimed, i.e., *“at least one optimization criteria comprises one of an optimum inventory turns per item, an optimum inventory turns per class and a maximization of cash availability”* (claim 16).

FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

The scope and content of the prior art

1. Usrey is related to an inventory optimization method. Usrey optimizes inventory based on the most popular varieties of products and decreasing the exposure of lesser popular ones. (Col. 4, ll. 12-37). Market demand and retail sales data are among the factors which may be considered in making the optimization determination. (Col. 7, ll. 5-18).
2. The sentence at (col. 4, ll. 15-17) of Usrey reads: “Because a better assortment of more popular items translates into more profits, optimization of the more popular products for a given shelf space should maximize profits.”
3. Usrey discloses classifying categories of products based on their popularity. Various popularity classes are defined; e.g., velocity class. “Velocity Class – a measurement of the average throughput of an item sold by a store handling that item over a certain time period.” Usrey: (col. 4, Ins. 22-24).
4. Dulaney relates to shelf inventory management. (Col. 2, ll. 40-54).

Any differences between the claimed subject matter and the prior art

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5. The claimed subject matter differs from the prior art in that the cited references do not explicitly disclose the claimed optimization criteria, i.e., “at least one optimization criteria comprises one of an optimum inventory turns per item, an optimum inventory turns per class and a maximization of cash availability” (claim 16).

The level of skill in the art

6. Neither the Examiner nor the Appellant has addressed the level of ordinary skill in the pertinent art of inventory control. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the prior art itself reflects an appropriate level and a need for testimony is not shown’”) (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

Secondary considerations

7. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

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subject matter pertains.”” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”) The Court in *Graham* further noted that evidence of secondary considerations “might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” 383 U.S. at 18.

ANALYSIS

The Appellant argues claims 16-18 as a group (Br. 11-12). We select claim 16 as the representative claim for this group, and the remaining claims 17-18 stand or fall with claim 16. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Examiner argued that Usrey discloses the claimed optimization criteria when the criteria is “*an optimum inventory turns per item*” (claim 16). Answer 3-4. To show this, the Examiner relies on the statement at col. 4, ll. 15-17 of Usrey. Answer 4. FF 2.

The Appellant disagreed that the disclosure in Usrey cited by the Examiner equates with *an optimum inventory turns per item*. (Br. 11). The Appellant relies on discussion in the Specification to argue that *inventory turns per item* should be construed to have a meaning which limits the claim

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so as to preclude from its scope Usrey's optimization method. The Appellant relies on [0029] at p. 8 of the Specification. It reads as follows:

[0029] Upon receiving relevant transaction costs statistics and item statistics for each item to be analyzed, the inventory optimization 100 [see Fig. 1 above] performs the item optimizer logic 125 to optimize at least one optimization criteria for each inventory item to be analyzed. Optimization criteria may include, but are not limited to, the following criteria: number of inventory turns per item; number of inventory turns per class; maximization of cash flow; maximization of cash availability; and maximization of return of assets. The criteria "number of inventory turns" equates to the number of times a transaction for the inventory is completed, wherein a transaction for the inventory is completed when the inventory is purchased, optionally stocked and sold.

Br. 11-12. This passage states that "*inventory turns per item*" "equates to the number of times a transaction for the inventory is completed," i.e., when "the inventory is purchased". According to the Appellant, Usrey uses a different criteria – one for classifying the popularity of products to maximize profits based on the average throughput of an item sold by a store.

Instead, Usrey discloses classifying categories of products based on their popularity, i.e., based on the average throughput of an item sold by a store over a certain period of time. See Usrey: (col. 4, Ins. 12-37). The average throughput is used as a metric for determining whether one product is more or less popular than another product, in order to optimize the assortment of the products (i.e., the amounts of the different products). *Id.* Considering the number of units of a product actually sold per week to make the aforementioned popularity determination does not correspond to determining an optimal number of inventory turns for a product. Accordingly, Usrey fails to teach or suggest use of the at least one optimization criteria comprising one of an optimum inventory turns per item, an optimum inventory turns per

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class and a maximization of cash availability for determining the at least one optimized parameter value for each class, as recited in claim 16. Dulaney fails to make up for these deficiencies of Usrey.

Br. 11-12.

The Examiner responded by arguing that “Usrey discloses the feature “inventory turns” in terms of “throughput.” The Examiner “assert[ed] that these terms [“inventory turns” and “throughput”] correspond to one another.” (Answer 5). According to the Examiner, “[a]lthough Usrey only describes throughput as the number of items sold during a time period, it would have been obvious to one of ordinary skill in the art at the time the invention was made that in order to sell items it is necessary to purchase items first.” (Answer 5).

We have reviewed the record. We agree with the Examiner. The Specification defines the criteria “*inventory turns per item*” as the times an item is *purchased*. Usrey discloses the criteria “throughput” as the number of times an item is *sold*. FF 3. It is not apparent to us and the Appellant has not clearly explained the difference between measuring the times an item is *sold* versus the times an item is *purchased*. Common sense tells us that an item cannot be purchased unless it is for sale. To one of ordinary skill, it would have been obvious over Usrey in light of its disclosure of measuring items sold (i.e., “throughput”) to use instead an optimization criteria based on items purchased (i.e., “inventory turns”) as claimed. “A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR* at 1740.

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Accordingly, the Appellant's argument that the claimed method distinguishes over that of Usrey in not teaching the claimed optimization criteria "inventory turns" is not persuasive as to error in the rejection. There being no other arguments to address, we sustain the rejection.

CONCLUSIONS OF LAW

We conclude the Appellant has failed to show that the Examiner erred in rejecting claims 16-18 and 8-34 as unpatentable over Usrey and Dulaney under § 103.

DECISION

The decision of the Examiner to reject claims 16-18 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

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AFFIRMED

JRG

CALFEE HALTER & GRISWOLD, LLP
800 SUPERIOR AVENUE
SUITE 1400
CLEVELAND, OH 44114