

1 UNITED STATES PATENT AND TRADEMARK OFFICE
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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES

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8 *Ex parte* ROLF TROSSEN

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11 Appeal 2007-2876
12 Application 10/093,080
13 Technology Center 3600

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16 Decided: May 16, 2008

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19 Before WILLIAM F. PATE, III, MURRIEL E. CRAWFORD, and
20 ANTON W. FETTING, *Administrative Patent Judges*.

21 FETTING, *Administrative Patent Judge*.

22 DECISION ON APPEAL

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27 STATEMENT OF CASE

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29 Rolf Trossen (Appellant) seeks review under 35 U.S.C. § 134 of a final
rejection of claims 1-26, the only claims pending in the application on appeal.

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

31

32 We AFFIRM.

1 The Appellant invented a way for managing information in transportation
2 systems in which detailed passenger information, traffic management and other
3 information is integrated and managed by a centralized system. (Specification 1:¶
4 0002).

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

- 8 1. A centralized information center, comprising:
 - 9 [1] a plurality of source information inputs;
 - 10 [2] a central processor,
 - 11 configured to receive information from the source information
 - 12 inputs;
 - 13 [3] a memory coupled to the processor;
 - 14 [4] a program running on the central processor and the program
 - 15 organizing information,
 - 16 prioritizing information and
 - 17 generating information flows,
 - 18 selected information flows being provided
 - 19 to a central office for a transportation system, and
 - 20 to a transportation vehicle; and
- 21 [5] the plurality of source information inputs includes
- 22 vehicle related information,
- 23 operations-related information, and
- 24 external service provider information.

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26 This appeal arises from the Examiner's Final Rejection, mailed November 16,
27 2005. The Appellant filed an Appeal Brief in support of the appeal on April 13,

¹ 2006. An Examiner's Answer to the Appeal Brief was mailed on November 2,
² 2006. A Reply Brief was filed on December 28, 2006.

PRIOR ART

4 The Examiner relies upon the following prior art:

Herz US 6,571,279 B1 May 27, 2003

REJECTION

6 Claims 1-26 stand rejected under 35 U.S.C. § 102(e) as anticipated by Herz.

ISSUES

8 The issue pertinent to this appeal is whether the Appellants have sustained
9 their burden of showing that the Examiner erred in rejecting claims 1-26 under
10 35 U.S.C. § 102(e) as anticipated by Herz.

11 The pertinent issue turns on whether Herz describes source information
12 including operations-related information.

FACTS PERTINENT TO THE ISSUES

14 The following enumerated Findings of Fact (FF) are supported by a
15 preponderance of the evidence.

16 *Claim Construction*

17 01. The disclosure contains no lexicographic definition of “operations-
18 related information.”

1 02. The ordinary and customary meaning of “operation” as a noun is the
2 act or process of functioning.¹

3 *Herz*

4 03. Herz is directed to a Location Enhanced Information Delivery System
5 (LEIA) which customizes the information that is displayed to an
6 information recipient based on optimizing a match between information
7 purveyors, such as advertisers, and the information recipients who are
8 local to an information delivery system. The LEIA presents the
9 information most suited to the real current audience, as measured by
10 location information systems, rather than to a static predicted audience
11 (Herz 1:38-54).

12 04. Herz describes such vehicle related information as vehicle location.
13 Herz describes such external service provider information as
14 advertisements. Herz describes such operations related information as
15 direction of movement, speed of movement, and the predicted location
16 of the automobile using the speed vector as calculated through
17 triangulation of its location from two server beacons (Herz 5:62 – 6:7).

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

1 PRINCIPLES OF LAW

2 *Claim Construction*

3 During examination of a patent application, pending claims are given
4 their broadest reasonable construction consistent with the specification. *In*
5 *re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969); *In re Am. Acad. of Sci.*
6 *Tech Ctr.*, 367 F.3d 1359, 1364, (Fed. Cir. 2004).

7 Limitations appearing in the specification but not recited in the claim are not
8 read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed.
9 Cir. 2003) (claims must be interpreted “in view of the specification” without
10 importing limitations from the specification into the claims unnecessarily).

11 Although a patent applicant is entitled to be his or her own lexicographer of
12 patent claim terms, in *ex parte* prosecution it must be within limits. *In re Corr*,
13 347 F.2d 578, 580 (CCPA 1965). The applicant must do so by placing such
14 definitions in the Specification with sufficient clarity to provide a person of
15 ordinary skill in the art with clear and precise notice of the meaning that is to be
16 construed. *See also In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (although
17 an inventor is free to define the specific terms used to describe the invention, this
18 must be done with reasonable clarity, deliberateness, and precision; where an
19 inventor chooses to give terms uncommon meanings, the inventor must set out any
20 uncommon definition in some manner within the patent disclosure so as to give
21 one of ordinary skill in the art notice of the change).

22 *Anticipation*

23 "A claim is anticipated only if each and every element as set forth in the claim
24 is found, either expressly or inherently described, in a single prior art reference."

1 *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir.
2 1987). "When a claim covers several structures or compositions, either generically
3 or as alternatives, the claim is deemed anticipated if any of the structures or
4 compositions within the scope of the claim is known in the prior art." *Brown v.*
5 *3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001). "The identical invention must be
6 shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki*
7 *Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). The elements must be arranged
8 as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of
9 terminology is not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

ANALYSIS

Claims 1-26 rejected under 35 U.S.C. § 102(e) as anticipated by Herz.

The Appellant argues these claims as a group.

Accordingly, we select claim 1 as representative of the group.

37 C.F.R. § 41.37(c)(1)(vii) (2006).

The Examiner found that Herz anticipated claim 1. In particular, the Examiner found that Herz described vehicle related information as vehicle location; operations related information as the predicted location of an auto, and external service provider information as advertiser information (Answer 3-4).

The Appellant contends that Herz fails to describe operations related information. The Appellant cites examples of operations related information from Specification, such as break down information, to support the argument. The Appellant then argues that Herz's anticipated location information is vehicle related, not operations related information (Br. 8). The Appellant further contends

1 that knowing a vehicle's location is not the same as knowing its operating status
2 (Br. 9).

3 We disagree. First, we must construe the limitation "operations-related
4 information." The Specification provides no lexicographic definition of
5 operations-related information (FF 01). Although the Specification provides
6 examples, we do not import limitations from the Specification into the claims. *E-*
7 *Pass Techs.*, 343 F.3d at 1369. The ordinary and customary meaning of
8 "operation" as a noun is the act or process of functioning (FF 02). Thus, we
9 construe operations-related information as information that is related in some
10 manner to the act or process of functioning. The limitation of operations-related
11 information in claim 1 is unconstrained as to what operations have such
12 information input.

13 Before reaching the issue of whether Herz describes operations-related
14 information, we initially find that the Examiner was correct in finding that Herz
15 describes the other two sources of information, *viz.* vehicle related and external
16 service provider information (FF 03 & 04). These findings are not contested by the
17 Appellant.

18 Therefore the issue is whether Herz describes information that is related in
19 some manner to the act or process of functioning. The Examiner found that Herz
20 describes computing an anticipated location of a vehicle based on vehicle related
21 information. Such a computation is a derivation from the parameters of the
22 functioning of the vehicle, and therefore is necessarily related in some manner to
23 the act or process of functioning of the vehicle. Nothing in claim 1 precludes
24 information being both vehicle related and operations related, so long as one item

Appeal 2007-2876
Application 10/093,080

1 of information may be characterized as vehicle related, and a different item may be
2 characterized as operations related.

3 We further find that Herz's vehicle direction and speed are similarly
4 operations-related information (FF 04). The argument that knowing a vehicle
5 location is not the same as knowing its operating status is moot because Herz
6 describes operations-related information beyond vehicle location. Thus, we find
7 that Herz describes operations related information.

8 The Appellant has not sustained its burden of showing that the Examiner erred
9 in rejecting claims 1-26 under 35 U.S.C. § 102(e) as anticipated by Herz.

10 CONCLUSIONS OF LAW

11 The Appellant has not sustained its burden of showing that the Examiner erred
12 in rejecting claims 1-26 under 35 U.S.C. § 102(e) as unpatentable over the prior
13 art.

14 On this record, the Appellant are not entitled to a patent containing claims 1-
15 26.

16 DECISION

17 To summarize, our decision is as follows:

- 18 • The rejection of claims 1-26 under 35 U.S.C. § 102(e) as anticipated by Herz
19 is sustained.

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

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Appeal 2007-2876
Application 10/093,080

AFFIRMED

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3 JRG

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