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13/291,479	11/08/2011	Eskander Kazim	2043.224US2	1687

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Schwegman, Lundberg, Woessner & Kluth, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402

EXAMINER
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REFAI, RAMSEY

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ESKANDER KAZIM

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Appeal 2014-009357  
Application 13/291,479  
Technology Center 3600

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Before HUBERT C. LORIN, BIBHU R. MOHANTY, and  
BRADLEY B. BAYAT, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant seeks our review under 35 U.S.C. § 134 of the final rejection of claims 2–19 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

## THE INVENTION

The Appellant's claimed invention is directed to digital goods delivery (Spec., para. 2). Claim 2, reproduced below, is illustrative of the subject matter on appeal.

2. A method of identifying and authenticating a buyer associated with a digital good, the method comprising:

receiving a package from a seller, the package including the digital good;

storing the digital good in a digital goods storage;

notifying the buyer, based on a buyer identifier, and via a message that is communicated over a network to the buyer, that the digital good has been received from the seller and is accessible from the digital goods storage; and

authenticating an identity of the buyer, based on the buyer identifier, before allowing the buyer to access the digital good from the digital goods storage, the authenticating done through the use of one or more processors.

## THE REJECTION

The following rejection is before us for review:

Claims 2–19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Russell (US 7,155,415 B2; iss. Dec. 26, 2006).

## FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence.<sup>1</sup>

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<sup>1</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

## ANALYSIS

The Appellant argues that the rejection of claims 2–19 under 35 U.S.C. § 102(e) is improper because Russell does not disclose “notifying the buyer, based on a buyer identifier, and via a message that is communicated over a network to the buyer, that the digital good has been received from the seller and is accessible from the digital goods storage” as required by claim 2 (Appeal Br. 13–14). The Appellant argues that “Russell provides no such notice because Russell relates to a ‘user’ driven protocol” (Reply Br. 2). According to the Appellant, “the totality of Russell does not recite the word ‘notice,’ nor the word ‘notify,’ nor the word ‘notification’ because Russell relates to a user who navigates to a website, selects content, and downloads the content” (*id.*).

In contrast, the Examiner has determined that the rejection is proper (Ans. 2–3). The Examiner finds the above limitation in Russell at column 6, lines 22–32 and column 7, lines 35–40 in the personalized home pages that display content that is available. According to the Examiner, “[b]roadly taken, a message is merely a piece of information” and “Russell’s teaching of notifying the user whether/when the content is available for download via webpages over the network meets the claimed limitation” (*id.* at 3).

We agree with the Examiner.

Here, the argued claim limitation above is met by the above citations to Russell. The argued claim limitation for the “notifying the buyer” does require that “a message that is communicated over a network to the buyer” but does not limit how that message is communicated. Nothing in the claims excludes a system that communicates the message to the user via a web page. Thus, the Appellant’s arguments are not commensurate with the scope

of the claims. We further note that Figure 1 of Appellant's Specification indicates that messaging/notification component 162 communicates with buyer system 126 via "interface component (e.g., web or API)." Therefore, Appellant's Specification supports the Examiner's interpretation that the message can be delivered via a web page. The Appellant's argument that in the Reply Brief at page 3 that Russell does not use the words "notify," "notice," or "notification" is not persuasive because anticipation is not an *ipsissimis verbis* test. See *In re Bond*, 910 F.2d 831, 832-33 (Fed. Cir. 1990). Thus, the Appellant has not shown any error in the Examiner's finding that Russell discloses the above limitation. The Appellant has not argued the remaining claims separately and the rejection of these claims is sustained for the same reasons given above.

For the reasons above, Appellant's arguments do not apprise us of error in the Examiner's rejection and the rejection is sustained.

#### CONCLUSIONS OF LAW

We conclude that the Appellant has not shown that the Examiner erred in rejecting claims 2–19 under 35 U.S.C. § 102(e).

#### DECISION

The Examiner's decision to reject claims 2–19 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).

AFFIRMED