UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT H. KUMMER, JR., JACQUES E. HASBANI
and LINDA S. LIN

Appeal 2008-4091
Application 10/681,724
Technology Center 3600

Decided: September 26, 2008

Before: MURRIEL E. CRAWFORD, LINDA E. HORNER and STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134 (2002) from the final rejection of claims 11-20. We have jurisdiction under 35 U.S.C. § 6(b)

(2002). We AFFIRM.

The claims on appeal relate to a system for processing mail that is able to make appropriate class of service determinations during processing. The system includes software executable by a central processing unit. (Spec. 5, ¶ 0008). The software includes instructions for making appropriate class of service determinations during processing. (*Id.*; Spec. 4, ¶ 0006). That is, the execution of the instructions causes a determination to be made as to whether a first class of service received from the user is appropriate for a selected mail piece using the weight and one or more dimensions of the piece. If the first class of service is not appropriate, a second class of service is determined for the selected mail piece using the weight and the dimensions of the piece. A final class of service for the selected mail piece is set to the first class of service if the first class of service was determined to be appropriate and to the second class of service if the first class of service was not determined to be appropriate. (Spec. 4, ¶ 0006).

ISSUES

The issue in this appeal is whether the Appellants have shown that the Examiner erred by rejecting claims 11-20 under 35 U.S.C. § 103(a) (2002) as being unpatentable over Kulik (Patent US 5,842,186, issued 24 Nov. 1998) and Ramsden (Patent US 5,831,220, issued 3 Nov. 1998). This issue turns on whether the combined teachings of Kulik and Ramsden would have suggested a mail processor including software having instructions for receiving a first class of service from a user for processing said mail piece and for determining whether said first class of service received from said

user is appropriate for said mail piece using said determined weight and said determined at least one dimension.

FINDINGS OF FACT

The record supports the following findings of fact ("FF") by a preponderance of the evidence.

1. Kulik discloses a software controlled mail processor. (Kulik, col. 4, ll. 52-55).

2. The mail processor includes a postage meter, a scale, a central processing unit and a non-volatile memory. (Kulik, col. 5, ll. 10-21). The memory stores software which controls the functions of the mail processor. (*Id.*; Kulik, col. 5, ll. 28-31).

3. Kulik's software permits a user to enter a custom template. (Kulik, col. 6, ll. 28-30). The custom template permits a user to select individual mail classes for processing of mail for different values of one or more parameters. (*See* Kulik, col. 3, ll. 4-8). If the parameter is weight, the resulting user defined template specifies a weight range for which each selected class processing should apply. (Kulik, col. 6, ll. 38-39).

4. During the input of a custom template, the software will cause the central processing unit to present a prompt on a display asking for the input of a first class selection. (Kulik, col. 9, ll. 5-8). In response to the displayed prompt, the user selects a first one of the available classes. (Kulik, col. 9, ll. 16-17). The user next inputs a selected upper limit for the controlling parameter. (Kulik, col. 9, ll. 24-25). The software continues to prompt the user to enter additional classes of service and upper limits for the

controlling parameter corresponding to those classes of service until the user indicates that the table is complete. (Kulik, col. 9, ll. 46-52).

5. During the entry of the custom template, the software checks the class of service entered by the user for each range of weight to determine if the class of service is available for all weights within the selected weight range. If the desired class of service is not available for all weights within the selected weight range, the software indicates an error and prompts the user to refine the selected weight range. (Kulik, col. 9, ll. 27-35).

6. The software uses the custom template to develop a custom rate table. (Kulik, col. 6, ll. 40-42). The mail processor processes pieces of mail by determining a weight range from the customer rate table within which the weight of the particular piece of mail falls. (Kulik, col. 7, ll. 3-7). This determination is made on the basis of a measured weight of the piece of mail. (*Id.*)

7. The mail processor applies the postage from the customer rate table corresponding to the range of weight into which the piece of mail falls. (Kulik, col. 7, ll. 9-14; *see also id.*, col. 7, ll. 17-24).

8. Kulik teaches that a number of different parameters other than weight may be used to control the ranges for applying postage for the selected classes. (Kulik, col. 3, ll. 43-36).

9. Ramsden discloses an automated shipping machine for accepting and storing items for subsequent pick-up by a commercial carrier. (Ramsden, col. 5, ll. 23-29).

10. The automated shipping machine includes a weighing system for measuring the weight of a parcel and ultrasonic distance transducers for

measuring the length, width and height of the parcel. (Ramsden, col. 16, ll. 1-3 and col. 17, ll. 26-29).

11. The automated shipping machine also includes a microprocessor which receives signals from the ultrasonic distance transducers indicating the dimensions of the parcel. (Ramsden, col. 18, ll. 27-30). The microprocessor calculates the cost for each available delivery service using the weight and dimensioning information. (Ramsden, col. 21, ll. 10-13).

PRINCIPLES OF LAW

A claim is unpatentable for obviousness under 35 U.S.C. § 103(a) if "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." In *Graham v. John Deere Co.*, 383 U.S. 1 (1966), the Supreme Court set out factors to be considered in determining whether claimed subject matter would have been obvious:

> Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.

Id., 383 U.S. at 17.

ANALYSIS

The Appellants argue claims 11-20 as a group. (App. Br. 8). We select claim 1 as representative of the group. 37 C.F.R. § 41.37(c)(1)(vii) (2007). The Appellants contend that Kulik does not teach a mail processing system having software including instructions for receiving a first class of service from a user for processing a mail piece because Kulik teaches selecting a custom rates table rather than a first class of service. (App. Br. 6). The Appellants also contend that Kulik does not teach determining whether the first class of service received from the user is appropriate for the mail piece using a determined weight and at least one determined dimension of the mail piece because Kulik's system will always apply the class specified in the customer rate table for the weight of the mail piece without determining if that class is appropriate. (App. Br. 7-8). We disagree.

"During examination, 'claims . . . are to be given their broadest reasonable interpretation consistent with the specification . . . .'" *In re American Acad. of Science Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Claim 11 recites a mail processing system having software including instructions for performing various method steps. We agree with the Examiner (Ans. 9-10) that the claim as broadly construed does not require that the steps be performed in any particular order. The recitation "receiving a first class of service from a user for processing said mail piece" does not require that the first class of service be received at the time that the mail piece is processed or that the first class of service be received specifically for one mail piece.

Kulik discloses a software controlled mail processor having a memory storing software which controls the functions of the mail processor. (FF 1

and 2). Kulik's software permits a user to enter a custom template, thereby permitting the user to select individual mail classes for processing of mail for different values of one or more parameters. (FF 3). When the user responds to a prompt by entering a first class of service (*see* FF 4), the central processing unit receives a first class of service from the user. If a custom rates table derived from the custom template (FF 6) is later used to process the mail piece (FF 6 and 7), then the first class of service received from the user is for processing the mail piece even though the first class of service may be received prior to the time of processing and is not received specifically for processing that mail piece.

Similarly, the step of "determining whether said first class of service received from said user is appropriate for said mail piece using said determined weight and said determined at least one dimension" need not be performed during the processing of the mail piece or specifically for that mail piece. During the entry of the custom template, the software checks the first class of service entered by the user for each range of weight or other parameter values to determine if the first class of service is available for all parameter values within the selected range. If the first class of service is not available for all parameter values within the selected range, the software indicates an error and prompts the user to refine the selected range. (FF 5). The user is then prompted to enter a second class of service and an upper limit of the parameter value corresponding to the second class of service. (*Id.*) In this manner, the user may determine the second class of service appropriate for pieces of mail having parameter values for which the first class of service is not appropriate.

Kulik teaches the use of weight as a parameter so that the resulting user defined template specifies a weight range for which each selected class processing should apply. (FF 3). On the other hand, Kulik teaches that the controlling parameter need not be weight (FF 8) and that more than one parameter may be used to define the ranges in which the various classes of service are applied (FF 3). Ramsden teaches weight and dimensioning information may be used in determining postal rates (FF 11) and teaches automatic means for determining weight and dimensioning information (FF 10). In view of these teachings, it would have been obvious to modify Kulik's mail processor so as to permit a user to enter a custom template specifying ranges limited by both weight and dimensioning information. (*See* Ans. 4). Although the Appellants criticize Ramsden for not curing alleged deficiencies in the teachings of Kulik (App. Br. 8), they do not appear to contest the reasoning articulated in support of the Examiner's posited modification of Kulik's mail processor in view of the teachings of Ramsden.

Kulik's mail processor as modified in view of the teachings of Ramsden would include software having instructions for receiving a first class of service from a user for processing said mail piece and for determining whether said first class of service received from said user is appropriate for said mail piece using said determined weight and said determined at least one dimension. Consequently, the Appellants have not shown on the record before us that the Examiner erred in rejecting claims 11-20 under § 103(a).

CONCLUSIONS

On the record before us, the Appellants have not shown that the Examiner erred in rejecting claims 11-20 under § 103(a) as being unpatentable over Kulik and Ramsden.

DECISION

We AFFIRM the rejections of claims 11-20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (2007). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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