

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Catalina Marketing Corporation,
APPELLANT

Appeal 2007-2809
Reexamination Control 90/005,888¹
Patent 6,014,634²
Technology Center 3600

Decided: 23 April 2008

Before TEDDY S. GRON, LEE E. BARRETT, and MARK NAGUMO,
Administrative Patent Judges.

NAGUMO, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ Request for Reexamination filed 12 December 2000, by third-party requester coolsavings.com, inc., Chicago, IL.

² Michael C. Scroggie, *et al.*, *System and Method for Providing Shopping Aids and Incentives to Customers through a Computer Network*, based on application 08/905,501 filed on 4 August 1997.

A. Introduction

The patent owner, Catalina Marketing Corporation (“Catalina”) appeals³ under 35 U.S.C. § 134(b) from the final rejection⁴ of claims 1–49, which are all of the pending claims in Reexamination Control 90/005,888 of U.S. Patent 6,014,634 issued to Michael C. Scroggie, Michael E. Kacaba, David A. Rochon, and David M. Diamond (“634 patent”)⁵. We have jurisdiction under 35 U.S.C. § 6. We AFFIRM.

The subject matter on appeal relates to a method of providing purchasing incentives (coupons) implemented on a computer network.

Claims 1 and 49 are representative of the issues on appeal and read as follows.

Claim 1:

A computer implemented method for determining purchasing incentives for consumers, comprising the steps of:

storing in a purchase history database product data for products purchased in association with a unique identifier;

³ “37 CFR 41.37 FOURTH BRIEF” (“Br.”), filed 6 October 2007.

⁴ Final Rejection mailed 28 August 2006 (“FR”). As recognized by Catalina (“37 CFR 41.41 REPLY BRIEF” (“Reply Br.”)) filed 16 February 2007) at 3, second paragraph), much, but not all, of the Final Rejection and the Answer are substantially the same.

⁵ All citations are to the patent, the disclosure of which has not been amended.

- [a] transmitting a prompt for personal information from a main computer to a personal computer over a computer network;
- [b] transmitting personal information data from said personal computer to said main computer over said computer network in response to said prompt, said personal information data including an identity code;
- [c] generating page data defining a personal web page that is accessible over said computer network, said personal web page based at least in part on said personal information data transmitted from said personal computer to said main computer,
- [d] assigning a web page address to said personal web page based upon said personal information data,
storing said page data defining said personal web page in a personal page database;
determining a purchase incentive depending on
 - (1) said product data stored in said purchase history database or
 - (2) said page data stored in said personal page database; andupdating said page data so that said personal web page will display said purchase incentive.

(Br., Claims App. at 32; bracketed labels and underscore added.)

Claim 49:

A computer implemented method for generating a web page, said method comprising the steps of:

- [a] transmitting a prompt for personal information from a main computer to a personal computer over a computer network;
- [b] transmitting personal preference information data from said personal computer to said main computer over said computer network in response to said prompt;

- [c] generating page data defining a web page based upon said personal preference information data;
assigning a web page address to said web page based upon said personal information data;
determining a purchase incentive depending on said personal information; and
changing said page data so that said web page having said web page address displays said purchase incentive.

(Br., Claims App. at 45; bracketed labels and underscore added.)

The Examiner has maintained the following rejections⁶:

1. Claims 1-49 are rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Barnett⁷ and Shane⁸.
2. Claims 48 and 49 are rejected under 35 U.S.C. § 112(2).

⁶ Examiner's Answer ("Ans.") mailed 24 January 2007. A "double patenting" rejection was withdrawn in the Office Action mailed 28 August 2006, at 18. The fact of withdrawal may have been obscured by the statement of the rejection in that office action at 5. As the rejection has been replaced by a standard objection that claims 40 and 41 are substantial duplicates of claims 42 and 43, respectively, we have no occasion to comment on this matter further, despite Catalina's request (Br. at 11 and at 13-18), as our jurisdiction only encompasses rejections: it does not extend to objections.

⁷ Craig W. Barnett *et al.*, *Method and System for Electronic Distribution of Product Redemption Coupons*, U.S. Patent 6,321, 208 B1, 20 Nov 2001, based on application 08/425,185, filed 19 April 1995.

⁸ Terence Martin Shane, *System and Method Providing an Interactive Response to Direct Mail by Creating Personalized Web Page Based on URL Provided on Mail Piece*, U.S. Patent 5,793,972, 11 August 1998, based on application 08/642,317, filed 3 May 1996.

B. Findings of Fact (FF)

Findings of fact throughout this Decision are supported by a preponderance of the evidence of record.

The 634 Patent

1. The 634 patent is based on application 08/905,501, which was filed 4 August 1997 as a continuation of PCT/US96/20497, which was filed 23 December 1996.
2. Provisional application 60/009,244, filed 26 December 1995, is listed on the face of the 634 patent, but no claim for the benefit under 35 U.S.C. § 119(e) of its filing date has been made in this proceeding.
3. Catalina does not dispute the status of Barnett or Shane as prior art against the 634 patent.
4. The principal interpretive disputes in this appeal relate to the phrase “assigning a web page address,” which occurs in claim 1, clause [d], and to the phrase “said personal web page based upon said personal information data,” which occurs in claim 1, clauses [c] and [d], *supra*.
5. Embodiments of the invention that make use of a personal web page are described in detail at column 14 of the 634 patent, in conjunction with Figure 16, which is shown on the following page.⁹

⁹ The text in curly braces before and after the Figures is provided to ensure compliance with section 508 of the U.S. Rehabilitation Act for publication of this Decision on the USPTO website pursuant to the Freedom of Information Act. It is not part of the Decision.

6. Figure 16 of the 634 patent is shown below:

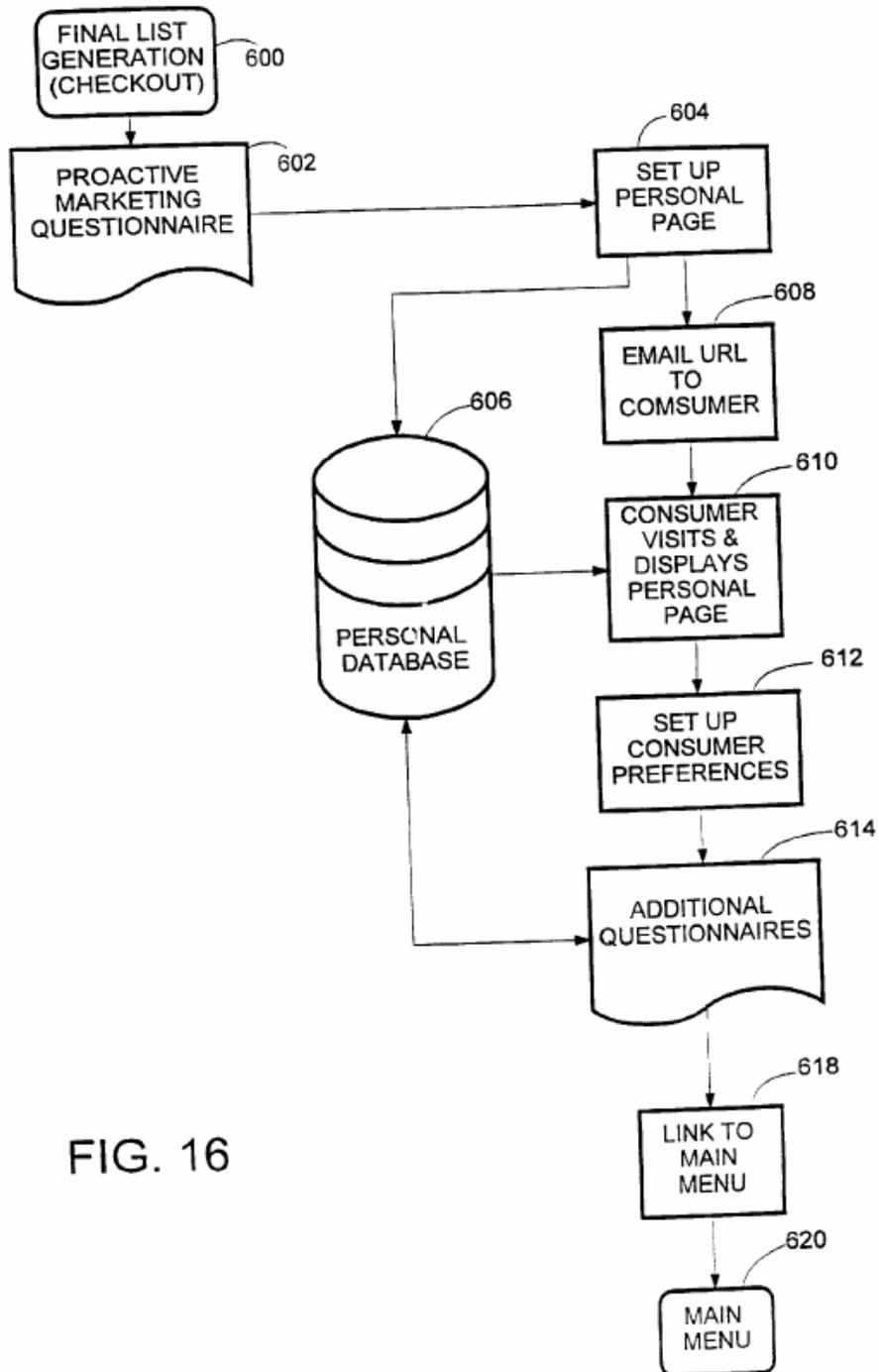


FIG. 16

{ 634 patent Figure 16 is said to show a flow diagram of part of a process of the claimed invention that uses a web page. }

7. According to the 634 patent, a “personal page” is set up at the request of the consumer based on responses to a questionnaire that seeks selected personal or demographic information. (634 patent at 14:8–15; see also Figure 16, block **604** (“SET UP PERSONAL PAGE”).)

8. In the words of the 634 patent,

The personal page displays a screen of information that is consumer-specific in many respects but will, of course, contain some data that is supplied to all consumers who have personal pages. The page is preferably personalized with the consumer’s name and may also contain the shopping list, if any, already generated by the consumer in the current online session. Significantly, the personal page will also contain offers and incentives targeted to the specific consumer.

(634 patent at 14:16–24.)

9. The 634 patent continues, “[w]hen the personal page is first set up, the system generates an E-mail message to the consumer to advise him or her of the address for gaining access to the personal page, as indicated at **608** [“EMAIL URL TO COMSUMER”].” (634 patent at 14:25–28; Figure 16.)

10. The 634 patent also describes setting up a personal database, **606**. (634 patent at 14:15–16.)

11. According to the 634 patent, the personal database **606** and the personal page contents are updated based on consumer purchases and changes to the personal page. (634 patent at 14:46–65.)

12. According to the 634 patent, “[u]se of the personal page permits manufacturers and retailers to focus incentives on specific consumers, based

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on demographic data and prior purchasing data in the consumer's personal database **606**." (634 patent at 14:66 to 15:2.)

Barnett

13. Barnett describes a method and system that provides packages of coupon data that can be downloaded on demand to a user's personal computer. (Barnett, Abstract.)

14. According to Barnett, "[t]he user's demographic as well as coupon selection data is provided back to the online service and coupon distributor and issuers for subsequent marketing analysis." (Barnett, Abstract.)

15. The general process is described in the following words (labels to Barnett Figure 2 omitted for clarity):

The online service provider is connected with the datalink and is thus accessible by any remote personal computer having a data communications interface such as a modem. The online service provider communicates with the personal computer in order to transmit requested coupon data, and also in order to receive coupon requests and the user-specific data mentioned above.

(Barnett at 6:66–7:5.)

16. The "user-specific data mentioned above" is said to include coupons selected, deleted, printed, and user demographics. (Barnett at 6:58–61.)

17. According to Barnett:

Information related to the coupons selected and printed can be supplied to the coupon distributors and issuers, which can also use information obtained from the various retail stores as to which coupons were actually redeemed in order to more

intelligently market subsequent coupons and target coupon issuance in a more cost effective manner.

(Barnett at 5:27–33.)

18. Somewhat more particularly, Barnett indicates that “the coupon selection, printing and redemption habits may be analyzed over a time period and used to determine the subsequent targeted packages.” (Barnett at 12:59–62.)

19. Barnett describes a further alternative embodiment in which the functions of the online service provider are carried out at a site on the Internet, such that the user’s identification number is sent to the Internet site for validation and subsequent fulfillment of the request. (Barnett at 13:50-63.)

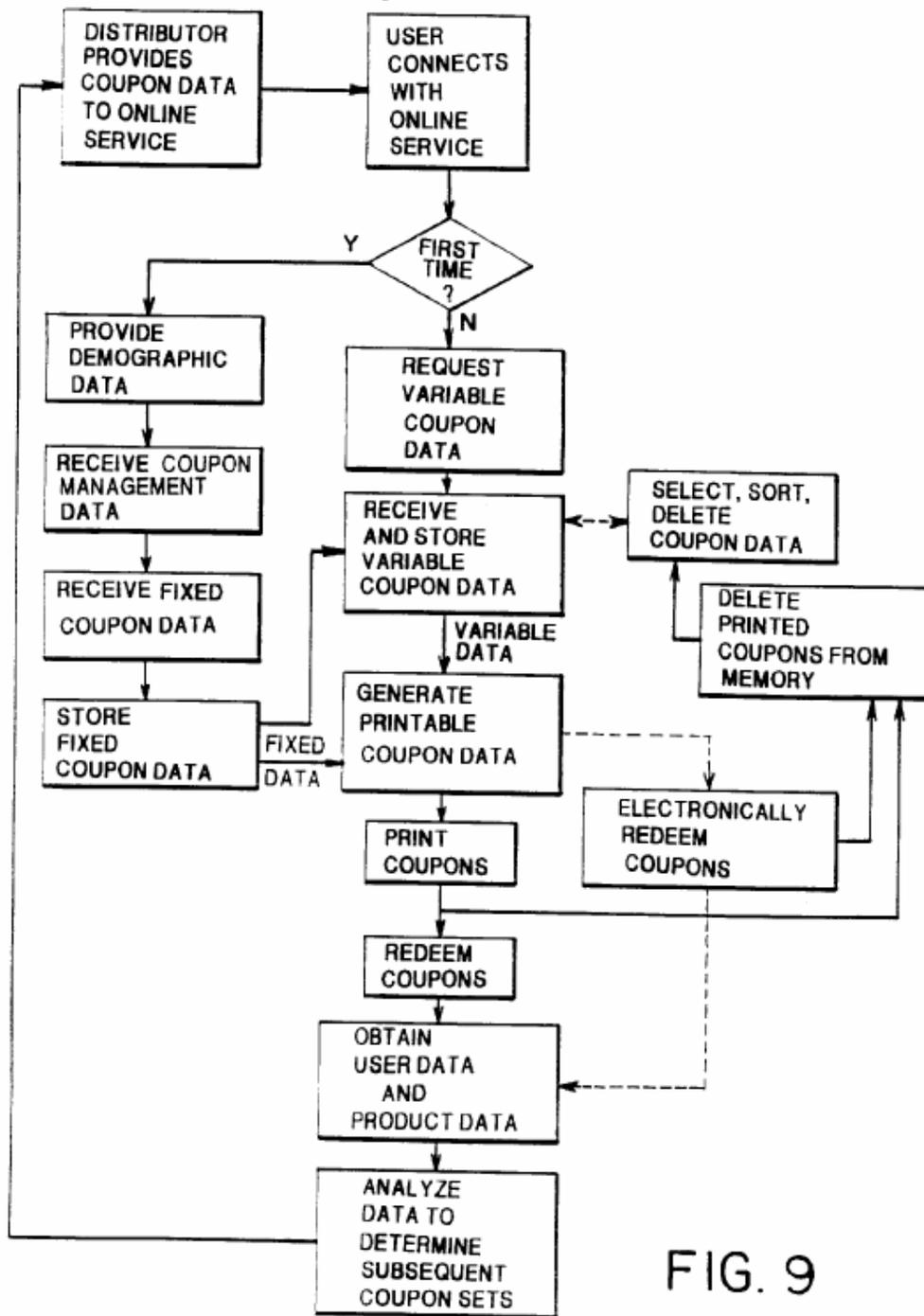
20. Barnett does not describe the preparation of personalized web pages as such.

21. A relatively detailed flowchart of Barnett’s process is illustrated in Figure 9, which is shown on the following page.

22. Notably, first time users are prompted to provide demographic data. (See Figure 9 and Barnett at 7:62–8:2.)

23. In response to a request for coupons, a coupon package can be generated according to marketing analysis of the demographic information (Barnett at 9:34-53, esp. 48) as well as “individual coupon selection, printing, and redemption habits . . . analyzed over a time period . . . to determine subsequent targeted packages” (*id.* at 12:48-62, esp. 59-62).

{Barnett Figure 9 is shown below:}



{Barnett Figure 9 is said to show a flow chart of Barnett's process}

24. Barnett describes an alternative embodiment in which the function of the online provider are carried out at a site on the Internet. (Barnett at 13:50–62.)

Shane

25. Shane is “directed towards a system for providing an interactive response to direct marketing programs, which involve the creation of a personalized computer web page or like computer user interface accessible by each recipient of the direct mail.” (Shane at 2:23–27.)

26. In an embodiment:

[a] web server computer accessible through the Internet and capable of serving a plurality of web browsers enables a responding recipient to access the web server computer by entering the uniform resource locator displayed on the direct mail piece received by the responding recipient into a web browser on a remote computer. The web server computer retrieves recipient data from the recipient database correlated to the personal identification code contained in the uniform resource locator and uses this recipient data to create a unique interactive web page, and download the web page to responding recipient’s web browser.

(Shane at 2:59 to 3:3.)

27. According to Shane, the web page may include the user’s name, interactive elements such as forms to fill in and options to select, or still more elaborate and unique web pages may be created. (Shane at 5:11–30.)

28. A flow chart of a process is illustrated in Shane Figure 4, which is reproduced on the following page, and described starting at column 5, line 63.

29. Shane Figure 4E is shown below:

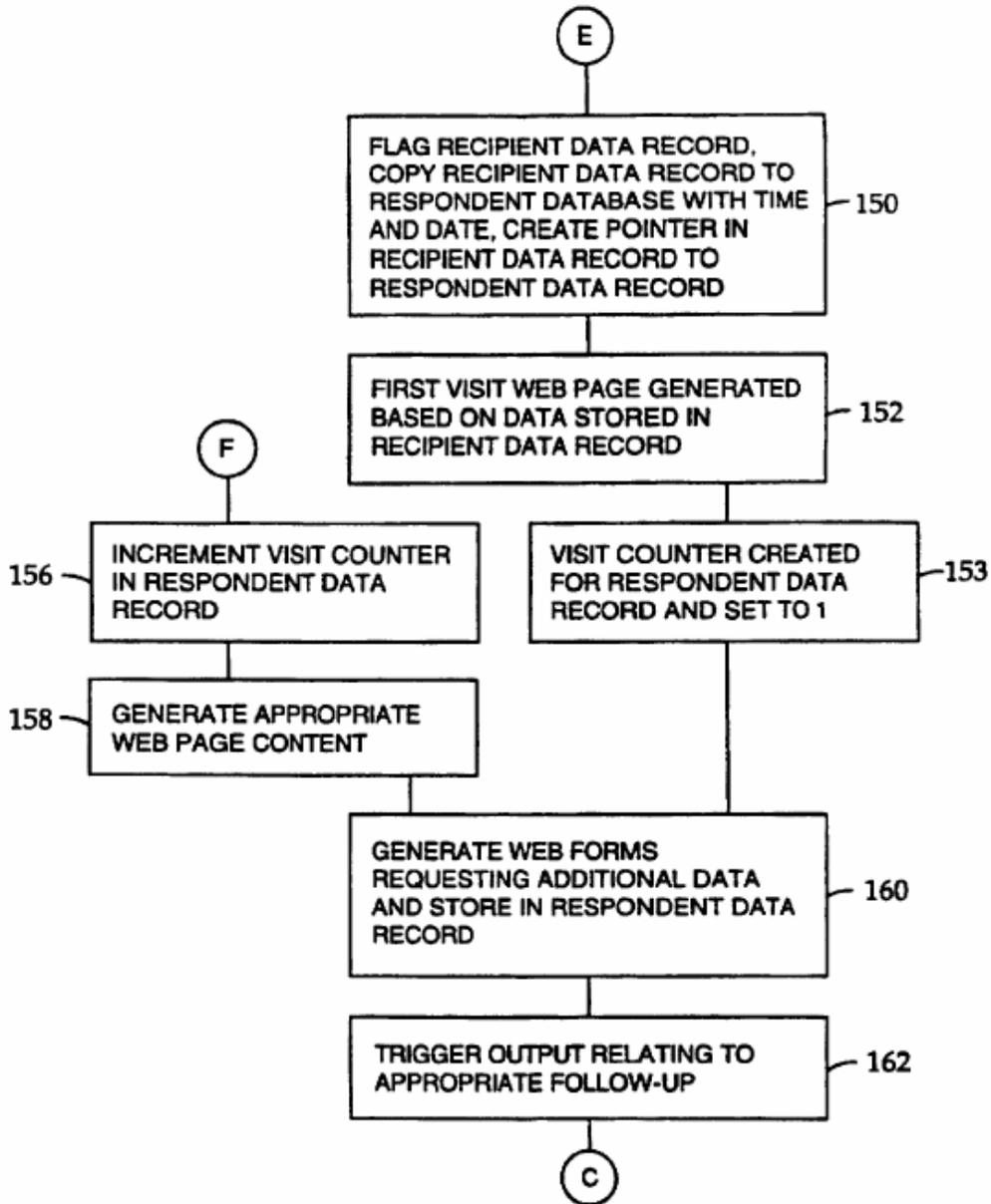


Fig. 4E

{Shane Figure 4E is said to show a flow diagram of part of the Shane direct mail process.}

30. Following initialization and receipt and validation of a personal identification code, if the user is a first-time user, the path starting at branch

point **E** is followed; if the user has visited before, the path starting at branch point **F** is followed.

31. On a first visit, the date, time, and user data are stored, a personalized first visit web page is generated (Block **152**) and the visit counter is set to 1 (Block **153**). (Shane at 7:39-45.)

32. According to Shane, a direct mail piece such as the one shown in Shane Figure 2 is sent to the recipient, which contains, in addition to the recipient's name and address, the uniform resource locator (URL), "of which the last series of characters comprises the unique personal identification code." (Shane at 4:66 to 5:4.)

33. Shane explains that the URL, in this example,

`www.abc.com/myproject/123-456-789-246`

"is entered by the responding recipient into [the] web browser to access the web server computer which generates a personalized web page." (Shane at 5:4-7, labels omitted.)

34. Thus, as Shane explains, the URL serves as the web page's electronic return address that contains a unique personal identification code. (Shane at 2:32-34.)

35. If the user is a repeat customer, the user's visit counter is incremented (Block **156**) (Shane at 7:53-55) and web page content, "preferably different from the web page displayed during the respondent's last visit" is displayed (*id.* at 7:55-58.)

36. In either case, additional data may be requested of the user (Shane at 7:59-63) and stored in the user's data file (Block **160**) (*id.* at 7:63-65), and

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output, such as e-mail (*id.* at 7:66-8:4), is triggered relating to appropriate follow-up (Block **162**) at branch point **C** (not shown).

C. Discussion

On appeal, the procedural burden is on the Appellant to demonstrate reversible error in the Examiner's position.

Obviousness

Claimed subject matter is not patentable if the differences between the claimed subject matter and the prior art are such that one of ordinary skill in the art, at the time the invention was made, would have deemed the claimed subject matter obvious. 35 U.S.C. § 103(a). Obviousness is a legal conclusion based on factual inquiries including the scope and content of the prior art, the differences between the prior art and the claimed subject matter, and the level of ordinary skill in the pertinent art. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). The inquiry is broad, and any secondary considerations that prove instructive should be considered. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1739 (2007). "One of the ways in which a patent's subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent's claims." *KSR*, 127 S.Ct. at 1742.

The Examiner finds that Barnett describes an online coupon distribution method comprising many of the limitations recited in Catalina's claims. (Ans. at 4-9; FR at 8-13.) In particular, the Examiner finds that Barnett describes [a] transmitting, to non-registered user at a remote terminal who is seeking coupon information, an electronic prompt for

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information to complete a user profile; [b] receiving and [c'] storing the response as a user profile; downloading to the user at the remote terminal a coupon data management software module for managing the printing of coupons, including unique user identification information; and, for registered users, viewing coupons selected on the basis of user specific information that is user profile information or user history information. (Ans. at 8–9; FR at 12-13: bracketed letters correspond to claim limitations identified *supra*. The prime indicates that the limitation is not fully met because Barnett does not disclose the use of a web page.)

The Examiner also finds that:

Barnett does not expressly disclose the steps of using the user's personal data, such as demographic data, to generate a unique personal web page for the user uniquely identifying the user, assigning a unique web page address (unique URL) to the user's created web page, storing the generated or created web page data (along with the user's identifier) in a database, sending an advisory message concerning the web page to the user . . . and displaying the user's personal data, such as the user's name, and the targeted generated coupons or purchase incentives to the user via the personal web page (upon the occurrence of the visit).

(Ans. at 10; FR at 13-14.)

The Examiner relies on Shane for the missing disclosure (Ans. at 10-13 and at 17–21; FR at 14-16 and at 25-29), and concludes that the ordinary worker would have found it obvious to combine the teachings of Barnett and Shane to arrive at the claimed invention. (Ans. at 13-14 and at 21-22; FR at 17-18 and at 29-30.)

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In particular, the Examiner finds that Shane describes a system for providing a personalized web page for interactive response to direct [electronic] mail. (Ans. at 10-14.) The Examiner finds further that Shane teaches that a personalized web page containing messages and promotions is set up for users who respond to an inquiry. (Ans. at 10-11.) Moreover, the Examiner finds that Shane describes “a system wherein during an identified user’s visit to a personalized web page, created based on the user’s personal information, the web server or the main computer requests additional personal information from the user or allows the user to modify existing personal information . . . [which] is used to generate or update personal web page data for the user (col. 7:59-66).” (Ans. at 20; FR at 28.)

The Examiner reasons that the ordinary worker would have been motivated to incorporate the personalized web page methodology described by Shane in the targeted coupon distribution system described by Barnett to take advantage of the personalization, rapid coupon delivery, and information collection capabilities (such as customer information, coupon printing and use). (Ans. at 13-14 and 22; FR at 29-30.)

Catalina argues the patentability of the rejected claims in three groups. The first argument, which applies to all the claims on appeal, is that neither Barnett nor Shane discloses assigning a web page address based upon the personal information provided from the personal computer to the main computer. (Br. at 25, first paragraph.)

Catalina focuses on limitations [a] through [d] of claim 1, which we reproduce here for convenient reference:

A computer implemented method for determining purchasing incentives for consumers, comprising the steps of:

* * *

- [a] transmitting a prompt for personal information from a main computer to a personal computer over a computer network;
- [b] transmitting personal information data from said personal computer to said main computer over said computer network in response to said prompt, said personal information data including an identity code;
- [c] generating page data defining a personal web page that is accessible over said computer network, said personal web page based at least in part on said personal information data transmitted from said personal computer to said main computer,
- [d] assigning a web page address to said personal web page based upon said personal information data.

In particular, Catalina finds that “Shane does not disclose the prompt/response of personal information between the main and personal computers and subsequent use of the personal information received from the personal computer being used for assigning a web page address.” (Br. at 26.) Although Catalina finds that “Shane does disclose that its system associates a unique identification code with each recipient record” (*id.* at 27, last paragraph), Catalina argues that Shane “does not disclose that the unique identifier is based upon either personal information or information provided by a personal computer to Shane’s main computer. Moreover, it does not even suggest that the unique identifier is based upon information provided by the intended recipient.” (*Id.*)

Catalina's argument rests on a misinterpretation of limitation [d]. The phrase "based upon said personal information data" modifies the immediately preceding phrase, "said personal web page," not, as Catalina assumes, the initial phrase, "assigning a web page address." That is, the complex phrase "said personal web page based upon said personal information data" is a unitary term in the context of claim 1. The basis for this interpretation is found in limitation [c], which contains the phrase, "said personal web page based at least in part on said personal information data transmitted from said personal computer to said main computer." Thus, the phrase in [d], "personal web page based upon said personal information data," merely refers back to the more complex phrase in [c]. The presence in [c] of the proviso, "at least in part," does not detract from this analysis, as the proviso merely and expressly permits the web page to be based on additional personal information (e.g., information that is already part of a database). Similarly, the "transmitted from . . ." phrase merely ties the personal data to that defined in limitation [b].

Thus, step [d] merely requires that a web page address be assigned to the personal web page. The address need not have been based on personal data transmitted from the personal computer to the main computer. The personal web page, of course, is required by [c] to be based on some of the transmitted personal data.¹⁰ But such data, if in fact missing from the

¹⁰ The Examiner's contention to the contrary (Ans. at 19, "the argued claims, or at least independent claim 1, never recite or require the presence of a live user or his real-time input or participation") is erroneous. The error, however, is harmless, as the Examiner points out (Ans. at 20, first full

personalized web page shown in Shane Figure 3, would have been obvious to display on the personalized web pages taught by Shane, given the intent and teachings of either Shane or Barnett to provide individualized marketing services.

Catalina has not directed our attention to any definition or usage of limitation [d] (or equivalent language) in the specification that might override the present interpretation that assignment of the web page address is independent from the personal data that is transmitted. Indeed, the only support Catalina cites for the address of the personal web page is Block **604**, “SET UP PERSONAL PAGE,” in Figure 16 (FF 6), and claim 1 itself. (*See*, Br. at 10, 4th paragraph.) These disclosures, however, are too meager and too general to carry Catalina’s burden of persuasion that the web address itself must be based on some of the transmitted personal information. Moreover, Block **608**, “EMAIL URL TO CO[N]SUMER” (Figure 16 and 634 patent at 14:25-28 (FF 8)) does not support Catalina’s contention that the address is based on the personal information transmitted by the consumer. Rather, the URL provided as an address by Catalina to the consumer appears to be no more than the URL address

www.abc.com/myproject/123-456-789-246

provided by Shane in the personalized initial direct mail shown in Shane Figure 2 (FF 33).

Catalina’s arguments in the Reply Brief have been considered but are not persuasive. Much of the Reply Brief is devoted to traversing the

paragraph) that Shane discloses modifying the web page in response to user input.

Examiner's findings of admissions by Catalina. As we have not relied on any such "admissions," we neither endorse nor reject the Examiner's findings—but we note that the Examiner and Catalina often appear to be talking past one another or are not addressing the same problem.

We conclude that Catalina has not shown reversible error in the Examiner's rejection of claims 1–49 for obviousness.

Catalina's second argument, that Barnett does not determine a purchase incentive on a basis of frequency of usage of purchase incentives by the user, applies to dependent claims 9, 22, and 35. (Br. at 30.) This argument is not persuasive in view of Barnett's disclosure that "the coupon selection, printing and redemption habits may be analyzed over a time period and used to determine the subsequent targeted packages." (Barnett at 12:59-62: FF 18.) Although "frequency of usage" of coupons is not mentioned, it is not credible that the ordinary worker in these arts would fail to analyze the frequency of coupon use when the aim of the disclosed system is to improve marketing and targeting of coupons to individual consumers.

Catalina's third argument, that Barnett does not describe determining purchase incentives on a basis of frequency of use of the personal page by a consumer, applies to dependent claims 10, 23, and 36. (Br. at 30-31). This argument is also not persuasive. Barnett describes, as pointed out by the Examiner (Ans. at 7, first full paragraph), an embodiment in which the user accesses the coupon data repository via an Internet site (Barnett at 13:50-52; FF 25). The ordinary Internet site developer would have routinely tracked the number of visitors to a given site and, as shown by Shane, the number, date and time of each visit would also have been of interest. (Shane

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at 7:39-45 (FF 31); 7:53–55 (FF 35.)) That potentially valuable marketing information, and the readily derived frequency of visits, would have been of great interest to anyone selling goods and services. Thus, determining the purchase incentive on the basis of frequency of usage of a web page would have been obvious to the ordinary web designer and web marketer.

Catalina’s three arguments are largely devoted to attacking the adequacy of either Barnett or Shane. The rejection, however, is over the combined teachings of the two references. It is improper to attack references individually where, as here, the obviousness rejection is based on their combined teachings. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425-26 (CCPA 1981).

Because Catalina has not raised arguments with respect to the other limitations of claim 1, or to the limitations of the other independent or dependent claims, except as noted in the discussion of Catalina’s second and third arguments, all other arguments against the Examiner’s rejections under § 103 have been waived in this proceeding. 37 C.F.R. § 41.37(c)(1)(vii)¹¹.

Indefiniteness

Claims are definite if they “set out and circumscribe a particular area with a reasonable degree of precision and particularity. It is here where the definiteness of the language employed must be analyzed—not in a vacuum, but always in light of the teachings of the prior art and of the particular

¹¹ Board rule 37(c)(1)(vii) reads in relevant part, “Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown.”

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application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art.” *In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971).

The Examiner maintains that the presence of the “broad” limitation in part [a] of claims 48 and 49, “personal information,” and the “narrow” limitation in part [b], “personal preference information,” render the scope of these claims indefinite because the metes and bounds of the patent protection desired are not clearly set forth. (Ans. at 3.) Although the Examiner cites a non-precedential decision of the Board of Patent Appeals and Interferences and several non-precedential decisions of its predecessor, the Board of Patent Appeals, the Examiner does not explain why the rationales of those decisions apply to the facts of this case.¹² The Examiner speculates that the “Patent owner probably intended” that the personal preference information be a subset or further limitation of the requested “personal information” (Ans. at 4), but does not explain what interpretive problem arises. The Examiner then states that “[t]he Examiner will not interpret, herein, preference information as defined in the specification.” (*Id.*) The Examiner does not, however, indicate where such a definition is presented in the specification; nor does the Examiner state the substance of the alleged definition.

This rejection is set out with so little explanation that it is no more than a *per se* application of a rule that requires careful analysis. There are, of course, few, if any, *per se* rules in patent examination. *Cf. KSR*

¹² Non-precedential decisions have, by definition, only the force of their reasoning, as applicable to the facts in the case at hand, to recommend them.

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International Co. v. Teleflex Inc., 127 S.Ct. 1727, 1739 (2007) (“We begin by rejecting the rigid approach of the Court of Appeals.”) Moreover, the Examiner’s arguments are not internally consistent. If the specification provided an express definition of “personal preference information,” there would be no need to speculate as to what Catalina “probably intended.” Such an express definition of a term in the specification would trump any contrary or inconsistent general definition. The Examiner has not explained any basis on which an express definition in the specification could be ignored. Moreover, the Examiner has not directed our attention to express definitions of the terms “personal information” and “personal preference information”; nor have we found one in our own review of the specification. The decisive consideration, in any event, is that the Examiner has not explained why, in response to the broad request [a] for personal information, a “narrower” response [b] would be indefinite in the context of claim 1, taken as a whole, in the light of the 634 specification or the art of record.

As the Examiner has failed to establish a prima facie case that the claim language is indefinite, we need not consider extrinsic evidence such as the testimony of Michael C. Scroggie, offered by Catalina. The rejection of claims 48 and 49 under 35 U.S.C. § 112(2) is REVERSED.

E. Summary

In view of the record and the foregoing considerations, it is:

ORDERED that the rejection of claims 1–49 under 35 U.S.C. § 103(a) in view of the combined disclosures of Barnett and Shane is AFFIRMED;

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FURTHER ORDERED that that the rejection of claims 48 and 49 under 35 U.S.C. § 112(2) is REVERSED; and

FURTHER ORDERED that no time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

cc (via First Class Mail);

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