

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* SCOTT J. BROUSSARD, JOSEPH HERBERT MCINTYRE, and
9 EDUARDO N. SPRING
10

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12 Appeal 2008-1791
13 Application 10/205,122
14 Technology Center 3600
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17 Decided: January 13, 2009
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20 *Before* MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
21 ANTON W. FETTING, *Administrative Patent Judges*.

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23 CRAWFORD, *Administrative Patent Judge*.
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26 DECISION ON APPEAL
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28 STATEMENT OF THE CASE

29 Claims 1-48 were rejected in the Final Office Action mailed February
30 6, 2006.¹ We have jurisdiction under 35 U.S.C. § 6(b) (2002).

¹ The Final Rejection of claims 5, 21, and 37 under 35 U.S.C. § 112, second paragraph, was withdrawn (Examiner's Answer 3, 5).

1 Appellants invented methods, systems, and products for publicly
2 accessible deferred purchasing systems. (Specification 1:12-13).

3 Independent claim 1 under appeal reads as follows:

4 1. A method for operating a publicly accessible
5 purchasing system, the method comprising:

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7 receiving, on a receipt date, from a
8 purchaser, in a publicly accessible purchasing
9 system, a deferred purchase request (“DPR”) for
10 an item to be purchased;

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12 identifying a vendor; and

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14 issuing, in dependence upon the DPR, a
15 purchase order to the vendor on a date subsequent
16 to the receipt date.

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18 The prior art relied upon by the Examiner in rejecting the claims on
19 appeal is:

20	Kaminsky	US 2001/0047308 A1	Nov. 29, 2001
21	Tobin	US 2003/0074209 A1	Apr. 17, 2003
22	Tam	US 2002/0147656 A1	Oct. 10, 2002
23	Morimoto	US 2002/0013774 A1	Jan. 31, 2002
24	I’Anson	US 2002/0013736 A1	Jan. 31, 2002

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26 Pella® Product Finder, <http://www.pella.com> (retrieved via
27 www.archive.org last visited Jun. 27, 2001) (hereinafter referred to as
28 “www.pella.com.”)
29

30 The Examiner rejected claims 1, 2, 5, 16-18, 21, 32-34, 37, and 48
31 under 35 U.S.C. § 102(b) as being anticipated by Kaminsky.

32 The Examiner rejected claims 3, 4, 19, 30, 35, and 36 under 35 U.S.C.
33 § 103(a) as being unpatentable over Kaminsky in view of Tobin.

1 The Examiner rejected claims 6, 7, 22, 23, 38, and 39 under 35 U.S.C.
2 § 103(a) as being unpatentable over Kaminsky in view of Tam.

3 The Examiner rejected claims 8-13, 24-29, and 40-45 under 35 U.S.C.
4 § 103(a) as being unpatentable over Kaminsky in view of www.pella.com.

5 The Examiner rejected claims 14, 30, and 46 under 35 U.S.C. § 103(a)
6 as being unpatentable over Kaminsky in view of I'Anson.

7 The Examiner rejected claims 15, 31, and 47 under 35 U.S.C. § 103(a)
8 as being unpatentable over Kaminsky in view of Official Notice.

9 We REVERSE.

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ISSUE

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FINDINGS OF FACT

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Appellants invented methods, systems, and products for publicly
accessible deferred purchasing systems (Specification 1:12-13).

Embodiments are presented for operating publicly accessible
purchasing systems 106, including receiving 102, on a receipt date, from a
purchaser 108, in a publicly accessible purchasing system 106, a deferred
purchase request 112 ("DPR") for an item to be purchased; identifying a
vendor; and issuing 118, in dependence upon the DPR 112, a purchase order

1 122 to the vendor 114 on a date subsequent to the receipt date (Figs. 1-2;
2 Specification 3:3-7).

3 “DPR” abbreviates Deferred Purchase Request, a
4 request received in a deferred purchasing system
5 from a purchaser, the request representing an
6 instruction to issue to a vendor on behalf of the
7 purchaser a purchase order formulated according
8 to detailed information provided as part of the
9 DPR. DPRs are non-binding requests that a
10 purchase can alter or cancel at any time prior to
11 issuance of a purchase order.
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13 (Specification 8:10-14).

14 A “purchase order” is an offer, conferring upon an
15 offerree vendor a power of binding acceptance in
16 accordance with its terms, to purchase, license,
17 lease, rent, or otherwise acquire, goods, services,
18 or intellectual property as described in the
19 purchase order. A purchase order, unlike a DPR,
20 typically is expected to be binding, that is, only
21 capable of termination or alteration in accordance
22 with terms and conditions set forth in the purchase
23 order itself. There is within the scope of the
24 present invention no limitation regarding the form
25 of a purchase order. A purchase order can
26 comprise a contract for purchase of real estate, a
27 real estate lease, a software license, a license of
28 patented industrial technology, an equipment lease,
29 a purchase contract for tangible goods, and so on,
30 including any form of offer as will occur to those
31 of skill in the art.
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33 (Specification 9:13-22).

1 A DPR and a purchase order are separate and distinct elements.

2 Kaminsky discloses a sales tool **16** for “liquidating excess or returned
3 inventory in which the system has a variable pricing strategy” (Fig. 2;
4 [0019]).

5 “A manufacturer catalog company, an e-tailer or other merchant may
6 use sales tool **16** from a seller’s viewpoint to dispose of excess inventory,”
7 however, “[a] merchant can use sales tool **16** from the viewpoint of a buyer
8 or a seller” ([0032]-[0033]).

9 The user may also purchase a product by
10 placing an open order **40**. This approach is similar
11 to the immediate price strategy, except that the
12 user may seek a purchase price lower than the
13 current price **38**. The user places open order **40** at
14 a price below current price **38**, and awaits the
15 results of shifts in price trends. If current price **38**
16 reaches the price submitted in open order **40** due to
17 shifts in pricing trends, open order **40** is filled and
18 the user receives the product. Open order **40** is
19 valid for the length of time for which the product
20 offer is open. Thus, open order **40** may be made or
21 filled at anytime during the product offering
22 provided that the pricing criteria is met.

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24 ([0036]).

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PRINCIPLES OF LAW

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During examination of a patent application, a pending claim is given
the broadest reasonable construction consistent with the specification and
should be read in light of the specification as it would be interpreted by one

1 of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359,
2 1364 (Fed. Cir. 2004).

3 “A claim is anticipated only if each and every element as set forth in
4 the claim is found, either expressly or inherently described, in a single prior
5 art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Ca.*, 814 F.2d 628,
6 631 (Fed. Cir. 1987).

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ANALYSIS

9 Claims 1, 17, and 33 each recite (1) receiving a DPR from a purchaser
10 and (2) issuing a purchase order to a vendor. The Examiner appears to assert
11 that the placement of open order 40 in Kaminsky corresponds to the receipt
12 of the DPR, and that the fulfillment of open order 40 corresponds to the
13 issuance of the purchase order (Examiner’s Answer 6). Regardless of the
14 exact parameters that distinguish a DPR from a purchase order, the
15 Specification makes clear that the DPR and the purchase order are separate
16 and distinct elements. Kaminsky discloses the receipt/issuance of a single
17 order: open order 40. While open order 40 could arguably correspond to
18 *either* a DPR *or* a purchase order, open order 40 cannot be *both* a DPR *and* a
19 purchase order, especially when claims 1, 17, and 33 recite that the purchase
20 order is issued *in dependence upon the DPR*.

21 Accordingly, we do not sustain the rejection of claims 1, 17, and 33 as
22 being anticipated by Kaminsky. Claims 2-16, 18-32, and 34-47 depend from
23 one of claims 1, 17, and 33, and are rejected as being either anticipated by or
24 obvious in view of Kaminsky. For the same reasons we do not sustain the
25 rejection of claims 1, 17, and 33, we also do not sustain these rejections.

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CONCLUSIONS OF LAW

The Appellants did show that the Examiner erred in asserting that a fulfillment of an open order in Kaminsky anticipates “issuing, in dependence upon the [deferred purchase request], a purchase order to the vendor on a date subsequent to the receipt date” as recited in independent claims 1, 17, and 33.

DECISION

The decision of the Examiner to reject claims 1-48 is reversed.

REVERSED

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