

1 UNITED STATES PATENT AND TRADEMARK OFFICE

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3
4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
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8 *Ex parte* MICHAEL TILLMAN
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11 Appeal 2007-2846
12 Application 10/386,886
13 Technology Center 3600
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16 Decided: May 7, 2008
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19 Before HUBERT C. LORIN, ANTON W. FETTING, and
20 DAVID B. WALKER, *Administrative Patent Judges*.
21 FETTING, *Administrative Patent Judge*.

22 DECISION ON APPEAL
23

24 STATEMENT OF CASE

25 Michael Tillman (Appellant) seeks review under 35 U.S.C. § 134 of a
26 Final rejection of claims 1-24, the only claims pending in the application on
27 appeal.

28 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)
29 (2002).

1 We AFFIRM.

2 The Appellant invented a way for hosting centralized online point-of-
3 sale ("POS") activities for distributed customers and vendors (Specification
4 1:9-11).

5 An understanding of the invention can be derived from a reading of
6 exemplary claim 1, which is reproduced below [some paragraphing added].

7 1. A method for centrally hosting online point of sale activities,
8 the method comprising:

9 (i) receiving input from a customer specifying two or more
10 vendors having vendor web sites from which to purchase goods
11 or services during an online shopping session;

12 (ii) passing through the customer to the vendor web sites as a
13 controlling agent during the online shopping session;

14 (iii) receiving input from the two or more vendors indicating
15 that the customer has purchased goods or services at the two or
16 more vendor web sites during the online shopping session; and

17 (iv) outputting a single online receipt to the customer reflecting
18 all goods or services purchased at the two or more vendor web
19 sites during the online shopping session.

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21 This appeal arises from the Examiner's Final Rejection, mailed July 7,
22 2006. The Appellant filed an Appeal Brief in support of the appeal on
23 August 28, 2006. An Examiner's Answer to the Appeal Brief was mailed on
24 January 23, 2007. A Reply Brief was filed on January 19, 2007.

1 PRIOR ART

2 The Examiner relies upon the following prior art:

3	Van den Berghe	WO 00/31657 A2	Jun. 2, 2000
4	Scroggie	US ,5,970 469 A	Oct. 19, 1999
5	Taricani	US 6,347,304 B1	Feb. 12, 2002
6	Cockrill	US 6,473,740 B2	Oct. 29, 2002

7 REJECTIONS

8 Claims 1, 3-13, 15-18, and 20-24 stand rejected under 35 U.S.C.

9 § 103(a) as unpatentable over Van den Berghe and Cockrill.

10 Claims 2 and 14 stand rejected under 35 U.S.C. § 103(a) as
11 unpatentable over Van den Berghe, Cockrill, and Taricani.

12 Claims 7 and 19 stand rejected under 35 U.S.C. § 103(a) as
13 unpatentable over Van den Berghe, Cockrill, and Scroggie.

14 ISSUES

15 The issues pertinent to this appeal are

- 16 • Whether the Appellant has sustained its burden of showing that the
17 Examiner erred in rejecting claims 1, 3-13, 15-18, and 20-24 under 35
18 U.S.C. § 103(a) as unpatentable over Van den Berghe and Cockrill.
- 19 • Whether the Appellant has sustained its burden of showing that the
20 Examiner erred in rejecting claims 2 and 14 under 35 U.S.C. § 103(a)
21 as unpatentable over Van den Berghe, Cockrill, and Taricani.

1 the ability to enter into Cooperative Sales relationships through a
2 Multi-Site Shopping Cart. The invention enables online shoppers
3 to select and purchase items across a network of unrelated
4 Merchant Web sites starting from a Lead Web Site, without
5 having to repeatedly enter their relevant information (Van den
6 Berghe Abstract).

7 06. It provides a Parsing Proxy Server (PPS) and an Application
8 Server (APS) located on distributed computers across a network.
9 The PPS acts as an intermediary between the consumer and the
10 Merchants by parsing pages served by the Merchant to the
11 consumer, and redirecting Universal Resource Locators (URL) in
12 the Merchant's pages back to the PPS. The PPS can thus track,
13 manage, and monitor the consumer's shopping interaction with the
14 merchants (Van den Berghe Abstract).

15 07. The Multi-Site Shopping Cart experience is created by the APS
16 on the Lead Web Site. The APS gathers the consumer's shopping
17 cart information from the PPS, re-creates this information onto the
18 shopping cart located on the Lead Web Site, and displays it to the
19 consumer. When a consumer decides to finalize her purchases,
20 the APS executes the purchases on the various Coop Merchant
21 sites through form filling or through a software robot on the PPS
22 (Van den Berghe Abstract).

23 08. At the beginning of the user's shopping session, Van den
24 Berghe's APS serves pages with links to the merchant Web sites.

¹*American Heritage Dictionary of the English Language* (4th ed. 2000).

1 The user's browser requests a page from the PPS, which requests a
2 page from the merchant site, processes this page, and then serves
3 it to the browser. The PPS finds the links in the merchant's page
4 and modifies them to route through the PPS. If the page to be
5 served is the merchant's shopping cart page, the PPS performs a
6 re-direct to the APS, and the APS displays the Multi-Site
7 Shopping Cart page which includes the item just selected on the
8 merchant site. When the user is ready to execute the purchase, she
9 can select a sub-set of her shopping cart. She can then click on a
10 "buy" button. The APS instructs the PPS to re-create, on the
11 merchant sites, the shopping carts corresponding to the selected
12 items, and then to place an order using the user's billing and
13 shipping information. This interaction is performed by a bot,
14 which is a component of the PPS, either by simulating the user's
15 clicks on the merchant site or by using the merchant's own API, if
16 available (Van den Berghe 3:15-35).

17 *Cockrill*

18 09. Cockrill is directed to facilitating purchase transactions between
19 any number of customers and any number of merchants
20 participating in the network. The network relieves merchants of
21 the burdens of each maintaining a separate infrastructure for
22 authenticating and accepting payment from customers, delivering
23 goods, and providing customer service. The network provides a
24 single registration process during which the customer provides
25 credit card payment information once for all of the merchants, as
26 well as universal authentication to the Web sites of all of the

1 merchants through at [sic] single user interaction. The network
2 also provides customers with centralized, automated services for
3 customer account management, product refunds, subscription
4 management, and multiple purchasing accounts linked to the same
5 payment account (Cockrill 3:54 – 4:10).

6 10. Cockrill portrays a written acknowledgement that transactions
7 involving goods or services and money were made to separate
8 vendors on a single document (Cockrill Fig. 21).

9 *Taricani*

10 11. Taricani is directed to interstate sales tax collection which fairly
11 applies laws to consumers depending on state guidelines, and does
12 not unfairly shift the government's burden of tax collection to the
13 seller (Taricani 3:24-30).

14 12. Taricani receives a collected tax from a seller along with
15 information as to the purchase and purchaser, and stores this data
16 in a database. After organizing and correlating the data, the
17 appropriate transfer of the collected revenue to appropriate
18 revenue agencies is effected (Taricani 3:58-64).

19 *Scroggie*

20 13. Scroggie is directed to the distribution, via a computer network,
21 of incentives and other related shopping aids useful to retail
22 customers. Importantly, the incentives are distributed in such a
23 way that they may be redeemed only at a specific retailer selected
24 by each customer (Scroggie 1:48-33).

1 clarity to provide a person of ordinary skill in the art with clear and precise
2 notice of the meaning that is to be construed. *See also In re Paulsen*, 30
3 F.3d 1475, 1480 (Fed. Cir. 1994) (although an inventor is free to define the
4 specific terms used to describe the invention, this must be done with
5 reasonable clarity, deliberateness, and precision; where an inventor chooses
6 to give terms uncommon meanings, the inventor must set out any
7 uncommon definition in some manner within the patent disclosure so as to
8 give one of ordinary skill in the art notice of the change).

9 *Obviousness*

10 A claimed invention is unpatentable if the differences between it and
11 the prior art are “such that the subject matter as a whole would have been
12 obvious at the time the invention was made to a person having ordinary skill
13 in the art.” 35 U.S.C. § 103(a) (2000); *KSR Int’l v. Teleflex Inc.*, 127 S.Ct.
14 1727, 1729-30 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14
15 (1966).

16 In *Graham*, the Court held that that the obviousness analysis is
17 bottomed on several basic factual inquiries: “[(1)] the scope and content of
18 the prior art are to be determined; [(2)] differences between the prior art and
19 the claims at issue are to be ascertained; and [(3)] the level of ordinary skill
20 in the pertinent art resolved.” 383 U.S. at 17. *See also KSR Int’l v. Teleflex*
21 *Inc.*, 127 S.Ct. at 1734. “The combination of familiar elements according to
22 known methods is likely to be obvious when it does no more than yield
23 predictable results.” *KSR* at 1739.

24 “When a work is available in one field of endeavor, design incentives
25 and other market forces can prompt variations of it, either in the same field
26 or [in] a different one. If a person of ordinary skill [in the art] can

1 implement a predictable variation, § 103 likely bars its patentability.” *Id.* at
2 1740.

3 “For the same reason, if a technique has been used to improve one
4 device, and a person of ordinary skill in the art would recognize that it would
5 improve similar devices in the same way, using the technique is obvious
6 unless its actual application is beyond his or her skill.” *Id.*

7 “Under the correct analysis, any need or problem known in the field
8 of endeavor at the time of invention and addressed by the patent can provide
9 a reason for combining the elements in the manner claimed.” *Id.* at 1742.

10 *Automation of a Known Process*

11 It is generally obvious to automate a known manual procedure or
12 mechanical device. Our reviewing court stated in *Leapfrog Enterprises Inc.*
13 *v. Fisher-Price Inc.*, 485 F.3d 1157 (Fed. Cir. 2007) that one of ordinary
14 skill in the art would have found it obvious to combine an old
15 electromechanical device with electronic circuitry

16 to update it using modern electronic components in order to gain the
17 commonly understood benefits of such adaptation, such as decreased
18 size, increased reliability, simplified operation, and reduced cost. . . .
19 The combination is thus the adaptation of an old idea or invention . . .
20 using newer technology that is commonly available and understood in
21 the art.

22

23 *Id.* at 1163.

24

ANALYSIS

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Claims 1, 3-13, 15-18, and 20-24 rejected under 35 U.S.C. § 103(a) as

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unpatentable over Van den Berghe and Cockrill.

1 The Appellant argues these claims as a group.

2 Accordingly, we select claim 1 as representative of the group.
3 37 C.F.R. § 41.37(c)(1)(vii) (2007).

4 The Examiner found that Van den Berghe explicitly described
5 limitations (i) and (ii) of claim 1, and implicitly described (iii). The
6 Examiner further found that Cockrill described limitations (iii) and (iv) of
7 claim 1. The Examiner found that one of ordinary skill would have known
8 of the advantages of reducing workload by combining actions and concluded
9 that it would have been obvious to a person of ordinary skill in the art to
10 have combined Van den Berge with Cockrill to achieve those advantages
11 (Answer 4-6).

12 The Appellant contends that Van den Berge's user does not pass
13 through to the merchant sites. The Appellant argues that, rather than being a
14 controlling agent for passing the customer through to the Vendor web sites,
15 in Van Den Berghe the user only sees what is retrieved by the intermediary
16 site from the merchant site. The Appellant goes on to argue that retrieval
17 and presentation to the user of pages obtained from other sites neither
18 teaches nor suggests the passing through claimed (Br. 5:First full ¶). The
19 Appellant argues that in Van Den Berghe, after the user clicks a "buy"
20 button on the intermediary webpage, the intermediary APS and PPS re-
21 create separate shopping carts on each of the merchant sites or they fill in the
22 separate shopping carts at the merchant sites for manual checkout by the
23 user, implying no aggregation of the payment functions (Br. 5:Second full
24 ¶).

1 We disagree. We initially find that the Specification provides no
2 lexicographic definition of “passing through” (FF 01). Accordingly we
3 construe “passing through” according to its usual and customary meaning of
4 moving along a permitted route (FF 02). Thus, the issue is whether Van Den
5 Berghe describes moving the customer to the vendor web sites along a
6 permitted route as a controlling agent during the online shopping session.
7 We further find that this means metaphorically moving a customer, since in
8 a computer system, it is data rather than people that are moved.

9 As the Appellant correctly described, Van den Berghe relies on an
10 intermediate process to administer the dialog between customer and vendors
11 (FF 06 - 08). We take the Appellant’s argument to be that because this
12 intermediary controls the dialog with the customer, the customer is not
13 passed through to the vendor web sites. The Appellant fails to consider that
14 the customer controls the dialog and is fully able to interact with the
15 merchant web site through Van den Berghe’s intermediary. In particular, the
16 customer may access links on the merchant web site and even send a
17 software “bot” through to the merchant web site (FF 08). Such interaction
18 remains under the customer’s control; Van den Berghe’s intermediary is
19 simply acting as a buffer to coordinate visits among multiple merchants (FF
20 06 & 07). Thus, we find that Van Den Berghe describes moving the
21 customer to the vendor web sites along a permitted route as a controlling
22 agent during the online shopping session.

23 The Appellant next contends that Van Den Berghe fails to suggest
24 aggregation of payment and that Cockrill does not remedy this because when
25 making purchases from multiple vendors, Cockrill’s purchaser receives
26 separately enumerated receipts from each vendor. The Appellant goes on to

1 argue that the system in Cockrill is not a controlling agent for the online
2 shopping session for receiving input from a customer specifying two or more
3 vendors having vendor web sites from which to purchase goods or services
4 during an online shopping session or passing through the customer to the
5 vendor web sites as a controlling agent during the online shopping session
6 (Br. 6:Last full ¶ - 7:Top ¶).

7 We disagree. First, Cockrill does not explicitly use the word
8 “receipt,” so there is no evidence to support the Appellant’s contention that
9 Cockrill’s purchaser receives separately enumerated receipts from each
10 vendor. Next we must construe the word “receipt.” The disclosure contains
11 no lexicographic definition of “receipt” (FF 03). Thus we construe a receipt
12 according to the usual and customary meaning consistent with its usage in
13 the disclosure of a written acknowledgment that a specified article, sum of
14 money, or shipment of merchandise has been received (FF 04).

15 We find that, contrary to the Appellant’s contention, Cockrill portrays
16 a written acknowledgement, that transactions involving goods or services
17 and money were made to separate vendors, on a single document (FF 10).
18 Cockrill refers to this document as a statement rather than a receipt, but as
19 this document is within the scope of a receipt, the difference in nomenclature
20 is of no patentable significance. Further, this consolidation of multiple
21 purchases on a single document, when combined with Van den Berghe’s
22 multi-site shopping cart, would have suggested similarly consolidating
23 purchases on any such document evidencing the purchases made during a
24 common time frame.

1 describes a centralized intermediary that controls the customer purchase
2 process. Thus, the Appellant is arguing that Scroggie fails to describe that
3 which Van den Berghe is applied to describe. Again, nonobviousness
4 cannot be established by attacking the references individually when the
5 rejection is predicated upon a combination of prior art disclosures.

6 The Appellant has not sustained its burden of showing that the
7 Examiner erred in rejecting claims 7 and 19 under 35 U.S.C. § 103(a) as
8 unpatentable over Van den Berghe, Cockrill, and Scroggie.

9 CONCLUSIONS OF LAW

10 The Appellant has not sustained its burden of showing that the
11 Examiner erred in rejecting claims 1-24 under 35 U.S.C. § 103(a) as
12 unpatentable over the prior art.

13 On this record, the Appellant is not entitled to a patent containing
14 claims 1-24.

15 REMARKS

16 Claims 20-23 are improper because of what appears to be typographic
17 errors. In particular, system claims 20-22 refer back to method claim 11 and
18 system claim 23 refers back to method claim 1. It would appear, by virtue of
19 the parallel between claims 1-12 and 13-24, that each of claims 20-23 are
20 meant to refer back to system claim 13 in a manner analogous to the way
21 method claims 8-11 refer back to claim 1.

22 DECISION

23 To summarize, our decision is as follows:

