

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THEODORE F. ECONOMY, GREGORY R. STURM,
and LESLIE A. UZAR

Appeal 2008-3165
Application 10/923,976
Technology Center 3600

Decided: December 29, 2008

Before HUBERT C. LORIN, DAVID B. WALKER, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges.*

FISCHETTI, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134(a) (2002) from the final rejection of claims 28-55. A telephonic hearing was held on December 10, 2008.

Representative claims 28 and 42 read as follows:

28. A process for activating a point-of-sale activation (POSA) device, comprising the steps of:
 - obtaining a point-of-sale activation (POSA) device, the POSA device having identification data stored thereon or therein;
 - obtaining by a reader the identification data of the obtained POSA device;

commencing by the reader a financial transaction by initiating a communication to communicate with a first processing entity capable of processing financial transactions;

routing, prior to when communication between the reader and the first processing entity is established, the communication to a second processing entity capable of activating the POSA device; and

communicating the identification data to the second processing entity to cause the POSA device to be activated.

42. A process for activating a point-of-sale activation (POSA) device, comprising the steps of:

obtaining a payment device, the payment device being one of a point-of-sale activated (POSA) device and a non-point-of-sale activated (non-POSA) device, the payment device having identification data stored thereon or therein;

identifying the payment device as a POSA device or a non-POSA device;

obtaining by a reader the identification data of the obtained payment device;

commencing by the reader a financial transaction by initiating a communication to communicate with a first processing entity capable of processing financial transactions, the

communication being supplied to a router distinct from the reader;

allowing, by the router, the initiated communication to pass to the first processing entity if the payment device is identified as a non-POSA device;

blocking, by the router, the initiated communication if the payment device is identified as a POSA device, and after blocking the initiated communication, carrying out the steps of receiving by the router the obtained identification data from

prior to establishing the communication with the first entity as required by claim 28.

Accordingly, we conclude that Appellants' argument is persuasive as to error in the rejection.

Since we cannot sustain the rejection of claim 28 we also do not sustain the rejection of claims 29-41 which depend thereon.

Claim 42 includes language similar to that identified above as to points 1 and 2, and additionally requires.

[3.] identifying the payment device as a POSA device or a non-POSA device.

Arditti does not disclose or show as inherent any distinction between a payment device being one of a point-of-sale activated (POSA) device and a non-point-of-sale activated (non-POSA). Rather, in Arditti, the user communicates with the server responsible for activation/authentication of the card (Arditti, col. 4, l. 26) using a telephone functioning without deference to whether the card is POSA or non-POSA device.

Accordingly, we conclude that Appellants' argument is persuasive as to error in the rejection.

Since we cannot sustain the rejection of claim 42 we also do not sustain the rejection of claims 43-55 which depend thereon.

CONCLUSIONS OF LAW

We conclude the Appellants have shown that the Examiner erred in rejecting claims 28-55 under 35 U.S.C. § 102(b) as anticipated by Arditti.

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DECISION

The decision of the Examiner to reject claims 28-55 is REVERSED.

REVERSED

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