



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/961,514	12/20/2007	Fabrice Laur	15609-179001	6413
32864	7590	02/21/2013	EXAMINER	
FISH & RICHARDSON, P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			ORTIZ ROMAN, DENISSE Y	
			ART UNIT	PAPER NUMBER
			3627	
			NOTIFICATION DATE	DELIVERY MODE
			02/21/2013	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FABRICE LAUR

Appeal 2011-000314
Application 11/961,514
Technology Center 3600

Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and
MEREDITH C. PETRAVICK, *Administrative Patent Judges.*

PETRAVICK, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Fabrice Laur (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.¹

THE INVENTION

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

1. A computer-implemented method for making an availability determination regarding a requested ware, the method comprising:
 - identifying a request to provide a quantity of a ware at a delivery date;
 - determining, in response to the identification, which one of multiple time periods includes the delivery date, the multiple time periods being at least three and running serially from a beginning time, each of the multiple time periods corresponding to a step in a process to provide the ware and being associated with a different supply scope for determining ware availability; and
 - determining availability of the ware for the request using the supply scope of the determined

¹ Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed Jun. 21, 2010) and Reply Brief ("Reply Br.," filed Sep. 8, 2010), and the Examiner's Answer ("Ans.," mailed Jul. 20, 2010).

time period.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Smith	US 7,027,999 B2	Apr. 11, 2006
-------	-----------------	---------------

The Examiner took official notice that it is “old and well known in the retails arts to generate a new confirmation date if the item is not available.” Ans. 11. [Hereinafter, Official Notice].

The following rejections are before us for review:

1. Claims 1-3 and 5-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Smith.
2. Claim 4 is rejected under 35 U.S.C. §103(a) as being unpatentable over Smith and Official Notice.

ISSUE

The issue is whether the recitation of “multiple time periods corresponding to a step in a process to provide the ware and being associated with a different supply scope for determining ware availability” renders the claims nonobvious over Smith.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Smith discloses determining the probability of units in stock at each time increment. Col. 4, ll. 14-21. *See also*, Col. 3, ll. 49-67; Col. 4, ll. 4-14; Col. 16, ll. 29-36.
2. Smith discloses determining different probabilities for different time periods, such as a 90% probability of having 2 units in stock today or an 80% probability of having 1 unit in stock tomorrow. Col. 4, ll. 14-21. *See also*, Col. 3, ll. 49-67; Col. 7, ll. 51-60; Col. 11, ll. 27-35.

ANALYSIS

The Appellant does not provide separate arguments for claims 1-3 and 5-20. We select claim 1 as the representative claim for this group, and the remaining claims 2-3 and 5-20 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

We are not persuaded by the Appellant's arguments that the recitation of "multiple time periods corresponding to a step in a process to provide the ware and being associated with a different supply scope for determining ware availability" renders the claims nonobvious over Smith. Contrary to the Appellant's arguments, we find that Smith does teach multiple time periods. As the Appellant points out, Smith describes finding probability of having units in stock at each time increment (e.g. a day). FF 1. We find that Smith's time increments meet the claim requirement of multiple time periods. We also note that Smith's time increments are associated with a "different supply scope." FF 2. As to the requirement that the multiple time periods correspond to a step in a process to provide the ware, we find that this limitation is nonfunctional descriptive material as it is merely a

characterization of the “data” (i.e. claimed multiple time periods) and does not affect the claimed determination. Nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004). *Cf. In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability). See also *In re Xiao*, 462 Fed. Appx. 947 (Fed. Cir. 2011) (non-functional descriptive material, being useful and intelligible only to the human mind, is given no patentable weight).

Accordingly, the rejection of claims 1-3 and 5-20 under 35 U.S.C. § 103(a) over Smith is affirmed. The rejection of claim 4 under 35 U.S.C. § 103(a) over Smith and Official Notice is also affirmed, as Appellant did not provide any separate arguments.

DECISION

The decision of the Examiner to reject claims 1-20 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).

AFFIRMED

MP