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IBM CORPORATION INTELLECTUAL PROPERTY LAW 11501 BURNET ROAD AUSTIN, TX 78758			NGUYEN, LOAN T	
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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* TYREN J. STADING, RHYS D. ULERICH,  
PAUL S. WILLIAMSON, and SCOTT L. WINTERS

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Appeal 2010-011227  
Application 11/226,960  
Technology Center 2100

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Before JOSEPH L. DIXON, ST. JOHN COURTENAY III, and  
CARLA M. KRIVAK, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1, 2, 4, 7-16, 18, 21-28, and 43-53. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## INVENTION

Appellants' claimed invention is generally related to networks such as the World Wide Web for users at network display stations accessing data in the form of documents from database sources or sites maintained on the network, and particularly to the linking of viewers of conventional Television programming to predetermined network database sites. (Spec. 1).

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

1. In a communication network with user access via a plurality of data processor controlled interactive receiving display stations for displaying received presentations accessible from transmitting sites in the network, method for linking a user at a receiving display station to predetermined network sites comprising:

displaying to said user a live unscripted television presentation having spontaneous sequences of text representing the audio stream of the television presentation;

predetermining, at a transmitting site, a set of sites of interest in said network based upon anticipated interest of said user of said presentation;

predetermining, at said transmitting site, a set of key text terms, anticipated to randomly occur in said spontaneous sequences of displayed text, respectively corresponding to said set of sites of interest, the selection of which key text terms will link the user to one of said set of sites of interest; and

enabling the user at said receiving station to select said key text terms if said terms randomly occur in said spontaneous sequences of text in said live unscripted television presentation to link the user to the site of interest corresponding to the selected term.

#### REFERENCE

Schneider US Pat. App. Pub. No.: 2008/0016142 A1 Jan. 17, 2008  
(Filed Sep. 7, 2000)

#### REJECTIONS

The Examiner rejected claims 1, 10, 15, 24, 43, and 49 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to point out what is included or excluded by the claim language.

The Examiner rejected claims 1, 2, 4, 7-16, 18, 21-28, and 43-53 under 35 U.S.C. § 102(e) as being anticipated by Schneider.

#### ANALYSIS

##### 35 U.S.C. § 112, SECOND PARAGRAPH

The Examiner maintains that:

[E]xaminer interpreted that the term "anticipated" equal with "predictable", wherein a set of key text terms are occurred predictable, and "randomly" equal with "unpredictable", wherein a set of key text terms are occurred unpredictable, which are no connection between these terms. Clarification is strongly advised.

(Ans. 3). Appellants explain and clarify the interpretation of the claim language and assert the terms are not contradictory. (App. Br. 16; Reply Br. 3).

"The legal standard for definiteness is whether a claim reasonably apprises those of skill in the art of its scope." *In re Warmerdam*, 33 F.3d 1354, 1361 (Fed. Cir. 1994) (citing *Amgen Inc. v. Chugai Pharma. Co.*, 927 F.2d 1200, 1217 (Fed. Cir.1991)). "[T]he definiteness of the language employed must be analyzed — not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art." *In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971).

Here, we conclude that the claim language does not fail to particularly point out and distinctly claim the invention. That is, although the language of the claim is broad with respect to the content of the nonfunctional descriptive material, it is not indefinite. Therefore, we do not sustain the rejection claims 1, 10, 15, 24, 43, and 49.

35 U.S.C. § 102(e)

Appellants maintain that, while the Schneider reference discloses displaying a displayed text stream which may be that of the audio of a television broadcast, the purpose of the Schneider reference is to enable a broadcaster or the broadcast sponsor to insert definitely occurring, not randomly occurring, terms in the displayed text stream. (Reply Br. 3-4). In response to the Examiner's identification of emergency alerts as insertions which are randomly inserted (Schneider ¶ [0061]; Answer 4-5, 11), Appellants submit that "while the actual occurrence of emergencies or alerts may be random or unplanned, such emergency messages in the data stream are not terms which just occur randomly occurring in text. The warnings or alerts will be understood to be specifically inserted for the very purpose of

alerting or warning." (Reply Br. 4). We find Appellants' argument is not commensurate in scope with the express language of independent claim 1 and is unpersuasive.

Independent claim 1 sets forth a "method for linking a user at a receiving display station to predetermined network sites." The method recites the steps of "displaying to [a] user"; "predetermining, at a transmitting site, a set of sites of interest"; "predetermining, at [a] transmitting site, a set of key text terms"; and "enabling the user at said receiving station to select said key terms if said terms randomly occur." We find no meaningful limitation set forth in the nonfunctional descriptive material or content of the broadcast or key terms which distinguish the method steps recited in the language of independent claim 1. Nor have Appellants identified any limitation which distinguishes the claimed method steps from the method described by the Schneider reference. Appellants have not identified how any of the steps of the method differ from the steps in the process of the Schneider reference.

Appellants contend that the warnings or alerts in the Schneider reference are inserted for the very "purpose" of alerting or warning. (App. Br. 20-21). We find Appellants' argument to the "purpose" to be unavailing since the purpose is not expressly found in the method steps of independent claim 1. Therefore, we find Appellants' argument does not show error in the Examiner's finding of anticipation of independent claim 1.

Since Appellants have not set forth separate arguments for patentability, we group independent claims 10, 15, 24, 43, and 49 and their respective dependent claims as falling with representative claim 1.

### CONCLUSION

The Examiner erred in rejecting claims 1, 10, 15, 24, 43, and 49 under 35 U.S.C. § 112, second paragraph.

The Examiner did not err in rejecting claims 1, 2, 4, 7-16, 18, 21-28, and 43-53 under 35 U.S.C. § 102(e).

### DECISION

The Examiner's decision rejecting claims 1, 10, 15, 24, 43, and 49 under 35 U.S.C. § 112, second paragraph, is reversed. The Examiner's decision rejecting claims 1, 2, 4, 7-16, 18, 21-28, and 43-53 under 35 U.S.C. § 103 is affirmed.

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is affirmed. See 37 C.F.R. § 41.50(a)(1).

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).

AFFIRMED

Vsh/peb