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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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12/124,027

05/20/2008

Stephen Corey Wren

case F

1958

62250

7590

08/04/2010

STEPHEN WREN

6 Monarch Trace Court, #102
Chesterfield, MO 63017

EXAMINER

ZURITA, JAMES H

ART UNIT

PAPER NUMBER

3625

MAIL DATE

DELIVERY MODE

08/04/2010

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 12/124,027
Filing Date: May 20, 2008
Appellant(s): WREN, STEPHEN COREY

STEPHEN WREN, *pro-se*

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/20/2010 appealing from the Office action mailed 11/24/2009.

(1) Real Party in Interest

The examiner has no comment on the statement identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The Examiner has no comment concerning appellant's statement concerning related appeals and interferences.

(3) Status of Claims

Appellant fails to note that this appeal involves claims 7-26.

(4) Status of Amendments After Final

There are no after-final amendments. The Affidavit filed on 05/20/2010 under 37 CFR 1.131 is acknowledged. The submission has been considered but is ineffective to overcome the Bernard (US 5,918,213) reference.

Appellant has not presented good and sufficient reason why the Affidavit is necessary and was not presented earlier.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

Appellant incorrectly states the grounds as follows, citations omitted:

- (1) The issue is whether claims 23-26 are unpatentable under 35 U.S.C. 101 for being directed to non-statutory subject matter.
- (2) The issue is whether claims 8, 9-11, and 21 are unpatentable under 35 U.S.C. 112, first paragraph, for being unsupported by Applicant's disclosure.
- (3) The issue is whether claims 7-26 and 16-20 are unpatentable under 35 U. S. C. 112, second paragraph, for being indefinite.

The correct grounds follow:

Claims 23-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 8-11 and 21 are rejected under 35 USC 112, first paragraph as failing to comply with the written description requirement.

Claims 17-20 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

WITHDRAWN REJECTIONS

For purposes of appeal, the Examiner withdraws the rejections of claims 7-26 under 35 USC 112, second paragraph.

Appellant correctly notes that claim 16 should not be included in the rejection of claims 17-20 (...*said customer entertainment-based programming*...)

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5918213	Bernard et al.	06-1999
5845265	Woolston	12-1998
5586264	Belknap et al.	12-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

Claims 23-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based on Supreme Court precedence see *Diamond v Diehr* 450 US 175,184 (1981); *Parker v. Flook*, 437 US 584,588,n. 9 (1978); *Gottschalk v Benson*, 409 US 63, 70 (1972); *Cochrane v Deener*, 94 US 780, 787-88 (1876) a 101 process must (1) be tied to another statutory class (such as an apparatus) or transform underlying subject matter (such as an article or materials) to a different state or thing. Since neither of these requirements is met by the claim the claim is rejected as being directed to non-statutory subject matter.

Claim Rejections - 35 USC § 112 – first paragraph

Claims 8-11 and 21 are rejected under 35 USC 112, first paragraph as failing to comply with the written description requirement. The claim(s) contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the time the application was filed, had possession of the claimed invention.

In claims 9-11, the limitation ...adapted to build...profile based on [said/multiple /single] customer's use...appears based on the following paragraph:

To determine its corporate customer profile each provider of goods can use the system. Profiles of those customers who specifically request product information can be used by those providers to build general profiles of those customers who might have an interest or need in their goods. Thereafter those *provider profiles* can be used to help the system guide commercials to system users most likely to be interested in those goods. Commercials can then be shown to customers

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intermittently throughout the customer's session or at predetermined points such as when the customer is waiting for live assistance or in between queries.
[specifications, page 14, lines 20-27]

Applicant appears to describe a recommendation to a *single* customer based on that particular customer's action during a session, and *not* on a history of other customers' entry. There is no support for recommendations based on a history of multiple customers. For purposes of the Examination, the limitation is interpreted as using history and statistics of customer use and using the profiling information to target or guide advertisements to customers most likely to be interested in particular types of goods.

In claims 8 and 21, the limitation ...display said...information involuntarily based on said customer's use of said apparatus... is not supported by the disclosures. Applicant mentions involuntarily three times, but does not provide a description.

Claim Rejections - 35 USC § 112 – second paragraph

Claims 17-20 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 17-20 refer to ...said customer entertainment-based programming... which is not previously mentioned.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7-23 and 26, as best understood and as interpreted, are rejected under 35 U.S.C. 102(e) as being anticipated by Bernard et al. (US 5,918,213), filed 22 December 1995, issued 29 January 1999.

As per claim 7, Bernard discloses the use of the Internet, a global network connecting millions of computers of buyers and sellers. The Internet inherently includes apparatus for providing marketing and/or sales information relating to goods and/or services comprising:

- a computerized central communications facility (e.g., Bernard, col 53, lines 2-16)
- a database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility Database(s) maintained at a node (see at least Fig. 12 and related text), containing information pertaining to goods and/or services purchasing history of previous customers (see, for example, at least Col. 51, lines 19-42);
- a communications device at said computerized central communications facility (see, for example, interfaces, as in Col. 51, lines 29-41);
- wherein said computerized central communications facility is operable to be linked to a plurality of other computerized central communications facilities and to a plurality of computerized remote communications facilities (e.g, Bernard and references to the Internet);
- wherein said database of marketing and/or sales information relating to goods and/or services is accessible to a customer at one or more of said computerized remote communications facilities; e.g, Bernard, col. 52, lines 60-67.
- wherein said communications device at said computerized central communications facility is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities; e.g., Bernard, col. 53, lines 2-16.

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- wherein said computerized central communications facility is operable to provide at least a portion of said marketing and/or sales information relating to said goods and/or services to one or more of said computerized remote communications facilities upon request (e.g., Bernard, col. 15, lines 26-64);
- wherein at least one of said other computerized central communications facilities enables said customer at one or more of said computerized remote communications facilities to select and contact a computerized central communications facility of a different provider, (e.g., Bernard, col. 58, line 65-col. 59, line 17); and;
- wherein said computerized central communications facility of a different provider equipped with (e.g., Bernard, col. 53, lines 2-16);
- a database of marketing and/or sales information relating to goods and/or services accessible to said customer at one or more of said computerized remote communications facilities, Database(s) maintained at a node (see at least Fig. 12 and related text), containing information pertaining to goods and/or services purchasing history of previous customers (see, for example, at least Col. 51, lines 19-42)
- a communications device adapted to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities, (e.g., Bernard, col. 5, lines 7-15 and other references to interfaces);
- whereby said customer has access to information at multiple computerized central communications facilities of different providers (e.g., Bernard, col. 5, lines 28-40).

As per claim 8, Bernard discloses that displayed goods and/or services are displayed involuntarily. See, for example, references to displaying advertisements and promotions, as in Col. 51, lines 29-41, Col. 52, lines 46-54.

As per claim 9 Bernard discloses that customer use is used to build a provider or corporate profile. See, for example, references to targeting specific customers, as in Col. 6, lines 31-49, profiling; see also Col. 31, lines 35-40, Col. 52, lines 46-54.

As per claim 10 Bernard discloses that a profile is built from a single customer's use. See, for example, references to profiling based on individual customers, as in Col. 31, lines 35-50.

As per claim 11 Bernard discloses that a profile is built from multiple customers' use. See, for example, references to profiling based on [multiple] customers in general, as in Col. 31, lines 35-50.

As per claims 12 and 13, Bernard discloses suggesting goods and/or services based on at least one of said customers' use of said apparatus. E.g., Bernard, at least Col. 31, lines 35-50.

As per claim 14, Bernard discloses that a customer at one or more of said computerized remote communications facilities can access or browse (e.g., Bernard, col. 4, lines 21-43) said database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility and at one or more of said other computerized central communications facilities (e.g., use of the Internet and browsing, as in Bernard, col. 3, lines 8-18).

Claim 15 is rejected on the same grounds as claim 7.

As per claim 16, Bernard discloses that n at least one of said other computerized central communications facilities is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities (E.g., references to fulfillment vendor 406)

As per claim 17, Bernard discloses at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of a game. E.g., Bernard, col. 54, lines 7-18.

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As per claim 18, Bernard discloses at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of music. E.g., Bernard, at least col. 4, lines 21-21.

As per claim 19, Bernard discloses at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of a movie. E.g., Bernard, at least Col. 3, lines 29-40.

As per claim 20, Bernard discloses at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming including a commercial of a sponsor. E.g., references to displaying advertisements and promotions, as in Bernard, Col. 51, lines 29-41, Col. 52, lines 46-54.

Claim 21 is rejected on the same grounds as claim 8.

As per claim 22, Bernard discloses that one or more of said computerized remote communications facilities is operable to access or browse (Bernard, Summary of Invention, col. 3, lines 8-18) said database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility and at one or more of said other computerized central communications facilities (see references to Internet, as in col. 3, lines 8-18).

Claim 23 is rejected on the same grounds as claim 7.

As per claim 26, Bernard discloses that the customer can use said information to select and contact another of said providers (e.g., use of the Internet and browsing, as in Bernard, col. 3, lines 8-18).

Claim Rejections - 35 USC § 103

Claims 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard et al. (US 5,918,213), in view of Woolston (US 5,845,265).

As per claim 24, Bernard **does not** specifically disclose that the customer can submit a bid in an auction with one of said providers. Woolston discloses auctions in an environment of the Internet and WWW, as in col. 5, line 46-col. 6, line 67.

It would have been obvious to one of ordinary skill at the time the invention was made to combine Bernard and Woolston to disclose that the customer can submit a bid in an auction with one of said providers because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

Claims 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard et al. (US 5,918,213), in view of Belknap (US 5,586,264).

As per claim 25, Bernard **does not** specifically disclose that a presentation stopping point can be recorded. This is disclosed by Belknap, as in col. 36, lines 9-19. It would have been obvious to one of ordinary skill at the time the invention was made to combine Bernard and Belknap to disclose that a presentation stopping point can be recorded because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

(10) Response to Argument

Issue 1: Claim 23 was rejected under 35 USC 101 as directed to non-statutory

matter. Appellant argues:

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The Examiner states in his final action on page 4 that a process must be either "1) tied to another statutory class (such as an apparatus), or 2) transform underlying subject matter to a different state or thing". Accordingly, Claim 23 from which claims 24-26 depend, is tied to a database which is an article of manufacture, having been created or manufactured by a computer. Therefore, Claim 23 is tied to another statutory class as are its dependent claims and hence it and its dependent claims 24-26 are all allowable.

During prosecution, claims are given their broadest reasonable interpretation:

USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. MPEP 2106.

Appellant provides no definitions for database. Since appellant has provided no explicit definition for database, the Examiner relies on the term's ordinary meaning and broadest reasonable interpretation. *E-Pass Technologies, Inc. v. 3Com Corporation*, 343 F.3d 1364, 1368, 67 USPQ2d 1947, 1949 (Fed. Cir. 2003). The Examiner interprets the term database **to include software**

...Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings."). Any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also MPEP § 2111.01.

Issue 2: Claims 8 and 21 are rejected under 35 USC 112, first paragraph as failing to comply with the written description requirement. Appellant merely asserts that the rejection is unfounded and purports to find support as follows:

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...providers could instead be charged for each incidence a customer requests their product information or is shown it **involuntarily** based on a customer's profile. Different rates... (specification, page 14, lines 1-2)

In response, the Examiner respectfully finds that mere mention of the word "...involuntarily..." does not satisfy the written description requirement.

Issue 2: Claims 9-11 are rejected under 35 USC 112, first paragraph as failing to comply with the written description requirement. Appellant merely asserts that the rejection is unfounded and purports to find support as follows:

To determine its corporate customer profile each provider of goods can use the system. Profiles of those customers who specifically request product information can be used by those providers to build general profiles of those customers who might have an interest or need in their goods (specification, page 14, lines 20-23)

In response, the Examiner respectfully finds

[Appellant] appears to describe a recommendation to a *single* customer based on that particular customer's action during a session, and *not* on a history of other customers' entry. There is no support for recommendations based on a history of multiple customers. For purposes of the Examination, the limitation is interpreted as using history and statistics of customer use and using the profiling information to target or guide advertisements to customers most likely to be interested in particular types of goods.

Issue 3(b): claims 17-20 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Appellant quotes claim 17 and argues:

Further, as can be seen above, "customer" should not be read as part of "entertainment-based programming", but rather by itself. Therefore, the phrase "said customer" refers to the prior use of "customer" in claim 15 from which claim 17 and the others depend. Thus the use of "said customer" is proper and claims 16-20 are allowable.

In response, the Examiner respectfully notes that appellant sidesteps the issue: Claims 17-20 (...customer ***[singular]*** entertainment-based programming...) depend from claim 15 (...customers ***[plural]***):

15. An apparatus for providing marketing and/or sales information relating to goods and/or services comprising:

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- ...
- wherein said database of marketing and/or sales information relating to goods and/or services is accessible to **customers** [Ex. Note: plural] at one or more of said computerized remote communications facilities;
- ...
- wherein said computerized central communications facility is operable to provide at least a portion of said marketing and/or sales information relating to said goods and/or services to **customers** [Ex. Note: plural] at one or more of said computerized remote communications facilities upon request;
- wherein at least one of said other computerized central communications facilities allows **customers** [Ex. Note: plural] at one or more of said computerized remote communications facilities to select and contact a computerized central communications facility of a different provider, and;
- wherein said apparatus is operable to record a presentation stopping point for future use.

...
 17. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said **customer** [Ex. Note: singular] entertainment-based programming in the form of a game.

18. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said **customer** [Ex. Note: singular] entertainment-based programming in the form of music.

19. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said **customer** [Ex. Note: singular] entertainment-based programming in the form of a movie.

20. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said **customer** [Ex. Note: singular] entertainment-based programming including a commercial of a sponsor.

Issue 4: Claims 7-23 and 26, as best understood and as interpreted, are rejected under 35 U.S.C.102(e) as being anticipated by Bernard et al. (US 5,918,213), filed 22 December 1995, issued 29 January 1999.

As to independent claims 7, 15 and 23, Appellant merely states:

Claims 7, 15, and 23

As illustrated in the chart in section v, support for independent claims 7, 15, and 23 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for each of the independent claims Bernard is not prior art and thus these claims are allowable.

The Examiner finds no support for the claimed limitations in Appellant's (chart, section v). Claims 7, 15 and 23 refer to a "...different provider ..." and "...another provider..." and receive a priority of 03/29/1996, as stated previously:

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The Examiner notes that central facilities #2...#n first appear in Fig. 1 as amended on 03/29/1996 in application 08/268309 and in application 08/650834, Fig. 1 as filed 05/20/1996.

Claims that refer to a distributed network receive a priority date of 03/29/1996...
(Non-Final Office Action of 01/12/2009)

This issue was also addressed in the Final Rejection of 11/24/2009:

The Examiner notes that central facilities #2...#n first appear in Fig. 1 as amended on 03/29/1996 in application 08/268309 and in application 08/650834, Fig. 1 as filed 05/20/1996.

Claims that refer to a "...computerized central communications facility of a different provider ..." receive a priority date of 03/29/1996. The term is interpreted as referring to nodes in the Internet, which inherently includes apparatus for providing marketing and/or sales information relating to goods and/or services among computerized central communications facilities of different providers.

As to claim 8, Appellant cites a portion of Bernard and states:

There is nothing in the cited passages of Bernard to suggest that goods and/or services information is displayed "involuntarily". Rather, in the case of Bernard a free CD is offered if a customer meets a certain requirement such as being a frequent purchaser. The Examiner has modified the Bernard disclosure in light of Applicant's own teaching.

In response to these arguments, the rejection is maintained. In Bernard, see for example, references to displaying advertisements and promotions, as in Col. 51, lines 29-41, Col. 52, lines 46-54.

Appellant recites claim 9 and argues

There is nothing in the cited passages of Bernard to suggest building "a provider or corporate profile based on said customer's use of said apparatus ". Therefore, claim 9 is for at least that reason allowable.

In response to these arguments, the rejection is maintained. In Bernard, see for example, references to displaying advertisements and promotions, col. 6, lines 31-49, profiling, col. 31, lines 35-40 and col. 52, lines 46-54.

Appellant recites claims 10-11 and argues

...Whether or not Bernard has support for the invention as claimed, Applicant has support no later than... which precedes the Bernard filing date by over 1 year...Applicant therefore swears behind to remove this reference from consideration as regards claim 10

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and has attached a declaration and copy of the page in question from his Inventor's Notebook in support as Appendix A. Therefore, for at least that reason [claim ##] is allowable.

In response to these arguments, Bernard is prior art. The rejection is maintained.

Appellant recites claim 12 and argues

There is nothing in the cited passages of Bernard to support "suggest goods and/or services based on at least one of said customers use of said apparatus ". Therefore, claim 12 is for at least that reason allowable.

In response to these arguments, the rejection is maintained. See, for example, at least Bernard, col. 31, lines 35-50.

Appellant recites claims 13, 14, 16, 17, 18, 19, 20, 22, 26, and argues

As illustrated in the chart in section 5, support for [claim ##] dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for [claim ##] Bernard is not prior art and for at least that reason the claim is allowable.

In response to these arguments, Bernard is prior art. The rejection is maintained.

Appellant recites claim 21 and argues "...This claim is allowable on the same grounds as claim 8..." In response, Appellant's arguments concerning claim 8 are not persuasive. The rejection is maintained.

Issue 5: Claim 24, as best understood and as interpreted, is rejected under 35 U.S.C.102(e) as being anticipated by Bernard et al. (US 5,918,213), filed 22 December 1995, issued 29 January 1999 in view of Woolston (US 5,845,265). Appellant recites claim 24 and argues

As illustrated in the chart in section 5, support for claim 24 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 24 Bernard is not prior art and for at least that reason the claim is allowable.

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The Examiner finds that support is lacking in the instant application as well as its parents. Bernard and Woolston are prior art. The rejection is maintained.

Issue 6: Claim 26, as best understood and as interpreted, is rejected under 35 U.S.C.102(e) as being anticipated by Bernard et al. (US 5,918,213), filed 22 December 1995, issued 29 January 1999 in view of Belknap (US 5,586,264). Appellant recites claim 25 and argues

As illustrated in the chart in section 5, support for claim 25 dates to at least June 29, 1994. from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 25 Bernard is not prior art and for at least that reason the claim is allowable.

The Examiner finds that support is lacking in the instant application as well as its parents. Bernard and Belknap are prior art. The rejection is maintained.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/James Zurita/
James Zurita
Primary Examiner
Art Unit 3625
01 August 2010

Conferees:

Alexander Kalinowski/AK/
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/Hani M. Kazimi/
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