

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL C. HOLLATZ, DANIEL F. BAKER,
JOSEPH C. STEINLICHT, MARK J. MICHELSON, and KURT E.
SUNDERMAN

Appeal No. 1997-3181
Application No. 08/304,345

ON BRIEF

Before HAIRSTON, FLEMING, and GROSS, Administrative Patent
Judges.

FLEMING, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the rejection of claims
1 through 9 and 11 through 20. Claim 10 has been canceled.

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Appellants' invention relates to an automatic call distribution by grouping available agents according to their skills so that callers are quickly connected to agents with skills matching the specific needs of the callers. More specifically, Appellants on page 8 of the specification and Fig. 2 show that each agent is assigned one or more agent-skill indicators which are representative of one or more corresponding skills of the agent. The agents are then grouped into skill groups 110a through 110n according to their assigned agent-skill indicators. Each skill group is made of agents having a common agent-skill indicator while a specific agent may be included in more than one group based on the agent's different skills. Appellants further disclose on page 10 of the specification that a call-skill indicator representative of the skill needed to help the caller is assigned to each received call. The calls are then routed to the matching skill group to be connected to the next available agent in that group.

Representative independent claim 1 is reproduced as follows:

1. A method for routing an incoming telephone call from an external caller to one of a plurality of available

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agents in an automatic call distribution system, an available agent being an agent that is presently able to accept incoming telephone calls, the method comprising the steps of:

associating at least one agent-skill indicator with each of the agents, the agent-skill indicator being representative of at least one skill of each of the agents;

forming skill groups, each of the skill groups having a common agent-skill indicator associated therewith;

inserting available agents into the skill groups by matching each of the at least one agent-skill indicators associated with each of the available agents and one of the common agent-skill indicators associated with the skill groups;

identifying a call-skill indicator deemed useful in satisfying a need of the external caller;

matching the call-skill indicator with one of the skill groups associated with a common agent-skill indicator which corresponds to the call-skill indicator; and

connecting the external caller to one of the available agents in the matched skill group.

The Examiner relies on the following reference:

Kohler et al. (Kohler)	5,206,903	April 27,
1993		

Claims 1 through 9 and 11 through 20 stand rejected under 35 U.S.C. § 103 over Kohler.

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Rather than repeat the arguments of Appellants and the Examiner, we make reference to the brief¹ and the answer for the details thereof.

OPINION

After careful review of the evidence before us, we do not agree with the Examiner that claims 1 through 9 and 11 through 20 are properly rejected under 35 U.S.C. § 103. Accordingly, we reverse.

The Examiner has failed to set forth a *prima facie* case. It is the burden of the Examiner to establish why one having ordinary skill in the art would have been led to the claimed invention by the express teachings or suggestions found in the prior art, or by implications contained in such teachings or suggestions. *In re Sernaker*, 702 F.2d 989, 995, 217 USPQ 1, 6 (Fed. Cir. 1983). "Additionally, when determining obviousness, the claimed invention should be considered as a

¹ Appellants filed an appeal brief on July 5, 1996 which was deemed defective by the Examiner for including an incorrect copy of claims in the Appendix. Appellants filed an amended appeal brief on October 11, 1996 which was entered. On March 27, 2000, Appellants filed an amended Appendix to the Appeal Brief. All references to the brief and the claims made hereinafter are to those filed October 11, 1996 and March 27, 2000, respectively.

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whole; there is no legally recognizable 'heart' of the invention." *Para-Ordnance Mfg. v. SGS Importers Int'l, Inc.*, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995), *cert. denied*, 519 U.S. 822 (1996) *citing W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

Appellants argue on page 5 of the brief that Kohler's routing system assigns up to three skill numbers to incoming calls and searches among a group of agents having different skills in order to match the agent with the needs of the caller. Appellants add on page 10 of the brief that Kohler does not provide any teaching or suggestion to form "skill groups of available agents" comprising of "agents having a common agent-skill indicator" as recited in claim 1. Additionally, Appellants state that Kohler searches for an agent with the matching skill among agents who may be unavailable, have the wrong skill, or both, which requires longer search time while the caller is waiting. Appellants further state on page 11 of the brief that without any reason to modify Kohler to group agents in skill groups, the Examiner uses hindsight to show obviousness.

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In response to Appellants' arguments, the Examiner points out on page 5 of the answer that Kohler in Fig. 1 teaches that incoming calls according to the number dialed and the need of callers are routed to one of the two groups of agents. The Examiner recognizes on page 10 that Appellants' invention requires only available agents in the group whereas Kohler's agent groups contain available and unavailable agents, but adds that Kohler could be modified to remove unavailable ones from the group. The Examiner further refers to various portions of Kohler to show that unavailable agents are tagged such that they may not be included in the search for the matching skill.

As pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Claims will be given their broadest reasonable interpretation consistent with the specification, and limitations appearing in the specification are not to be read into the claims. *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985).

We note that Appellants' claim 1 recites

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. . . associating at least one agent-skill indicator with each of the agents, . . .

forming skill groups of available agents,
. . . having a common agent-skill indicator associated therewith;

identifying a call-skill indicator . . . ;
matching the call-skill indicator with one of the skill groups . . . (emphasis added).

We find that Appellants' claim 1 includes the step of forming skill groups of available agents with a common agent-skill indicator for each group. Additionally, claim 1 recites that each incoming call is assigned a call-skill indicator which is matched to the agent-skill indicator in one of the groups for routing the call to the next available agent in that group. Appellants point out that the search time is reduced by eliminating the search among a large number of agents to match the skill to the needs of the caller. This is further supported by Appellants' disclosure on pages 8 and 9 of the specification stating that each group is formed based on a common agent-skill indicator and consequently an agent may be a member of more than one skill group if more than one agent-skill indicator is associated with that agent. Thus, Appellants' claim 1 requires forming skill groups made of available agents having the same agent-skill indicator.

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We are not inclined to dispense with proof by evidence when the proposition at issue is not supported by a teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a *prima facie* case. *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984); *In re Knapp-Monarch Co.*, 296 F.2d 230, 232, 132 USPQ 6, 8 (CCPA 1961); *In re Cofer*, 354 F.2d 664, 668, 148 USPQ 268, 271-72 (CCPA 1966). Furthermore, our reviewing court states in *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984) the following:

The Supreme Court in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), focused on the procedural and evidentiary processes in reaching a conclusion under Section 103. As adapted to ex parte procedure, Graham is interpreted as continuing to place the "burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under section 102 and 103." *Citing In re Warner*, 379 F.2d 1011, 1020, 154 USPQ 173, 177 (CCPA 1967).

After a review of the teachings in Kohler, although we find that only available agents are searched for a particular skill, we fail to find skill groups of available agents with a common agent-skill indicator as recited in Appellants' claim 1. We disagree with the Examiner that Appellants' claimed

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limitation of "skill group" reads on Kohler's agent groups 230 and 240. Kohler teaches in col. 3, line 57, through col. 4, line 25, and Fig. 1 that callers are routed to two different splits depending on the number dialed. Kohler further shows in col. 4, lines 63 through 68, and Fig. 2 that the agent group connected to split member 1 contains agents with different skills. Therefore, a split is not limited to a particular skill. Further, another search is needed to find the agent with the skill that matches the caller's need. Each call also has other information related to needed skills associated with it that determines which agent with a specific skill within each group receives the call. With respect to the presence of available and unavailable agents in the group, we find that Kohler in col. 7, lines 56 through 58, teaches that agent skills stored in memory are cleared when an agent becomes unavailable. Therefore, we find that the pool of agents to be searched in memory for a matching skill contains only available agents.

As our reviewing court stated in *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999), combining prior art references without evidence of such a

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suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight. See, *e.g.*, ***Interconnect Planning Corp. v. Feil***, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985) ("The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time."). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence." *Id.* *e.g.*, ***McElmurry v. Arkansas Power & Light Co.***, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993) ("Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact."). Here, we do not find any suggestion or reason to modify Kohler such that the agents are grouped based on a common skill. We disagree with the Examiner that grouping of agents in two groups based on the number callers dial is the same as forming skill groups of available agents with a common agent-skill indicator as recited in Appellants' claim 1. We find that the Examiner merely made conclusory arguments without providing evidence and setting forth reasons to modify Kohler based on the

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teachings of prior art. Therefore, the limitation of "forming skill groups of available agents with a common agent-skill indicator," as recited in Appellants' claim 1, is absent in Kohler's group of agents at different splits.

Additionally, we find that the prior art provided no reason for modifying Kohler's agent group and rearranging the agents based on a common skill. We note that the other independent claims 9 and 14 similarly recite grouping of available agents with a common agent-skill indicator. Accordingly, we reverse the rejection of claims 1 through 9 and 11 through 20 under 35 U.S.C. § 103 over Kohler.

In view of the forgoing, the decision of the Examiner rejecting claims 1 through 9, and 11 through 20 under 35 U.S.C. § 103 is reversed.

REVERSED

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

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