

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS J. SULLIVAN, RICHARD J. WINDISH,
DORR H. LEWRIGHT, JOSEPH M. TRATTNER, SUZANNE K. ARENSON,
GEORGE COLUNGA, KATHY S. HACKETT and JOICA C. CAMPBELL

Appeal No. 2004-0199
Application No. 09/385,489

HEARD: May 4, 2004

Before KRASS, FLEMING, and DIXON, ***Administrative Patent Judges.***
FLEMING, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-94, all the claims pending in the instant application.

Invention

The present invention relates to a system and method for administrating a trade promotion for a product involving a manufacturer and retailer. See page 1 of Appellants' specification. Trade promotions are where the manufacturer pays promotion funds to the retailer to give incentive to the retailer to promote product or products produced by the manufacturer. See

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page 2 of Appellants' specification. One of the more prevalent type of trade promotions is known in the industry as or referred to as "scan-based trade promotions" or "scan-pay trade promotions." They are referred to as "scan-based" or "scan-pay" because the performance of the promotion can be tracked by reviewing the participating stores' conventional point-of-sale system data or information. See page 3 of Appellants' specification. Either manually, or sometimes with systems support, the retailer uses the data collected by the point-of-sale system to determine the amount of money the manufacturer owes the retailer under the terms of the scan-based promotion. See page 8 of Appellants' specification. There are several problems with this system of administering scan-based trade promotions. The main problem for the retailer is that the retailer may wait a significant period of time for reimbursement. The retailer must also spend a significant number of man-hours processing the paperwork for the manufacturer. The main problem for the manufacturer is that the manufacturer has no effective way of verifying the retailer's paperwork. See pages 9 and 10 of Appellants' specification.

Referring to Figure 1, the system of the present invention includes a retailer system 20, a manufacturer system 22 and an

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independent recording, tracking, reporting, monitoring, verifying and clearing or settling system 24 including communicating with a financial institution 25 through an electronic funds transfer system. See page 19 of Appellants' specification. Referring now to Figure 2A, manufacturers enter into agreement with the operator of the independent system to become participating manufacturers, as indicated by line 64, and retailers enter into agreements with the operator of the independent system to become participating retailers, as indicated by line 66. See page 24 of Appellants' specification. A manufacturer generates a promotion and presents the proposed promotion to a participating retail buyer, as indicated in block 84. See page 30 of Appellants' specification. The account administrator accesses the system from an account administrator workbench 36 and uses a promotion data entry process to enter the proposed promotion into the database server 32 at block 88. See page 31 of Appellants' specification.

Referring now to Figure 2C, on the day when the promotion becomes active, the in-store point-of-sale system stores all of the information regarding the purchase of the promoted product, the price of the promoted product and the discount. The stored

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information is referred to as promoted product POS data. See pages 41 and 42 of Appellants' specification.

Referring to Figure 2D, on a periodic basis, the retailer system 20 collects the product POS data from the retailer's in-store POS system 54. The data collected from each store's POS system is stored in and also called an item movement file 56. See page 42 of Appellants' specification. The retailer's main processor 40 consolidates or combines all of the retrieved item movement files 56 into a consolidated item movement file 60, as indicated in block 222. As indicated in block 228, the retailer system 20 or the independent system 24 filters the consolidated item movement file 60 to process only the information relevant to promotionally active UPC codes. See page 43 of Appellants' specification.

Now referring to Figure 2E, the filtered POS movement file checks the data to ensure that the products qualify for the promotion. See page 45 of Appellants' specification. If the data passes these checks, the system proceeds to the settlement processing 238. See pages 46 and 47 of Appellants' specification. During the settlement processing, the system uses the terms of the promotion to calculate the amount of money due. Once the money has been determined, the independent system will

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facilitate settlement of the promotion by such options as electronic fund transfer payment.

Appellants' independent claims 1 and 33 are representative of the claimed invention and are reproduced as follows:

1. A method for an independent system operator to administer a trade promotion for a product involving a manufacturer and a retailer having at least one store with an in-store POS system, said method comprising the steps of the independent system operator:

capturing terms of the trade promotion at least including promoted product identification and payment term information for said trade promotion;

storing the captured terms of the trade promotion in an independent system operator database;

collecting from the retailer product POS data from at least one in-store POS system of the retailer;

filtering the product POS data using the promoted product identification stored in the independent system operator database to obtain promoted product POS data;

processing the promoted product POS data in accordance with the stored payment term information of the trade promotion in the independent system operator database to determine an amount of money the manufacturer owes to the retailer for the trade promotion; and

facilitating the manufacturer's payment of the amount of money owed to the retailer for the trade promotion.

33. A method for enabling a retailer and a manufacturer involved in a plurality of trade promotions for a plurality of products to independently verify the terms of the trade promotions, said method comprising the steps of:

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capturing the terms of the trade promotions at least including promoted product identification and payment term information in an independent system which operates independently from the retailer and the manufacturer;

storing the captured terms of the trade promotions in an electronic database of the independent system; and

enabling the retailer and the manufacturer to access the electronic database of the independent system to determine the stored terms of the trade promotions.

Reference

The reference relied on by the Examiner is as follows:

Jones	5,832,458	Nov. 3, 1998
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Rejection at Issue

Claims 1-17, 19-62, 64-82 and 84-94 stand rejected under 35 U.S.C. § 102 as being anticipated by Jones.

Claims 18, 63 and 83 stand rejected under 35 U.S.C. § 103 as being unpatentable over Jones.

Throughout our opinion, we make reference to the briefs¹ and answer for the respective details thereof.

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of Appellants

¹ Appellants filed an appeal brief on December 9, 2002. Appellants filed a reply brief on March 13, 2003. The Examiner mailed out an Office communication on April 8, 2003, stating the reply brief has been entered into the record.

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and Examiner, for the reasons state *infra*, we affirm the Examiner's rejection of claims 33-36 under 35 U.S.C. § 102. Furthermore, we reverse the Examiner's rejection of claims 1-17, 19-32, 37-62, 64-82 and 84-94 under 35 U.S.C. § 102. Furthermore, we reverse the Examiner's rejection of claims 18, 63 and 83 under 35 U.S.C. § 103.

Rejection of Claims 33 through 36

At the outset, we note that Appellants state on page 10 of the brief that each of independent claims are argued separate and apart. Furthermore, we note that independent claim 33 is argued separately but dependent claims 34 through 36 are not. See pages 26 and 27 of the brief and the reply brief. 37 CFR § 1.192

(c) (7) (July 1, 2000) ***as amended at*** 62 Fed. Reg. 53196 (October 10, 1997), which was controlling at the time of Appellants filing the brief, states:

For each ground of rejection which [A]ppellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c) (8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

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We will, thereby, consider the Appellants' claims 33 through 36 as standing or falling together and we will treat claim 33 as a representative claim of that group. **See also *In re McDaniel***, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002) ("If the brief fails to meet either requirement [of 37 CFR § 1.192 (c) (7)], the Board is free to select a single claim from each group of claims subject to a common ground of rejection as representative of all claims in that group and to decide the appeal of that rejection based solely on the selected representative claim.") **See also, *In re Watts***, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

Appellants' argue that claim 33 includes capturing the terms of the contract and storing the terms of the contract elements. Appellants submit that at least for the reasons relating to claims 1 and 23, the Examiner's rejection of independent claim 33 should be reversed. See page 26 of Appellants' brief. Appellants argue for claims 1 and 23 that Jones does not expressly or implicitly mention capturing and/or storing the terms of the contract of the trade promotion agreed upon between the manufacturer and the retailer. See pages 14 and 18-19 of Appellants' brief.

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As our reviewing court states, "[T]he terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." **Texas Digital Sys., Inc. v. Telegenix, Inc.**, 308 F.2d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002).

"Moreover, the intrinsic record also must be examined in every case to determine whether the presumption of ordinary and customary meaning is rebutted." (citation omitted). "Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected." **Texas Digital Sys.**, 308 F.3d at 1204, 64 USPQ2d at 1819. ("[A] common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty."); *Id.* (citing **Liebscher v. Boothroyd**, 258 F.2d 948, 951, 119 USPQ 133, 135 (CCPA 1958). ("Indiscriminate reliance on definitions found in dictionaries can often produce absurd results.")). "In short, the presumption in favor of a dictionary definition will be overcome where the patentee, acting as his or her own lexicographer, has clearly set forth an explicit

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definition of the term different from its ordinary meaning."

Texas Digital Sys., 308 F.3d at 1204, 64 USPQ2d at 1819.

"Further, the presumption also will be rebutted if the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." **Id.**

We note that Appellants' claim 33 recites

capturing the terms of the trade promotion at least including promoted product identification and payment term information in an independent system which operates independently from the retailer and the manufacturer;

storing the captured terms of the trade promotions in an electronic database of the independent system.

Upon our review of Appellants' specification, we fail to find any specific definition to the term "payment term information." We do note that on page 12 of Appellants' specification, the specification states "payment information includes all information relating to the amount of money owed by the manufacturer to the retailer for the promotion and the related payment information." However, we fail to find a definition for "payment term information" as recited in Appellants' claims. Clearly, Appellants have chosen to use different language in the claim.

We find that Appellants' use of "payment term information" is properly construed to mean a sub-set of payment information since the use of the word term is used. Therefore, we find that the term "payment term information" is any information but not all information relating to the amount of money owed by the manufacturer to the retailer for the promotion and related payment information. Thus, information of sales volume can be properly construed to be "payment term information" since sales volume of a promoted product relates to the amount of money owed by the manufacturer to the retailer for the promotion.

We find that Jones teaches a system and method that electronically audits and tracks the results of the retailer's efforts while monitoring and recording all POS transactions. Each transaction record empirically establishes what is the incremental sales volume increase of a particular product promoted to support the trade promotion settlement process. See column 12, lines 14-20. Therefore, we find that Jones teaches "capturing the terms of the trade promotion at least including promoted product identification and payment term information in an independent system which operates independently from the retailer and the manufacturer in storing the captured terms of

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the traded promotion in the electronic database of the independent system."

Appellants also argue that Jones does not disclose "enabling the retailer and manufacturer to access the electronic database of the independent system to determine the stored terms of the trade promotions." See pages 26 and 27 of Appellants' brief.

As pointed out above, we have found that Jones does teach capturing and storing terms of the trade promotion in an electronic database of the independent system. Jones further teaches that the electronic database of the stored terms of the trade promotion are retained in a history file for a predetermined period, perhaps 52 weeks. See Jones, column 12, lines 14-16. Jones further teaches that predetermined and customized reports of the file is sent to both the retailer and the manufacturer. See Jones, column 12, lines 20-25. Thus, by retaining the files for 52 weeks and providing reports of the files, Jones teaches a method of enabling the retailer and the manufacturer to access the electronic database file to determine the stored terms of the trade promotions. Therefore, we find that Jones teaches all the limitations as recited in Appellants' claim 33. Therefore, we will sustain the Examiner's rejection of claims 33-36 under 35 U.S.C. § 102.

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Rejection of claim 84 under 35 U.S.C. § 102

Appellants argue that Jones fails to teach "capturing the terms of the trade promotions for the promoted products in an independent system which operates independently of the control of the retailer and the manufacturer, including retailer identification, manufacturer identification, trade promotion type, UPC Codes for the promoted products, payment values for the promoted products, and link codes for associated discounts if any of the trade promotions are electronic discount trade promotions." Appellants argue that the Examiner has not explained how and why capturing of these more specific terms in claim 84 is expressly or inherently present in Jones. See pages 33 and 34 of Appellants' brief.

Upon our review of Jones, we fail to find that Jones teaches capturing the terms of the trade promotion including link codes for associate discounts if any of the trade promotions are electronically discount trade promotions. Therefore, we will not sustain the Examiner's rejection of claim 84 as well as dependent claims 85-87 under 35 U.S.C. § 102.

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***Rejection of Independent claims 1, 23, 37, 47, 68, 74, 77, 88, 89
and 90 under 35 U.S.C. § 102***

Appellants argue that Jones does not disclose a method or system for an independent system operator to process the promoted product POS data in accordance with stored payment term information of the trade promotion in the independent system operator database to determine the amount of money the manufacturer owes to the retailer for the trade promotion and facilitating the manufacturer's payment of the amount of money owed to the trade retailer to the trade promotion. See pages 21-25, 27-32, 34 and 35 of the brief.

Upon our review of Jones, we agree that Jones teaches a system or method for an independent system operator of capturing terms of the trade promotion at least including promoted product identification and sales volume for the trade promotion and storing these captured terms. However, we fail to find that Jones teaches the independent system operator to determine the amount of money the manufacturer owes to the retailer for the trade promotion and facilitating the manufacturer's payment and the amount of money owed. Jones clearly teaches that the reports provided are sent to the manufacturer to support the settlement process. However, Jones does not teach that the independent

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system operator performs this settlement. Therefore, we fail to find that Jones teaches all the limitations as recited in Appellants' claims 1, 23, 30, 37, 68, 74, 77, 88, 89 and 90. Therefore, we will not sustain the Examiner's rejection of these claims under 35 U.S.C. § 102.

Rejection of Dependent claims 1, 23, 30, 37, 47, 68, 74, 77, 88, 89 and 90

For these claims, we note that the Examiner has rejected these dependent claims under 35 U.S.C. § 102 as being anticipated by Jones or under 35 U.S.C. § 103 as being unpatentable over Jones. We note that these claims recite the above limitation due to their dependencies on their respective independent claims. Therefore, we will not sustain the Examiner's rejection of these claims for the same reasons as above.

Conclusion

In view of the foregoing, we have sustained the Examiner's rejection of claims 33-36 under 35 U.S.C. § 102. However, we have not sustained the Examiner's rejection of claims 1-17, 19-32, 37-62, 64-82 and 84-94 under 35 U.S.C. § 102. Finally, we have not sustained the Examiner's rejection of claims 18, 63 and 83 under 35 U.S.C. § 103.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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Administrative Patent Judge)	
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)	BOARD OF PATENT
MICHAEL R. FLEMING)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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