

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MARTIN WAUGH

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Appeal 2008-3889  
Application 10/010627  
Technology Center 3600

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Decided: December 29, 2008

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Before, MURRIEL E. CRAWFORD, ANTON W. FETTING and JOSEPH A.  
FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-6, 8-28, 30-53, 55-56, and 58-61.

We have jurisdiction under 35 U.S.C. § 6(b). (2002)

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## SUMMARY OF DECISION

We AFFIRM.

### THE INVENTION

Appellant claims a method and apparatus of electronic commerce (or e-commerce) traffic monitoring and more particularly to storing traffic data in a database by tracking visitor information via hits. (Specification 1:20-25)

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method for storing network traffic data, the method comprising:  
retrieving a hit record of network traffic data; assigning the hit record to a visitor; recognizing visit information for the visitor based on the hit record; identifying a content group viewed by the visitor; and  
storing the visit information for the visitor and the content group viewed by the visitor in a database.

### THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Dedrick	5,724,521	Mar. 3, 1998
Weinberg	5,974,572	Oct. 26, 1999
Foote	6,065,068	May 16, 2000
Hansen	US 6,182,097 B1	Jan. 30, 2001

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The following rejections are before us for review.

1. The Examiner rejected claims 1-6, 9, 11-14, 19-28, 31, 33-36, 41-50, 53, 55-56, and 58-61 under 35 U.S.C. § 103(a) as being unpatentable over Hansen in view of Weinberg.

2. The Examiner rejected claims 8, 10, 30, and 32 under 35 U.S.C. § 103(a) as being unpatentable over Hansen in view of Weinberg and Dedrick.

3. The Examiner rejected claims 15-18, 37-40, and 51-52 under 35 U.S.C. § 103(a) as being unpatentable over Hansen in view of Weinberg and Foote.

#### ISSUES

1. Has Appellant shown the Examiner erred in rejecting the claims 1-6, 9, 11-14, 19-28, 31, 33-36, 41-50, 53, 55-56, and 58-61 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Hansen in view of Weinberg on the grounds that it would have been obvious to use the filtering process taught by Weinberg to identify a content group in Hansen as identified in a file, e.g., as “/card.html”?

2. Has Appellant shown the Examiner erred in rejecting the claims 8, 10, 30, and 32 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Weinberg and Dedrick on the grounds that it would be obvious to identify an advertising campaign which prompted a user to be brought to a web site?

3. Has Appellant shown the Examiner erred in rejecting the claims 15-18, 37-40, and 51-52 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Hansen in view of Weinberg and Foote on the grounds that on the grounds that it

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would obvious to use the semaphore disclosed in Foote in the combination of Hansen in view of Weinberg?

## FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. Weinberg discloses

...content/service filters 49 that filter out URLs of the following content or service types: (a) HTML, (b) HTML forms, (c) images, (d) audio, (e) CGI, (f) Java, (g) other applications, (h) plain text, (i) unknown, (j) redirect, (k) video, (l) Gopher, (m) FTP, and (n) all other Internet services (Weinberg, col. 16, ll. 14-21).

2. Weinberg discloses

[a] feature of the invention which permits the scanning and mapping of dynamically-generated Web pages will now be described. By way of background, a dynamically-generated Web page ("dynamic page") is a page that is generated "on-the-fly" by a Web site in response to some user input, such as a database query. Under existing Web technology, the user manually types-in the information (referred to herein as the "dataset") into an embedded form of an HTML document while viewing the document with a Web browser, and then selects a "submit" type button to submit the dataset to a Web site that has back-end database access or real-time data generation capabilities. (Technologies which provide such Web server extension capabilities include CGI, Microsoft's ISAPI, and Netscape's NSAPI.) A Web server extension module (such as a CGI script) then processes the dataset (by, for example, performing a database search, or generating real-time data) to generate

the data to be returned to the user, and the data is returned to the browser in the form of a standard Web page. (Weinberg, col. 23, ll. 6-24).

3. The Examiner found that:

...Weinberg et al discloses:

Identifying a content group viewed by the visitor/Identification software to identify a content group viewed by the visitor, or storing the content group viewed by the visitor/ wherein identifying a content group viewed by the visitor includes identifying the content group based on a content viewed by the visitor, (col. 16, lines 9-14), shows user can filter the content on a web site according to content/service filters, which filter out the URLs of specific content types such as, for example, images or plain text). Weinberg et al discloses this limitation in an analogous art for the purpose of showing that content groups are used to filter types of information on a Web Page... (Answer 5).

4. The Examiner found Hansen discloses

[i]dentifying a uniform resource locator (URL) and a parameter name for the value for the visit information/identification software to identify a uniform resource locator (URL) and a parameter name for the value for the visit information, (col. 5, lines 49-56, when link on a page is selected, the requested URL is downloaded along with the corresponding usage information);

Specifying/specification software to specify the URL and the parameter name as a source of a value for the visit information, col. 12, lines 10-12,

associating a visit index with each hit record, w/ col. 5, lined [(lines, sic)] 56-63, shows that click events for the requested URLs are intercepted, and requests are then dispatched to the servers, w/col. 6, lines 26-31, shows requests are issued during a visit, therefore requests for URLs serves as visit information, which therefore means that the requested URL downloaded along with the corresponding usage information is specified to the servers as visit information)... (Answer 10, 11).

5. The Examiner found that Detrick discloses with respect to claim 8

...recognizing visit information includes identifying an advertising campaign that brought the visitor to a business, (col. 18, lines 34-39, advertisement title). Detrick discloses this limitation in an analogous art for the purpose of showing that advertisements are identified by the title, and used to determine if the advertisement falls within a particular consumer scale for visiting the advertisement information. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to identify an advertising campaign that brought the visitor to a business with the motivation of determining and storing which advertising campaign is associated with a hit record. (Answer 13).

6. Hansen discloses

[a] method for tracking visitors to a Web site without using cookies, involves serving each Web component through the so-called cgi (Common Gateway Interface) mechanism. That is, the first time a visitor comes through the site, a unique number is assigned to that user. (This first time can be identified by the fact that the request does not include a visitor number

mechanism, while all subsequent requests will). The requested page is now served through the cgi mechanism, which changes all the internal links on that page to the appropriate cgi links including the unique visitor number. Consequently, all subsequent requests will go through the cgi mechanism, and all the pages served will have their links correspondingly altered. The visitor number now allows robust tracking of visitors. (Hansen, col. 8, ll. 25-38).

7. Hansen discloses that

[f]or each of these visit records, we record information for each of the hits that it contains. Specifically, we record the filename of the downloaded Web component (box 150) and other information concerning the hit, together with the hitnr index, the visitnr index, the filenames of the next and previous hits, and the time interval between the current hit and the next hit (box 155). (Hansen, col. 10, ll. 5-11).

8. Hansen discloses that

...the shadow-directory data base is advantageously built by retrieving, in turn, each of these collections of sorted records (box 160). The filename of the respective Web component is recorded (box 165). The hit information is then recorded (box 170) for each of the annotated hit records in the collection. (Hansen, col. 10, 26-32).

9. Hansen discloses

[a]nother mechanism which we use in our current implementation, infers visit sequences from

only the information in the log file. Hits are combined into a particular visit sequence if they are separated by less than a selectable time interval T (typically, ten minutes, although there is wide latitude for setting this interval) and they originate from the same host into a visit. (Hansen, col. 8, ll. 39-45).

10. Hansen discloses "...distinguishing respective filtered hit records according to the visit to which each of them belongs, and associating a particular visit index with each filtered hit record..." (Hansen, col.12, ll.8-11).

11. Hansen discloses that "[a] visit to a Web site is defined as a series of downloads, from a specified Web server by a fixed client browser that are contiguous in time. Each request for a Web component made by a client browser during the course of a visit is referred to as a hit." (Hansen, col.1, ll.50-54).

12. Hansen discloses establishing a shadow directory which affords immediate access to all hits on a web component (Hansen, col. 10, ll. 12-14).

13. In Hansen the files established by the shadow directory are retrievable by the names of the corresponding files on the Web server (Hansen, col. 9, ll. 53-55).

14. Hansen describes that ... this correspondence (FF 13) can be achieved by using the same filenames, in the shadow-directory database, as the corresponding Web-page files. (Hansen, col. 9, ll. 56-58).

15. Hansen gives as example of one such file name root /card.html (Hansen, col. 10, ll. 33-45) which as shown in Figure 1A corresponds to what appears to be a virtual business card, thereby showing that web component names describe the content of the files which they identify.

16. It is our understanding that a person with ordinary skill in the art would know to label the file with a name having some relation to its contents.

17. Foote discloses with respect to the use of a semaphore that

[i]n order to provide an informed determinism to the access control mechanism, the I/O module is configured to store a semaphore request time parameter which specifies the maximum time duration the I/O module control access to the register space after a request for access has been asserted by the communication module. The communication module reads the semaphore request time parameter from the I/O module preferably when the I/O module is inserted into the module bank. Thus, a process which requests access to the register space of an I/O module and is denied may optimally determine the times of subsequent access requests. For example, a "least effort" strategy dictates that having been denied an access request, a process should perform a subsequent access request after the semaphore request time elapses, since the I/O module will have released access to the register space within this time.

(Foote, col. 5, ll. 60-67, col. 6, ll.1-9).

18. The Specification states that “[p]referably the visitor can provide information about himself, for example, via a web-based form.”

19. It is our understanding that purging data from a database is a known practice in database management which prevents data from filling the capacity of the database.

20. Dedrick discloses that its network “...system 10 may also have a yellow page server 22 coupled to the publisher unit 18 and the metering servers 14. The

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publisher unit and servers of the WAN system contain the interface hardware and software necessary to transfer electronic information between the components of the system.” (Dedrick, col.3 ll. 10-15)

### PRINCIPLES OF LAW

“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 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.”)

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248.” *KSR*, 127 S.Ct. at 1739 (citing *Graham*, 383 U.S. at 12 (emphasis added)), and

reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

*Id.* at 1740. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

The Supreme Court stated that there are “[t]hree cases decided after *Graham* [that] illustrate the application of this doctrine.” *Id.* at 1739. “In *United States v. Adams*, ... [t]he Court recognized that when a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result.” *Id.* at 1739-40. “*Sakraida and Anderson’s-Black Rock* are illustrative – a court must ask whether the improvement is more than the predictable use of prior art elements according to their established function.” *Id.* at 1740.

The Supreme Court stated that “[f]ollowing these principles may be more difficult in other cases than it is here because the claimed subject matter may

involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement.” *Id.* The Court explained:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

*Id.* at 1740-41. The Court noted that “[t]o facilitate review, this analysis should be made explicit.” *Id.* (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”). However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”

#### ANALYSIS

We affirm the rejection of claims 1-6, 8-28, 30-53, 55-56, and 58-61.  
*Claims 1-6, 19, 21, 23-28, 41, 43, and 45-47.*

Claims 1, 23 and 45 are the independent claims in this group. Initially, we note that Appellant argues these claims together as a group. Correspondingly, we select representative claim 1 to decide the appeal of these claims. Appellant does

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not provide a substantive argument as to the separate patentability of claims 2-6, 19, 21, 24-28, 41, 43, and 46, 47 that depend from claims 1, 23 and 45 respectively, which are the sole independent claims among those claims. Therefore, claims 2-6, 19, 21, 24-28, 41, 43, and 46, 47 stand or fall with claims 1, 23 and 45. *See*, 37 C.F.R. § 41.37(c)(1)(vii)(2004).

We are not persuaded by Appellant of error in the Examiner's prima facie case with respect to claim 1 for the following reasons.

The Examiner found that Weinberg discloses identifying a content group viewed by a visitor (FF 3). Appellant however argues that while Weinberg discloses content filters, it does not define "content groups". (Appeal Br. 10).

The Specification states that

[c]ontent groups ...define particular types of content offered by the business that can be viewed by the visitor. For example, a clothing store can set up a content group called "pants" that refers to content describing pants offered for sale by the business. Content groups are preferably defined using a uniform resource locator (URL) with wildcards (e.g., "\*/pants"). Then, whenever a hit record includes a URL that matches the pants content group, the visit information can indicate that the visitor viewed the pants content group. (Specification 6:23-28).

Thus, from the example given in the Specification, a content group is distinguished by a designator or wildcard used in the URL which the system recognizes as an attribute of specific content.

Appellant therefore argues that “‘content groups’ and ‘content type’ are not the same concept. It is clear from the laundry list recited by Weinberg that he considers ‘content type’ to be based on a ‘type’ of the page. For example, all pages that are coded in HTML are considered to be the same ‘type’ of content as far as Weinberg is concerned.” (Appeal Br. 10)

We find that Weinberg discloses content/service filters 49 which filter out URLs of content or service types including HTML, HTML forms, images, audio, CGI, Java, plain text, video, and other Internet services. (FF1). Thus, Weinberg broadly teaches the filtering or the interrogating a URL of a web address to establish the type of data, e.g., format, which it contains.

Hanson uses a content designator in the file name accessed to determine the number of hits a web component receives, e.g., “/card.html” for a virtual business card, as shown in Figure 1A of Hansen (FF 8, 11-15). In addition, we find that a person with ordinary skill in the art would know to label a file with a name having some relation to its contents (FF 16).

Thus, we conclude that a person with ordinary skill in the art would have known to use the filtering process of Weinberg to identify a content group rather than a content type, as a predictable variation of expedients known in the same field of endeavor. “When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or in a different one.” If a person of ordinary skill in the art can implement a predictable variation, § 103 likely bars its patentability.” *KSR* at 1740.

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*Claims 9, 31, and 48,*

Claims 9, 31, and 48 recite in pertinent part *extracting the visit information from a web-based form.*

Appellant argues that Hansen does not disclose a web based form because the Web component which the Examiner asserts as a web based form does not meet Appellant's definition of that element. (Appeal Br. 12).

We do not find it necessary to determine whether Hansen's Web component is a web based form in the sense argued by Appellant because we find that Weinberg clearly discloses an embedded form of an HTML document which is filled out by the user in response to a database query, and which information is then extracted (FF 2). The visit information which Appellant extracts from its web based form is similar to that of Weinberg in that both respond to a database query (FF 18).

Thus, we find that a person with ordinary skill in the art would know to use a user completed form as a common method of populating a database with user information in order to place an identity to the raw data collected from visits to a web page. "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR*, at 1739.

*Claims 11, 33, and 49.*

Claims 11, 33, and 49 recite *eliminating inaccurate counting of visit information from the database.*

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We find that in one embodiment of Hansen visits are tracked and hence counted without using cookies by assigning a unique number to a first time visitor who visits the site (FF 6).

Appellant argues that the assigning of a unique number in Hansen will not result in eliminating inaccurate counting because

...if the user leaves the target web site (for example, by closing his or her Internet browser), then returns to the target web site a few moments later? As the Examiner's description does not explain how the user can be assigned the same unique number" (since no cookies are used), the user would be assigned a different 'unique number'." (Appeal Br. 14).

We do not agree with Appellant because Appellant's arguments are not based on limitations appearing in the claims and are not commensurate with the broader scope of claims 11, 33, and 49 which merely recite counting. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). Since Hansen discloses tracking or counting of all requests made through the Common Gateway Interface, we conclude that Hansen meets the requirements of the claims.

*Claims 13 and 35.*

Claims 13 and 35 recite *storing the hit record in a database; and eliminating inaccurate counting further includes regenerating visit information from the hit record in the database for the open visit.*

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Appellant argues that "...Hansen does not teach regenerating visit information under any circumstances, let alone as part of eliminating inaccurate counts...." (Appeal Br. 15).

We disagree with Appellant. We find the recording of the hit information into the shadow directory in Hansen (FF 8) to be regenerating visit information as required by the claims.

*Claims 14 and 36.*

Claims 14 and 36 recite *detecting an open visit in a current time slice; determining a corresponding visit in an adjacent time slice; and adding visit information from the open visit to the corresponding visit.*

Appellant argues that "...Hansen only teaches looking at a particular moment in time for each record. This shows that Hansen does not teach the possibility of time slices, which are more than a single moment in time."

(Appeal Br.16)

We disagree with Appellant. Hansen discloses that hits are combined into a particular visit sequence if they are separated by less than a selectable time interval T (FF 9). Thus, we conclude that Hansen meets the requirements of claims 14 and 36 because a visit within the interval T is read as occurring in a current time slice and one occurring before or after the current slice but within the open visit defined by interval T is combined or added together.

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*Claims 20, 22, 42, 44, and 50.*

Claims 20, 22, 42, 44, and 50 *recite purging the visit information from the database.*

Appellant argues that clearing of a screen in Hansen as proposed by the Examiner to mean purging does not meet the claim limitations because the claims require that it is the database which is being purged (Appeal Br. 18).

While we agree with Appellant that clearing a screen does not necessarily mean purging the database from which data is being displayed, we find that the practice of purging a database to be a known expedient in database management (FF 19). Common sense would mandate that, within any set of finite resources, at some point, a decision is made to purge files, e.g., of those less active or inactive users, in order to keep the storage media of the database from being completely filled. The application of common sense may control the combining of teaching. *See KSR*, 127 S. Ct. at 1742. Furthermore, given that Hansen discloses creating a shadow directory database based on the existence of a Web component (FF 7, 8, 12-15), by inference we conclude that such a shadow directory would be purged when the corresponding Web component on which it is based no longer exists. *See KSR*, 127 S.Ct. at 1741 (2007) (In making the obviousness determination one “can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”)

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*Claims 53 and 56.*

Claims 53 and 56 recite *assigning a name to the visit information; identifying a uniform resource locator (URL) and a parameter name for the value for the visit information; specifying the URL and the parameter name as a source of a value for the visit information; and storing the name of the visit information and the source of a value for the visit information in a database.*

The Examiner found that for each URL file downloaded, a uniform resource locator (URL) and a parameter name for the value for the visit information are synchronously downloaded together. (FF 4) Appellant argues that Hansen does not teach parameter names and thus asserts error. (Appeal Br. 19).

In light of the breadth of the claim, Appellant's argument is not persuasive as to error in the rejection. This is because we find that Hansen discloses for each visit record, the filename of the downloaded Web component (URL) and other information concerning the hit together with the hitnr index, the visitnr index, the filenames of the next and previous hits, and the time interval between the current hit and the next hit is recorded (FF 7). We conclude that any of the descriptive other information annexed to the URL would serve as a parameter name as a source of a value for the visit information.

*Claims 59-61.*

Claims 59 recites *a content group viewed by the visitor includes identifying the content group based on a content viewed by the visitor.*

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Appellant argues there is no basis provided by the Examiner for the rejection of this claim. (Appeal Br. 20). Notwithstanding, we find that Hansen defines a hit as a download (F 11) which we credit as viewed to the same extent that a downloaded file is viewed by Appellant. As discussed *supra*, Hansen discloses using a content group identifier e.g., /card.html for a virtual business card.

Appellant's argument is not persuasive as to error in the rejection.

### *Claims 8 and 30*

Claim 8 recites *recognizing visit information includes identifying an advertising campaign that brought the visitor to a business.*

The Examiner found that based on the disclosure in Detrick "it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to identify an advertising campaign that brought the visitor to a business with the motivation of determining and storing which advertising campaign is associated with a hit record." (FF 5.)

Appellant however argues that "Detrick does not provide this information to the business. Nor does Detrick provide any way for the business to identify the advertising campaign that "brought" the visitor to the business, as claimed." (Appeal Br. 21). Appellant does concede though that "Detrick can identify the advertising campaign that 'sends' a user to a businesses web site" (Appeal Br. 21).

The Examiner relies on Detrick disclosing that the servers of the system contain the interface hardware and software necessary to transfer electronic information between the components of the system (FF 20) thereby making it

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capable for the business or publisher to identify the advertising campaign that brought the visitor to the business. We agree with the Examiner that even though Dedrick does not specifically state the information communicated between the servers is the identity of a given advertising campaign, the interface which exists certainly would make it capable to transfer the visitor source information resident in the yellow page server. *See In re Schreiber*, 128 F.3d 1473, 1479 (Fed. Cir.1997).

Thus we are not persuaded to error here, nor are we persuaded as to error by the remaining arguments provided by Appellant.

*Appellant argues Foote is non-analogous art*

Appellant contends that Foote is non-analogous art. (Appeal Br. 23, 24). The analogous-art test requires that the Board show that a reference is either in the field of the applicant's endeavor or is reasonably pertinent to the problem with which the inventor was concerned in order to rely on that reference as a basis for rejection. *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992). References are selected as being reasonably pertinent to the problem based on the judgment of a person having ordinary skill in the art. *Id.* (“[I]t is necessary to consider ‘the reality of the circumstances,’ -in other words, common sense-in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.” *Id.* (quoting *In re Wood*, 599 F.2d 1032, 1036 (CCPA 1979))). *In re Kahn*, 441 F.3d 977, 986-87 (Fed. Cir. 2006).

The Appellant defines the problem to be solved in Foote as generating “...a

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memory image of the configuration state of an I/O card from its terminal base. When that I/O card is removed and a new I/O card inserted, the new card can be configured using the memory image.” (Appeal Br. 23). Appellant thus concludes Foote would not be concerned with problems attendant to network traffic information.

We disagree with Appellant’s description. The problem which Foote addresses in using a semaphore is “to provide an informed determinism to the access control mechanism” in a modular networked I/O system.” (FF 17.) The general problem facing Appellant and overcome by use of a semaphore is maintaining ordered flow of data e.g., import and export of hit records in the same time frame. (Specification 9:8-10). Foote is thus reasonably pertinent to the problem the Appellant was trying to solve because it too is concerned with the general problem of ordered access control of data in a computerized network, and is thus analogous art.

*Claims 15, 37, and 52.*

Claim 15 recites *using a semaphore on the database for a time range; and releasing the semaphore after the visit information is stored.*

Appellant argues that

the Foote semaphore request time parameter indicates to a blocked process a time at which the semaphore will have been released by the process that grabbed the semaphore.... [and that the] ...claimed invention makes no such guarantee that the semaphore will ever be released, nor is any time parameter provided by which

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the process that has currently grabbed the semaphore will release it. (Appeal Br. 25).

However, the Appellant's arguments "fail from the outset because . . . they are not based on limitations appearing in the claims . . .," and are not commensurate with the broader scope of claims 15, 37 and 52 which merely recite the step of using a semaphore for a time range, and releasing the semaphore after a desired function is accomplished. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). Foote is capable of functioning to meet these claim limitations in that Foote does disclose a time range (the time at which the semaphore will be released) and in that time range, a process will be allowed function through the semaphore to, e.g., store information. Following this, with the expiration of the time range, the semaphore is released.

#### *Claims 16 and 38*

Claims 16 and 38 recite *blocking an operation on the time range until the semaphore is released*.

In Foote, access to the register space is blocked to other modules except the one which has the access permit (FF 12) and thus Foote meets the requirement of claims 16 and 38. Appellant again argues that "...it is theoretically possible for the operation to be blocked indefinitely by whatever currently holds the semaphore." (Appeal Br. 26). For reasons discussed *supra*, Appellant's argument is not persuasive as to error.

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*Claims 17 and 39,*

Claims 17 and 39 recite *using a semaphore on the database; retrieving the visit information from the database; and releasing the semaphore after the visit information is retrieved.*

Appellant argues that Foote does not disclose the active step of releasing the semaphore. We disagree with Appellant. We read the elapse of time which triggers the semaphore action in Foote (FF 12) to be a release.

*Claims 18, 40, and 51*

Claims 18, 40, and 51 recite *storing software further includes snapshot software to take a snapshot of a setting for the database for use in analyzing the visit information.*

Appellant argues that “...Foote’s snapshot is limited to power-up configuration at the next power-up event.” (Appeal Br. 28). However, the Examiner uses the snapshot feature of Foote in combination with the visits database in Hansen and not singularly as argued by Appellant.

Thus, the argument is not well taken because the Appellant is attacking the reference individually when the rejection is based on a combination of references. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Young*, 403 F.2d 754, 757-58 (CCPA 1968).

We also affirm the rejections of dependent claims 10, 12, 19, 32, 34, 55, and 58 since Appellant has not challenged such with any reasonable specificity (*see In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987)).

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### CONCLUSIONS OF LAW

We conclude Appellant has not shown the Examiner erred in rejecting the claims 1-6, 9, 11-14, 19-28, 31, 33-36, 41-50, 53, 55-56, and 58-61 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Hansen in view of Weinberg.

We conclude Appellant has not shown the Examiner erred in rejecting the claims 8, 10, 30, and 32 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Weinberg and Dedrick.

We conclude Appellant has not shown the Examiner erred in rejecting the claims 15-18, 37-40, and 51-52 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Hansen in view of Weinberg and Foote.

### DECISION

The decision of the Examiner to reject claims 1-6, 8-28, 30-53, 55-56 and 58-61 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) (2006).

AFFIRMED

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