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HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528			TAYLOR, NICHOLAS R	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* PAUL GRADY RUSSELL and TIMOTHY JAMES LALLEY

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Appeal 2010-007998  
Application 10/910,031  
Technology Center 2400

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Before ROBERT E. NAPPI, HUNG H. BUI, and LYNNE E. PETTIGREW,  
*Administrative Patent Judges.*

PETTIGREW, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1 and 3-33.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

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<sup>1</sup> Claim 2 has been cancelled.

STATEMENT OF THE CASE

*Introduction*

Appellants' invention relates to a system and method for downloading digital media utilizing a kiosk or plurality of kiosks connected to a remote server. Abstract. At least part of a digital media library is stored at the kiosk(s) for faster downloading. Spec. 1.

Claim 16 is illustrative of the invention (disputed limitation *italicized*):

16. A method for downloading digital media, comprising:
  - a) providing a kiosk(s) including a computer, a user interface, and a memory device slot;
  - b) linking the kiosk(s) with a remote server having a database of a digital media library;
  - c) placing at least part of the digital media library on storage within the kiosk(s) for immediate transfer to a local user;
  - d) downloading by the user of at least part of the digital media library onto a memory device;
  - e) communicating transaction data relating to the downloading between the kiosk(s) and the remote server;
  - f) updating the kiosk(s) on a recurring and periodic basis with new digital media from the remote server;
  - g) creating the updates when digital media is introduced, deleted, or moved within the system or when changes are made regarding pricing of the media;

h) initiating a media file costing process when new media is introduced or removed for using information regarding contracts with artists and other companies to determine a price of the media;

i) creating an optimized placement of digital media for user sessions based on statistical analysis of length of transfer time and storage space on the kiosk after the updates; and

j) *providing an artist compensation process that examines an artist agreement and determines a method and timing of payments to the artist and conforms payments based on the artist agreement.*

#### *Rejection on Appeal*

The Examiner rejected claims 1 and 3-33 under 35 U.S.C. § 103(a) as being unpatentable over Brush (US 2004/0254940 A1, pub. Dec. 16, 2004), Buxton (US 2003/0204856 A1, pub. Oct. 30, 2003), and Eglen (US 2003/0023505 A1, pub. Jan. 30, 2003).

#### *Issues on Appeal*

(1) Does the combination of references teach or suggest providing an artist compensation process that examines an artist agreement and determines a method and timing of payments to the artist and conforms payments based on the artist agreement, as recited in independent claims 1, 16, and 26?

(2) Did the Examiner provide sufficient reasoning for combining the references?

## ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments that the Examiner has erred. We disagree with Appellants' conclusions. We adopt as our own the findings and reasoning set forth in the Examiner's Answer. We highlight and address specific findings and arguments for emphasis.

Appellants contend that the cited references, alone or in combination, do not teach providing an artist compensation process that examines an artist agreement and determines a method and timing of payments to the artist and conforms payments based on the artist agreement. App. Br. 9. In particular, Appellants argue that an artist agreement as disclosed by Eglen is not used in the manner claimed by Appellants because "Eglen [sic] dynamically adjusts price 'based on profit optimization . . . or based to time between purchases.'" App. Br. 10 (quoting Abstract of Eglen).

We agree with the Examiner that Eglen teaches or suggests the recited limitation. As stated by the Examiner, Eglen teaches a method of dynamically pricing digital media content. Ans. 11. In order to be paid for supplying content, artists ("content suppliers" in Eglen) enter into an agreement under which the "artist can 'determine the rules, pricing techniques, and time frames for the sales of the items' including setting minimum, maximum, and initial prices." Ans. 12 (quoting Eglen, para. 0155). The Examiner further finds that Eglen discloses various methods and timings for payments as part of a compensation process that provides payments to the artist based on the pricing rules set forth in the artist agreement. Ans. 12 (citing Eglen, para. 0158). We note that the Examiner properly relies on both form 3300 in Eglen (used by the artist to provide

pricing rules) and form 3200 in Eglen (agreement and release form) as teaching the claimed “artist agreement.” *See* Eglen, paras. 0154 and 0155.

We also conclude that the Examiner has provided articulated reasoning with some rational underpinning for combining the references. Contrary to Appellants’ contention that the Examiner relied on hindsight, the Examiner found that Eglen specifically teaches that a person of ordinary skill in the art would have been motivated to combine the references “because doing so would resolve a long-felt need for a way to provide digital media that is priced so that content suppliers can make a profit while still offering a competitive and attractive price to consumers.” Ans. 13 (citing Eglen, para. 0005). Furthermore, we agree with the Examiner that Appellants’ claimed invention is the combination of known features according to known methods to yield predictable results. Ans. 14; *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

For these reasons, we sustain the Examiner’s obviousness rejection of independent claims 1, 16, and 26, as well as their dependent claims, not argued separately.

#### CONCLUSION

The Examiner did not err in rejecting claims 1 and 3-33 as being unpatentable under 35 U.S.C. § 103(a).

#### DECISION

The Examiner’s rejection of claims 1 and 3-33 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)(1)(iv).

Appeal 2010-007998  
Application 10/910,031

AFFIRMED

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