

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BRANDON GABRIEL HOMUTH

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Appeal 2008-0886  
Application 10/119,049  
Technology Center 3600

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Decided: July 31, 2008

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Before LINDA E. HORNER, ANTON W. FETTING, and  
STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Brandon Gabriel Homuth (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 25-44. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF DECISION

We AFFIRM.

### THE INVENTION

The Appellant's claimed invention involves providing priority-based customer service (Spec. 1:¶001). Claim 25, reproduced below, is representative of the subject matter on appeal.

25. A method for providing priority customer service in a telephony-based customer service environment, the method comprising:

receiving an incoming call from a customer;

receiving input from the customer regarding a type of service selected by the customer;

determining an expected wait time for providing service to the customer;

providing an offer of priority service to the customer if the expected wait time exceeds a predetermined value,

wherein the offer includes a guarantee of service within a time less than the predetermined value in exchange for a payment of a first fee from the customer if the selected service is of a first type of service or in exchange for a payment of a second fee from the customer if the selected service is of a second type of service;

handling the call from the customer on a non-priority basis if the customer declines the offered priority customer service; and

handling the call from the customer on a priority basis if the customer accepts the offered priority customer service.

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### THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Daudelin	US 4,797,910	Jan. 10, 1989
Walker	US 5,946,388	Aug. 31, 1999

The following rejections are before us for review:

1. Claims 25-29, 31-35, and 37-43 are rejected under 35 U.S.C. § 103(a) as unpatentable over Walker.
2. Claims 30, 36, and 44 are rejected under 35 U.S.C. § 103(a) as unpatentable over Walker and Daudelin.

### ISSUES

The issue before us is whether the Appellant has shown that the Examiner erred in rejecting claims 25-29, 31-35, and 37-43 as unpatentable over Walker and claims 30, 36, and 44 as unpatentable over Walker and Daudelin. This issue turns on whether it would have been obvious, in view of the teachings of Walker, to include a guarantee of service within a time less than the predetermined value in exchange for a payment of a first fee if the selected service is of a first type of service or in exchange for payment of a second fee if the selected service is of a second type of service.

### 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

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1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. One having ordinary skill in the telephony art at the time of the invention would have known to use an interactive voice response unit (IVRU) to offer a caller a chance to move up in a call queue in return for a payment (Walker, col. 2, ll. 38-40).
2. One having ordinary skill in the art at the time of the invention would have also known to make the queue movement offer based on the estimated wait time before the call is expected to be answered (Walker, col. 4, ll. 57-61).
3. One having ordinary skill in the art at the time of the invention would have also known to use the IVRU to accept input from the customer in response to the offer via the touch tone keys of the customer's telephone (Walker, col. 2, ll. 40-44).
4. One having ordinary skill in the art at the time of the invention would have also known to change the rank order of the caller's call within the phone queue in response to the customer's input (Walker, col. 2, ll. 44-46).
5. The Appellant does not contest the Examiner's finding that it is well known to route customer inquiries to different departments based on information provided by a particular customer (App. Br. 13).
6. If the teachings of Walker were applied by one having ordinary skill in the art to a call system offering two different types of

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service, the system would offer a caller requesting a first type of service an opportunity for priority service in exchange for payment of a fee and would also offer a caller requesting a second type of service an opportunity for priority service in exchange for payment of a fee.

### PRINCIPLES OF LAW

Obviousness under § 103 is a two-step inquiry – the first step requires a proper construction of the claims, and the second step requires a comparison of the properly construed claim to the prior art. *See Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed. Cir. 2003).

We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims “their broadest reasonable interpretation consistent with the specification” and “in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

“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 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

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prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *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.”)

### ANALYSIS

The Appellant contends the Examiner erred in rejecting independent claims 25, 31, and 37 as unpatentable over Walker because:

Walker et al. fails to teach or fairly suggest at least an offer including “a guarantee of service within a time less than the predetermined value in exchange for a payment of a first fee from the customer if the selected service is of a first type of service or in exchange for a payment of a second fee from the customer if the selected service is of a second type of service.”

(App. Br. 11) (emphasis omitted.) The details of the Appellant’s argument are not, however, commensurate in scope with the claim language.

Claims 25, 31, and 37 each recite wherein the offer includes a guarantee of service within a time less than the predetermined value in exchange for a payment of a first fee for a first type of service *or* in exchange for a payment of a second fee for a second type of service. We read the alternative language in these claims to mean that the customer is provided an offer for payment of either a first fee or a second fee depending

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on the type of service selected by the customer. For example, if the customer selects billing as the desired service, the customer might be offered a guarantee of service within a certain amount of time for payment of a first fee, and if the customer selects technical support as the desired service, the customer might be offered a guarantee of service within a certain amount of time for payment of a second fee.

The Appellant argues:

Applying Walker et al. to multiple queues of a company would, at most, simply result[] in a system where each customer in a particular queue may receive the “upgrade offer” for that queue. Each “upgrade offer” would thus include only one fee – the fee associated with the queue that the customer is in. The Examiner has provided absolutely no suggestion or rationale for why the “upgrade offer” would also reflect a fee associated with one of the other queues. Nor would this make sense since the customer (in the Examiner’s hypothetical) would not be waiting for service in one of the other queues.

(Reply Br. 3.) The Appellant appears to be arguing that the claim language requires the customer who selected billing in the above example to be offered both a first fee and a second fee. Such a reading is not required by the language used in the claims. Because the claims recite that the offer is for payment of a first fee *or* for payment of a second fee depending on the service selected, once a customer has selected a service, as long as the system presents that customer with an offer for payment of a single fee, then the system falls within the scope of the claims. The Appellant admits that

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applying Walker to multiple queues would result in each customer in a queue being offered priority service for that queue (*id.*).

Our reading of the claim is based on the Appellant's use of the word "or" in the claims and is also consistent with the description of the invention provided in the Specification. The Appellant's Specification describes:

In another embodiment, systems and methods of the present invention may be used with a consumer product manufacturer. Upon calling a customer call center (such as customer call center 110), the customer would be asked whether the customer was seeking technical support for the product or whether the customer was trying to purchase and/or have installed a new product. For the customer seeking technical support, priority service may be offered at a first fee. For the customer trying to purchase or install a new product, priority service may be offered at a second, lesser fee, since this type of call is more likely to generate greater revenue for the consumer product manufacturer.

(Spec. 13:¶027.) In the Appellant's example, if the customer selects technical support service, the system offers the customer priority service in exchange for payment of a single, first fee, and if the customer selects purchasing/installation, the system offers the customer priority service in exchange for payment of a single, second fee. Thus, the description in the Appellant's Specification of providing an offer in exchange for payment of a first fee for a customer requesting a first type of service and in exchange for payment of a second fee for a customer requesting a second type of service is consistent with our reading of the claim language.

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We also agree with the Examiner that independent claims 25, 31, and 37 do not require that the first and second fees are different. As such, these claims are met by the prior art as long as the prior art teaches or suggests offering priority service in exchange for payment of a fee, wherein this offer is provided to customers who select either a first type of service or a second type of service. With this reading of the claims in mind, we now turn to a comparison of the prior art to the claimed invention.

One having ordinary skill in the telephony art at the time of the invention would have known to use an interactive voice response unit (IVRU) to offer a caller, based on a calculated expected wait time, a chance to move up in a call queue in return for a payment (Facts 1 & 2). It was also known in the art at the time of the invention to receive input from the caller in response to the offer via the caller's touch tone phone and to handle the call appropriately depending on whether the caller accepts the offer (Facts 3 & 4). The Appellant has not contested the Examiner's finding that it was old and well known in the telephony art to route customer inquiries to different departments based on information provided by a particular customer (Fact 5). If the teachings of Walker were applied by one having ordinary skill in the art to a call system providing two different types of service, the system of Walker would offer a caller requesting a first service an opportunity to move up in priority in exchange for payment of a fee and would also offer a caller requesting a second service an opportunity to move up in priority in exchange for payment of a fee (Fact 6, see also Reply Br. 3).

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Based on these findings, we agree with the Examiner that it would have been obvious to one having ordinary skill in the art at the time of the invention to have a system that provides an offer of priority service in exchange for payment of a first fee from the customer for a first type of service and in exchange for payment of a second fee from the customer for a second type of service. *KSR*, 127 S. Ct. at 1739 (“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”) As such, the Appellant has failed to persuade us of error in the Examiner’s rejection of independent claims 25, 31, and 37 as unpatentable over Walker.

The Appellant does not present any separate arguments for patentability of dependent claims 26-29, 32-35, or 38-43, and relies instead on the arguments presented for patentability of their respective dependent claims (App. Br. 15). As such, these dependent claims fall for the same reasons provided *supra* in our analysis of claims 25, 31, and 37. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

The Appellant also does not present any separate arguments for patentability of claims 30, 36, and 44 over Walker and Daudelin. The Appellants merely assert that Daudelin does not cure the defects of Walker (App. Br. 15). Finding no such defects in the Examiner’s rejection of the independent claims over Walker, we also sustain the rejection of claims 30, 36, and 44 as unpatentable over Walker and Daudelin.

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### CONCLUSIONS

We conclude the Appellant has failed to show that the Examiner erred in rejecting claims 25-29, 31-35, and 37-43 under 35 U.S.C. § 103(a) as unpatentable over Walker and claims 30, 36, and 44 under 35 U.S.C. § 103(a) as unpatentable over Walker and Daudelin.

### DECISION

The decision of the Examiner to reject claims 25-44 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).

AFFIRMED

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