

HAYNES BOONE

INSTACART V. CONSUMERON, LLC

IPR2023-00865 (11,238,465)

Apple Inc. v. Aire Technology, Ltd., Case IPR2022-01135

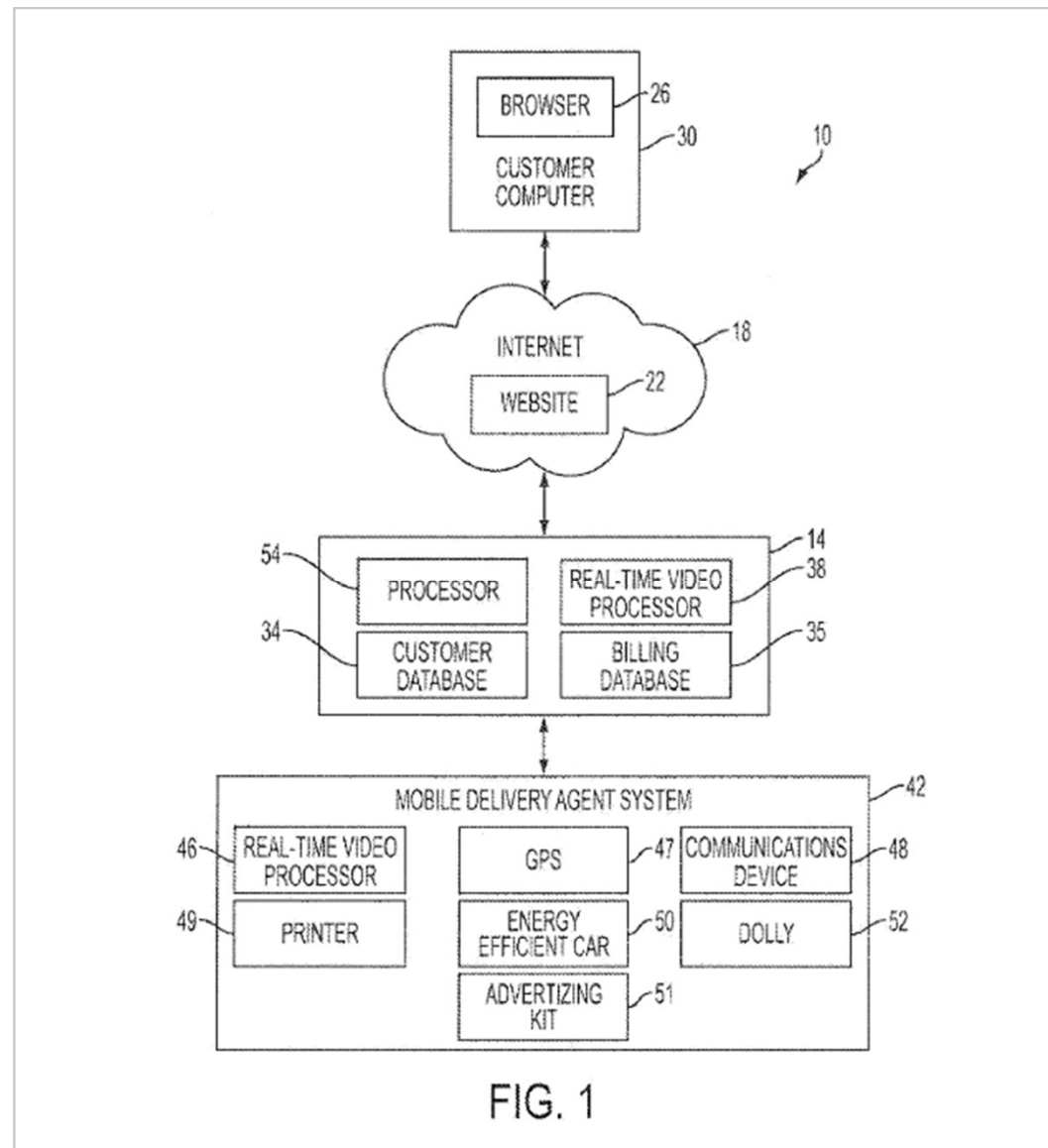
Scott T. Jarratt, Laura Vu
Counsel for Petitioner



DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Ex.1041 / IPR2023-00865 / Page 1 of 69
Maplebear Inc. d/b/a Instacart v. Consumeron, LLC

The '465 Patent



'465 Patent, Fig. 1; Petition, 10.

The '465 Patent

Alleged Problem

Perhaps more important, many customers are opposed to internet shopping. For instance, customers who are particular about style, quality or actual function, may wish to further view or otherwise examine an item before purchasing. Often, a picture may not be available for the item or the picture will be inadequate to accurately depict the item. For

'465 Patent, 1:50-55; Petition, 8.

Alleged Invention

Based on the above, it should be understood that the present invention provides a system for remote acquisition and delivery of goods that supplies a customer with the detailed information needed to make an informed purchase or acquisition remotely, and provides rapid same-day delivery of goods without creating a large carbon footprint. In one

'465 Patent, 9:23-28; Reply, 19.

Overview

- The '465 patent is only entitled to a priority date of April 20, 2020
- “*Acquisition request*” does not require shopping or purchasing
- Carr teaches an “*acquisition request*” and “*acquiring*”

Priority Date of the '465 Patent

The '465 patent is a continuation of the '848 application



US011238465B2

(12) **United States Patent**
Barron et al.

(10) **Patent No.:** **US 11,238,465 B2**

(45) **Date of Patent:** ***Feb. 1, 2022**

(54) **SYSTEM AND METHOD FOR REMOTE ACQUISITION AND DELIVERY OF GOODS**

(71) Applicant: **Consumeron, LLC**, Los Angeles, CA (US)

(72) Inventors: **Mark B. Barron**, Los Angeles, CA (US); **Michael Hays**, Belgrade (RS)

(73) Assignee: **Consumeron, LLC**, Los Angeles, CA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

This patent is subject to a terminal disclaimer.

(21) Appl. No.: **16/853,133**

(22) Filed: **Apr. 20, 2020**

(65) **Prior Publication Data**

US 2020/0302451 A1 Sep. 24, 2020

Related U.S. Application Data

(63) Continuation of application No. 13/270,848, filed on Oct. 11, 2011, now Pat. No. 10,628,835, which is a (Continued)

(56) **References Cited**

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(Continued)

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Lawrence et al., "Personalization of Supermarket Product Recommendations", Data Mining and Knowledge Discovery, vol. 5, pp. 11-21, 2001.

Primary Examiner — Ming Shui

(74) *Attorney, Agent, or Firm* — Diederiks & Whitelaw, PLC.

(57) **ABSTRACT**

A system and method for remote acquisition and delivery of goods includes a server in communication with customer computers, such as through a user interface via the internet. The server can store customer information including billing information, and may include an image processor. A mobile delivery system in communication with the server includes an energy efficient vehicle, an image capture device, a global positioning system, a communication device and a printer. In

The '848 application does not provide written description support for two limitations

1. A method for remote acquisition and delivery of goods through one or more agents of a service provider, each agent having a mobile agent system in communication with at least one remote server, with each mobile agent system including: a digital image capture device and a communication device, said method comprising:

receiving, through the at least one remote server, a first acquisition request from a customer for a first set of one or more goods;

contacting, through the communications device, the one or more agents;

upon failing to locate an identified product of the set of one or more goods, electronically transmitting information on a replacement product for the identified product of the set of one or more goods to the customer using the digital image capture device of the agent, including:

obtaining a bar or QR code of the replacement product;

determining the information from the bar or QR code, wherein the information includes at least one image of the replacement product; and

sending the information for the customer to approve the purchase of the replacement product based on the information determined from the bar or QR code; and

upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent.

The '848 application does not provide written description support for two limitations

14. A method for remote acquisition and delivery of goods with a plurality of agents of a service provider at various geographic locations, each agent having a mobile agent system in communication with at least one remote server, wherein each mobile agent system includes a digital image capture device and a communication device, said method comprising:

receiving, through the at least one remote server, a first acquisition request from a customer for an identified product in a first set of one or more goods;

contacting, through the communications device, one of the plurality of agents;

determining that the identified product is not available;

and

electronically transmitting information to the customer using the digital image capture device of the agent, including:

obtaining a bar code or QR code of a replacement product for the identified product of the first set of the one or more goods; and

sending to the customer the information determined from the bar code or QR code about the replacement product for the customer to approve the purchase of the replacement product, wherein the information includes at least one image of the replacement product;

upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent; and

providing for delivery of the replacement product.

Priority Date of the '465 Patent

“failing to locate” // “product is not available”

Requirements for § 112 written description

“[T]he hallmark of written description is disclosure.”

Ariad Pharms., Inc. v. Eli Lilly & Co.,
598 F.3d 1336, 1351 (Fed. Cir. 2010).

“[T]he disclosure must describe the claimed invention with all its limitations.”

*L.A. Biomedical Research Inst. at Harbor-UCLA Med.
Ctr. v. Eli Lilly & Co.*, 849 F.3d 1049, 1057 (Fed. Cir. 2017).

Requirements for § 112 written description

“Entitlement to a filing date does not extend to subject matter which is not disclosed, but would be obvious over what is expressly disclosed. It extends only to that which is disclosed.”

Lockwood v. American Airlines, Inc.,
107 F.3d 1565, 1571–72 (Fed. Cir. 1997).

Claim 1: “failing to locate an identified product”

1. A method for remote acquisition and delivery of goods through one or more agents of a service provider, each agent having a mobile agent system in communication with at least one remote server, with each mobile agent system including: a digital image capture device and a communication device, said method comprising:

receiving, through the at least one remote server, a first acquisition request from a customer for a first set of one or more goods;

contacting, through the communications device, the one or more agents;

upon failing to locate an identified product of the set of one or more goods, electronically transmitting information on a replacement product for the identified product of the set of one or more goods to the customer using the digital image capture device of the agent, including:

obtaining a bar or QR code of the replacement product; determining the information from the bar or QR code, wherein the information includes at least one image of the replacement product; and

sending the information for the customer to approve the purchase of the replacement product based on the information determined from the bar or QR code; and

upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent.

Claim 14: “determining...identified product not available”

14. A method for remote acquisition and delivery of goods with a plurality of agents of a service provider at various geographic locations, each agent having a mobile agent system in communication with at least one remote server, wherein each mobile agent system includes a digital image capture device and a communication device, said method comprising:

receiving, through the at least one remote server, a first acquisition request from a customer for an identified product in a first set of one or more goods;

contacting, through the communications device, one of the plurality of agents;

determining that the identified product is not available;

and

electronically transmitting information to the customer using the digital image capture device of the agent, including:

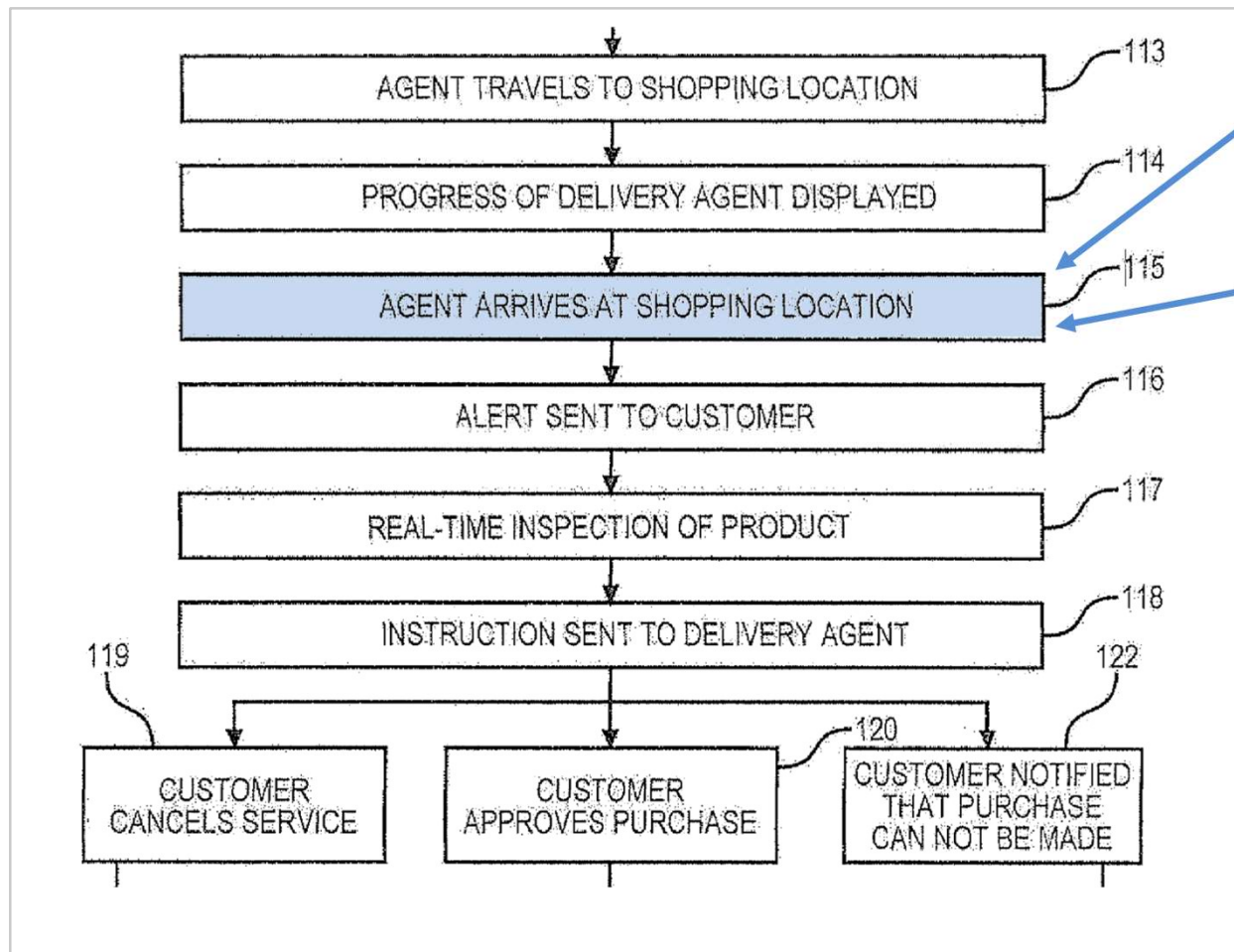
obtaining a bar code or QR code of a replacement product for the identified product of the first set of the one or more goods; and

sending to the customer the information determined from the bar code or QR code about the replacement product for the customer to approve the purchase of the replacement product, wherein the information includes at least one image of the replacement product;

upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent; and

providing for delivery of the replacement product.

The '848 application only describes locating identified product



agent “finds the
desired product to be
acquired”

agent “identifies the
product of interest”

'848 application, Figure 3 (excerpt), ¶ 23; Petition, 18-19.

The '848 application only describes locating identified product

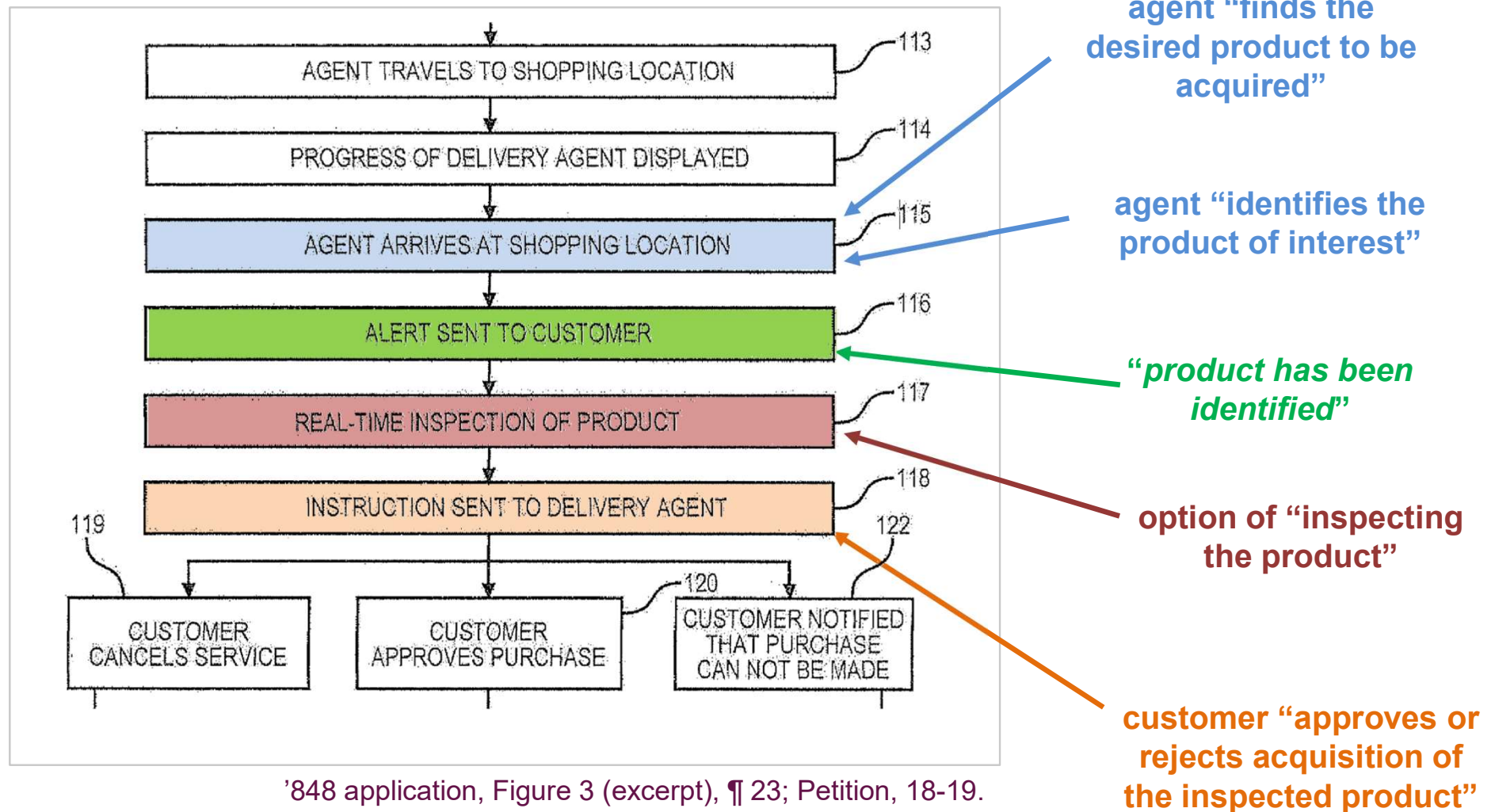
[0023] Once a store location is selected, the selected delivery agent travels to the store location as indicated at step 113, and finds the desired product to be acquired. Ideally, digital image capture device 46 is

...

agent, as indicated at 116. The delivery agent then enters the shopping location and identifies the product of interest. The delivery agent then communicates to the customer that the product has been identified, and the customer has the option of inspecting the product in real-time at 117.

'848 application ¶ 23; Petition, 18-19; Reply, 4.

The '848 application only describes agent actions when identified product is located



The '848 application only describes agent actions when identified product is located

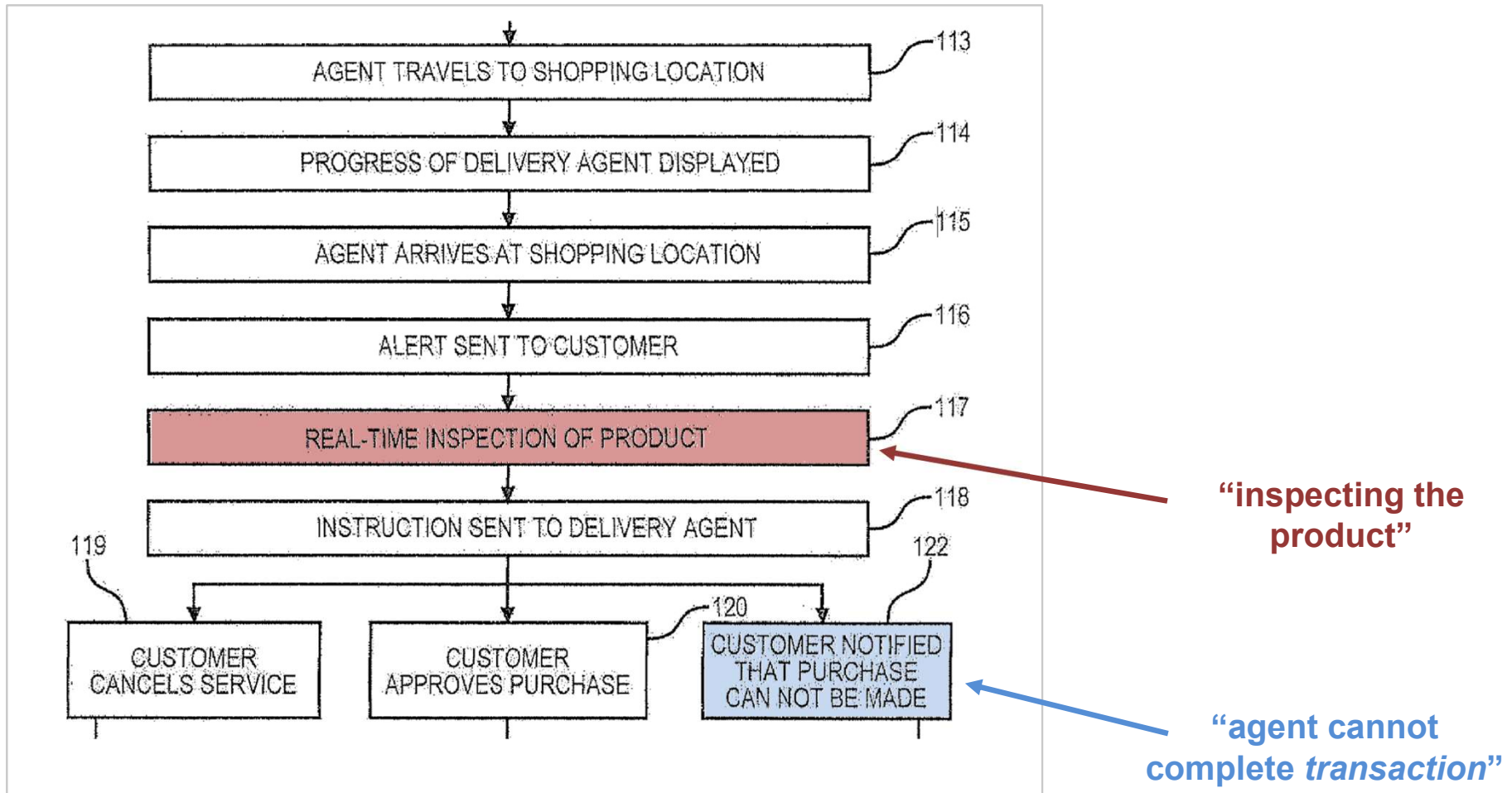
agent, as indicated at 116. The delivery agent then enters the shopping location and identifies the product of interest. The delivery agent then communicates to the customer that the product has been identified, and the customer has the option of inspecting the product in real-time at 117.

'848 application ¶ 23; Petition, 18-19; Reply, 4.

[0024] Next, the customer either approves or rejects acquisition of the inspected product. If the product is rejected, the customer has the choice of inspecting another product or terminating the service. Once the

'848 application ¶ 24; Petition, 20.

Step 122 does not provide 112 support



'848 application, Figure 3 (excerpt), ¶¶ 23, 25; Petition, 19-21.

Step 122 does not provide 112 support

[0025] If the customer is not qualified for the amount of the desired purchase, or if the delivery agent cannot complete the transaction for any reason, the customer is notified that the acquisition cannot be made as indicated at 122. It should be understood that this step can be provided at any time during the service period whenever it is established that the purchase price is outside of the pre-approved credit limit. Alternatively,

'848 application ¶ 25; PO Response, 21.

The “stock-out” problem does not provide 112 support

A skilled artisan comes to the patent with the knowledge that desired products may be out of stock and, consequently, that the agent will sometimes fail to locate them. *See Pozen Inc.*, 696 F.3d at 1167 (“[T]he patent specification is written for a person of skill in the art, and such a person comes to the patent with the knowledge of what has come before”) (citation omitted); *see also Capon*, 418 F.3d at 1357-58 (expressing that the “law is applied to each invention in view of the state of relevant knowledge”). Just like dispensing pharmaceutical products in containers or

See, e.g., PO Response, 18.

'465 claims require both problem and solution

Agent problem

1. A method for remote acquisition and delivery of goods through one or more agents of a service provider, each agent having a mobile agent system in communication with at least one remote server, with each mobile agent system including: a digital image capture device and a communication device, said method comprising:

receiving, through the at least one remote server, a first acquisition request from a customer for a first set of one or more goods;

contacting, through the communications device, the one or more agents;

upon failing to locate an identified product of the set of one or more goods, electronically transmitting information on a replacement product for the identified product of the set of one or more goods to the customer using the digital image capture device of the agent, including:

obtaining a bar or QR code of the replacement product; determining the information from the bar or QR code, wherein the information includes at least one image of the replacement product; and

sending the information for the customer to approve the purchase of the replacement product based on the information determined from the bar or QR code; and

upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent.

Agent response

'465 Patent, claim 1;
Reply, 2

Speculation as to agent response does not provide 112 support

prefer to do without them.”). In making this judgment call, the assembler **could** identify a substitute item (replacement product) that was potentially unsatisfactory to the customer. Ex. 2010 at 91 (“Substitution for items out of stock is a problem

PO Response, 19.

delivered. In the context of the problem solved, a skilled artisan would **envision** that when a requested product is unavailable, the agent **can** notify the customer and receive instructions for a replacement product that is to the customer’s satisfaction, as the ’848 Application conveys. Mitzenmacher Decl., ¶ 53.

PO Response, 23.

Speculation as to agent response does not provide 112 support

purchase); Mitzenmacher Decl., ¶ 49. As one concrete example, an agent upon receiving an acquisition request travels to the shopping location to shop for the requested product as identified in the acquisition request (e.g., Heinz Tomato Ketchup). '848 Application at ¶ 23. However, if the requested Heinz brand is out-of-stock, the agent then makes a judgment call and identifies another ketchup product (for instance, Heinz Organic) and conveys to the customer an image of that product for real-time inspection, as in step 117. *Id.* at Fig. 3, ¶¶ 23-24.

See, e.g., PO Response, 20.

Speculation as to agent response does not provide 112 support

“It is not sufficient for purposes of the written description requirement of § 112 that the disclosure, when combined with the knowledge in the art, would lead one to speculate as to modifications that the inventor might have envisioned, but failed to disclose.”

Lockwood v. American Airlines, Inc.,
107 F.3d 1565, 1572 (Fed. Cir. 1997).

Identifying a replacement product is not inherent

In view of the foregoing, the '848 Application as read in view of the skilled artisan, conveys with reasonable certainty that the agent would either identify a replacement product (for which the remedial steps ensure it is to the customer's satisfaction before purchasing) or notify the customer that the transaction cannot be completed (for which the customer can request further shopping for a satisfactory replacement product). Under either scenario, the application provides more than

PO Response, 23.

The “wrong product” example does not provide 112 support

'848 application background

However, if the person running the errand purchases the wrong product, the person placing the order will not know until the item is delivered. This creates the potential for a confrontation or, at the very least, a dissatisfied purchaser who has now also lost significant time in acquiring the desired product. Now this scenario may not be too important for

'848 application ¶ 5; PO Response, 17-18.

The examiner found no written description support in the '779 child application

Application/Control Number: 17/585,779
Art Unit: 3628

Page 3

5. The disclosure of the prior-filed application, Application Nos. 61/237128, 12/711867, 13/270848, and PCT/US2010/046747 fail to provide adequate support or enablement in the manner provided by 35 U.S.C. 112(a) or pre-AIA 35 U.S.C. 112, first paragraph for one or more claims of this application. Specifically, the prior-filed application U.S. Provisional Nos. 61/237128, 12/711867, 13/270848, and PCT/US2010/046747 fail to provide support for (including but not limited to)

- a. Claim 1 (“upon failing to locate the at least one item” emphasis added)
- b. Claim 1 (“using the digital image capture device, a bar or QR code of a replacement product for the at least one item” emphasis added)
- c. Claim 1 (“transmitting information on the replacement product, including an image of the replacement product, to the customer;” emphasis added)
- d. Claim 1 (“acquiring the replacement product;”)

Ex. 1030 at 235; Petition 18; Prelim. Reply 3; Institution Decision at 9.

The examiner found no written description support in the '779 child application

Priority Claim(s)

Applicant briefly presented citations from US Patent 10,628,835 (App. No. 13/270,848), specifically Para. 24 stating "If the product is rejected, the customer has the choice of inspecting another product or terminating the service" and expounded on their interpretation that this reads on the limitations cited in the rejection of priority to this application in the non-final office action. Examiner noted that this citation supports finding a different product after the customer has rejected an initial project. Examiner noted that this citation still fails to provide support for the failure to locate an item. Examiner noted that while not being able to find a product was a reasonable reason to send information on a replacement/another product, it was not the only reason that this information could be sent. Examiner further noted that obviousness does not factor into the written description requirement when evaluating priority. No agreement was reached.

Ex. 1039 at 311; Reply 10-11

Priority Date of the '465 Patent

determining an image from the bar or QR code

Claim 1: “determining the information from the bar or QR code”

1. A method for remote acquisition and delivery of goods through one or more agents of a service provider, each agent having a mobile agent system in communication with at least one remote server, with each mobile agent system including: a digital image capture device and a communication device, said method comprising:

receiving, through the at least one remote server, a first acquisition request from a customer for a first set of one or more goods;

contacting, through the communications device, the one or more agents;

upon failing to locate an identified product of the set of one or more goods, electronically transmitting information on a replacement product for the identified product of the set of one or more goods to the customer using the digital image capture device of the agent, including:

obtaining a bar or QR code of the replacement product;

determining the information from the bar or QR code, wherein the information includes at least one image of the replacement product; and

sending the information for the customer to approve the purchase of the replacement product based on the information determined from the bar or QR code; and

upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent.

Claim 14: “information determined from the bar code or QR code”

14. A method for remote acquisition and delivery of goods with a plurality of agents of a service provider at various geographic locations, each agent having a mobile agent system in communication with at least one remote server, wherein each mobile agent system includes a digital image capture device and a communication device, said method comprising:

receiving, through the at least one remote server, a first acquisition request from a customer for an identified product in a first set of one or more goods;

contacting, through the communications device, one of the plurality of agents;

determining that the identified product is not available; and

electronically transmitting information to the customer using the digital image capture device of the agent, including:

obtaining a bar code or QR code of a replacement product for the identified product of the first set of the one or more goods; and

sending to the customer the information determined from the bar code or QR code about the replacement product for the customer to approve the purchase of the replacement product, wherein the information includes at least one image of the replacement product;

upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent; and

providing for delivery of the replacement product.

Claims 1 and 14 require a specific act of “*determining*”

determining the information from the bar or QR code, wherein the information includes at least one image of the replacement product; and

'465 patent, claim 1 (partial).

obtaining a bar code or QR code of a replacement product for the identified product of the first set of the one or more goods; and
sending to the customer the information determined from the bar code or QR code about the replacement product for the customer to approve the purchase of the replacement product, wherein the information includes at least one image of the replacement product;

'465 patent, claim 14 (partial).

Written description does not extend to subject matter that *might* be contemplated by the specification

“[Section 112] is ‘not a question of whether one skilled in the art *might* be able to construct the patentee's device from the teachings of the disclosure. . . . Rather, it is a question whether the application necessarily discloses that particular device.’”

Martin v. Mayer,
823 F.2d 500, 505 (Fed. Cir. 1987).

The '848 application does not disclose “*determining*” an “*image*” “*from the bar or QR code*”

device and the communication device. For instance, digital pictures or video can be taken and used to communicate the product to the customer. On the other hand, bar codes, QR (Quick Response) codes, image recognition or near field communication can be used in identifying and communicating information about the product of concern. Once a

'848 application ¶ 8; Petition, 25.

between the customer and the delivery agent. On the other hand, the product data can be collected by scanning a bar code associated with the product, or perhaps a QR code. In addition, optical imaging in combination with image recognition software can be used for product identification.

'848 application ¶ 23; Petition, 24.

Information derived from bar code or QR code does not include images

and an associated processing device. Certainly bar code and QR data may be preferable due to associated accuracies, the ability to readily conduct simultaneous price comparisons for the product via internet searching or links, and enabling a host of information related to the product to be presented, e.g., nutritional or health information, product ratings and the like. Still, the image recognition or visual search

'848 application ¶ 30, Petition, 25.

Images are alternatives to bar and QR codes

such as Google Goggles™. A customer may travel to a retail establishment and, either utilizing in-house gear provided by the retail establishment or utilizing person equipment, such as a cell phone incorporating a camera, bar code or QR code scanning device, record which products the customer may be interested in obtaining at a future time. For each product on the list, the customer sends information regarding the product such as pictures, bar codes, QR codes, video, instructions, recipes, specifications, ingredients, where manufactured, etc. to server 14. This e-shopping list is then made available to the customer

'848 application ¶ 29; Petition, 24.

Images are alternatives to bar and QR codes

time needed to transmit the information over the internet. Certainly, there are various forms for data transmission and communication disclosed in connection with the most preferred embodiments of the invention, with these data forms including, but not being limited to, still images (either alone or in combination with image recognition software), streaming video (really just a series of still images), bar code data and QR data, all of which are generically encompassed by a digital image capturing device and an associated processing device. Certainly bar code and QR data

'848 application ¶ 30; Petition, 24.

The '848 application's alleged problem relates to unavailable or inaccurate pictures for internet shopping

[0004] Perhaps more important, many customers are opposed to internet shopping. For instance, customers who are particular about style, quality or actual function, may wish to further view or otherwise examine an item before purchasing. Often, a picture may not be available for the item or the picture will be inadequate to accurately depict the item. For

'848 application ¶ 4; Petition, 25.

The proposed solution provides real-time pictures and video

location and identifies the product of interest. The delivery agent then communicates to the customer that the product has been identified, and the customer has the option of inspecting the product in real-time at 117. If the customer chooses to inspect the product, the customer will communicate instructions to the delivery agent at 118, and the delivery agent will utilize digital image capture device 46 to transmit real-time data to customer computer 30. This data can be collected and relayed in

'848 application ¶ 23; Petition, 25-26.

The image from the bar code or QR code may be a static image obtained from a remote server

18. The method of claim 1, wherein the at least one image is obtained from a database on a remote server which links bar or QR codes with images.

'465 patent, claim 18.

19. The method of claim 14, wherein the at least one image is obtained from a database on a remote server which links bar or QR codes with images.

'465 patent, claim 19.

Sending a static image from a bar code or QR code is inconsistent with the proposed solution

Sending a customer a static image of a replacement product from a database is inconsistent with the alleged solution of the '848 application, as such a static picture would not allow for customer inspection of the replacement product, but instead would be the same type of potentially “inadequate,” static image that the '848 application attempts to improve upon. Thus, because images are viewed as an

Ex. 1003 ¶ 77 (Houh Decl.); Petition, 25-26.

The '465 patent's effective filing date is April 20, 2020

 US011238465B2	
(12) United States Patent Barron et al.	(10) Patent No.: US 11,238,465 B2 (45) Date of Patent: *Feb. 1, 2022
(54) SYSTEM AND METHOD FOR REMOTE ACQUISITION AND DELIVERY OF GOODS	(56) References Cited
(71) Applicant: Consumeron, LLC , Los Angeles, CA (US)	U.S. PATENT DOCUMENTS 5,896,128 A 4/1999 Boyer 5,907,604 A 5/1999 Hsu (Continued)
(72) Inventors: Mark B. Barron , Los Angeles, CA (US); Michael Hays , Belgrade (RS)	FOREIGN PATENT DOCUMENTS JP 2002094621 3/2002 JP 2003132278 5/2003 (Continued)
(73) Assignee: Consumeron, LLC , Los Angeles, CA (US)	OTHER PUBLICATIONS Lawrence et al., "Personalization of Supermarket Product Recommendations", Data Mining and Knowledge Discovery, vol. 5, pp. 11-21, 2001. <i>Primary Examiner</i> — Ming Shui (74) <i>Attorney, Agent, or Firm</i> — Diederiks & Whitelaw, PLC.
(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days. This patent is subject to a terminal disclaimer.	ABSTRACT (57) A system and method for remote acquisition and delivery of goods includes a server in communication with customer computers, such as through a user interface via the internet. The server can store customer information including billing information, and may include an image processor. A mobile delivery system in communication with the server includes an energy efficient vehicle, an image capture device, a global positioning system, a communication device and a printer. In
(21) Appl. No.: 16/853,133	
(22) Filed: Apr. 20, 2020	
(65) Prior Publication Data US 2020/0302451 A1 Sep. 24, 2020	
Related U.S. Application Data (63) Continuation of application No. 13/270,848, filed on Oct. 11, 2011, now Pat. No. 10,628,835, which is a (Continued)	

Claim Construction

“acquisition request”

“acquisition request”

1. A method for remote acquisition and delivery of goods through one or more agents of a service provider, each agent having a mobile agent system in communication with at least one remote server, with each mobile agent system including: a digital image capture device and a communication device, said method comprising:

receiving, through the at least one remote server, a first acquisition request from a customer for a first set of one or more goods;

contacting, through the communications device, the one or more agents;

upon failing to locate an identified product of the set of one or more goods, electronically transmitting information on a replacement product for the identified product of the set of one or more goods to the customer using the digital image capture device of the agent, including:

obtaining a bar or QR code of the replacement product; determining the information from the bar or QR code, wherein the information includes at least one image of the replacement product; and

sending the information for the customer to approve the purchase of the replacement product based on the information determined from the bar or QR code; and

upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent.

“acquisition request”

Patent Owner: “a request for an agent to shop for goods on a customer’s behalf.”

PO Response, 32.

No reason to deviate from Board's previous construction

For all the above reasons, we reject Consumeron's argument that "acquisition request" is limited to a request for an agent to *shop* for goods. Rather, we agree with Instacart that "acquisition request" has its ordinary meaning, which encompasses but is not limited to purchasing or shopping and includes other means of acquiring a product. Accordingly, consistent with the record here and our construction in the related 865 IPR, we construe "acquisition request" to include not only a request for a delivery agent to shop for and purchase goods, but also a request for the agent to pick up or obtain pre-paid goods.

Maplebear Inc. D/B/A Instacart v. Consumeron LLC, IPR2022-01357, Paper 35 at 11 (Feb. 29, 2024);
see also IPR2022-01356, Paper 35 at 11 (Feb. 29, 2024);
IPR2022-01358, Paper 36 at 13 (Feb. 29, 2024);
IPR2022-01359, Paper 35 at 15 (Feb. 29, 2024).

Must interpret consistently across related patents

'465 patent

1. A method for remote acquisition and delivery of goods through one or more agents of a service provider, each agent having a mobile agent system in communication with at least one remote server, with each mobile agent system including: a digital image capture device and a communication device, said method comprising:

receiving, through the at least one remote server, a first acquisition request from a customer for a first set of one or more goods;

contacting, through the communications device, the one or more agents;

upon failing to locate an identified product of the set of one or more goods, electronically transmitting information on a replacement product for the identified product of the set of one or more goods to the customer using the digital image capture device of the agent, including:

obtaining a bar or QR code of the replacement product; determining the information from the bar or QR code, wherein the information includes at least one image of the replacement product; and

sending the information for the customer to approve the purchase of the replacement product based on the information determined from the bar or QR code; and

upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent.

'835 patent

1. A method for remote acquisition and delivery of goods comprising:

locating a plurality of agents of a service provider at various geographic locations, each agent having a mobile agent system in communication with at least one remote server, wherein each mobile agent system includes: a digital image capture device and a communication device;

receiving through the at least one remote server a first acquisition request from a first customer for a first set of one or more goods, including receiving product data from the first customer regarding at least one of the one or more goods;

contacting through the communications device one of the plurality of agents for a location having the first set of one or more goods;

electronically transmitting, in real-time, information on the first set of one or more goods to the first customer using the digital image capture device of the agent, including obtaining an image of a particular product of the first set of the one or more goods and sending the image for the first customer to inspect and approve the purchase of the particular product exactly shown in the image;

acquiring the particular product, via the agent; and providing for delivery of the particular product to a delivery site.

'465 patent, claim 1.

U.S. Pat. 10,628,835, claim 1.

No reason to deviate from Board's previous construction

78-79. The mere fact that the specification includes an alternative embodiment of a customer pre-purchasing goods does not outweigh the language of the claims which clarify that the agent purchases the goods upon receiving approval.

PO Response, 37.

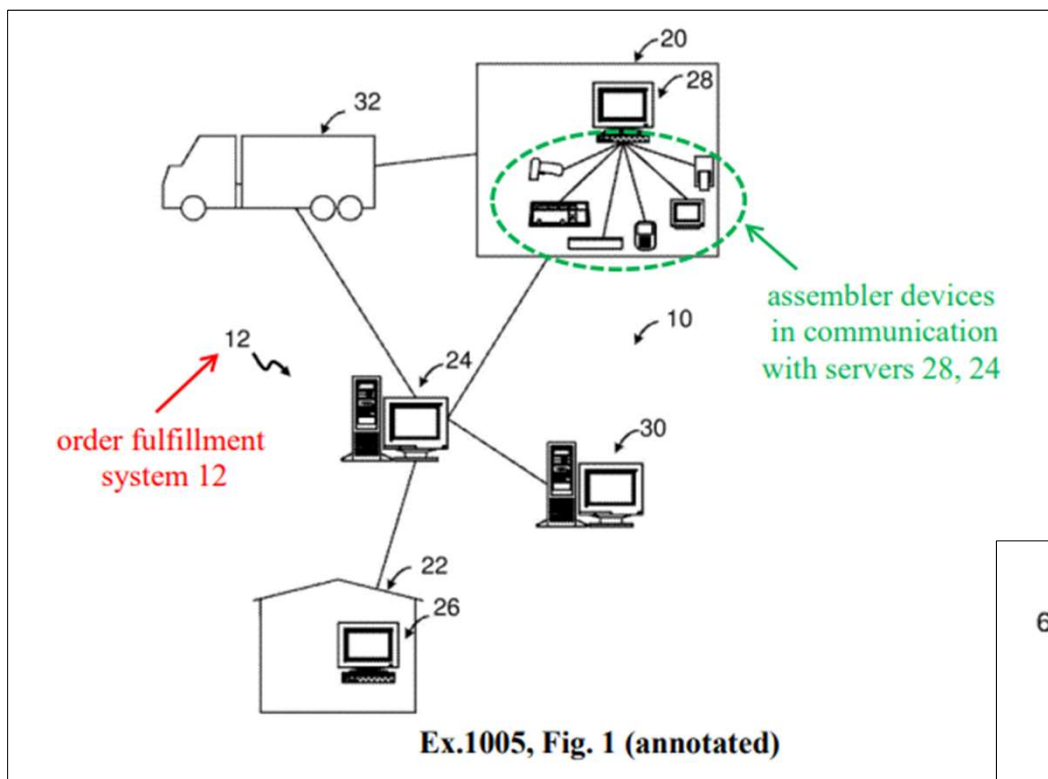
No reason to deviate from Board's previous construction

one or more of the items. Ex. 1001 at Claim 1. Failure to locate a desired item is something that occurs when an agent shops, not when an agent is merely there to pick up pre-purchased goods. Indeed, once the agent determines that she cannot locate an item, she finds and sends information about a “replacement product.” *Id.* It is impossible for this “replacement product” to be a “pre-purchased” product because, until the customer receives the information about the replacement product, any opportunity for the customer to have “pre-purchased” the replacement product has already passed.

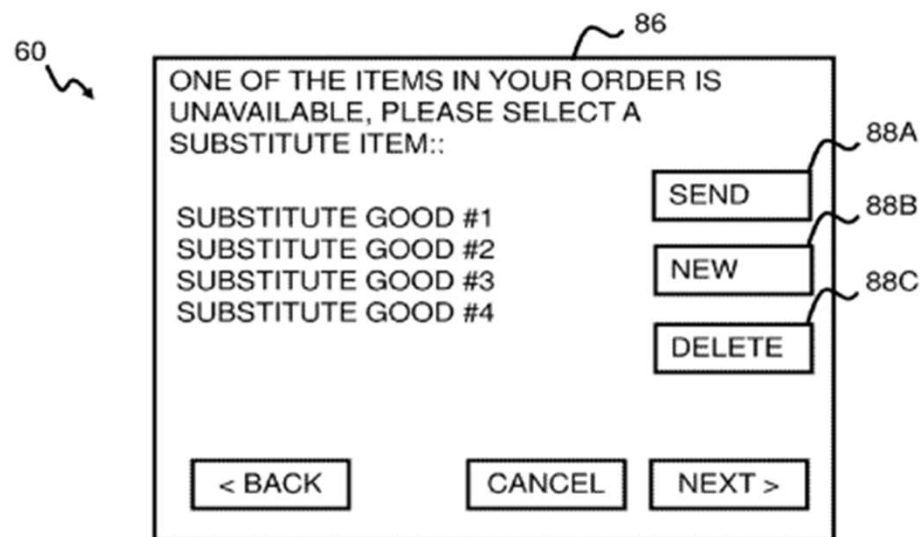
PO Sur-Reply, 15.

Primary Ground: Carr in view of Lauka

Overview of Carr



Petition, 36.



Ex.1005, Fig. 12

Petition, 43.

Consumeron does not dispute that the claims are obvious under the Board's construction

2. Carr Does Not Teach or Suggest the “Acquisition Request” and “Acquiring” Limitations When the Appropriate Construction is Applied

When the appropriate construction is applied, an “acquisition request” details an agent shopping for goods on the customer’s behalf, with “acquiring” encompassing the agent completing the transaction for the goods (purchasing the goods). *See* § V.B.1, *supra*. Carr’s customer’s online order, which is a transaction

PO Response 42; *see also* PO Sur-Reply 14.

Carr discloses “*acquisition request*” under the Board’s construction

[0009] In other embodiments, a method includes the step of receiving a customer order at an order fulfillment system associated with a facility and responsively assisting an assembler in assembling the customer order for the customer. The customer order includes at least one good. The method further

Ex. 1005 ¶ 9; Petition, 38.

Carr discloses “*acquiring*” under the Board’s construction

[0101] In another aspect of the present invention, the chosen one of the substitute goods is selected as the alternative good. The alternative good is communicated back to the assembler. The assembler includes the alternative good in the customer order. The order fulfillment system 12 modifies the customer order to include the alternative good and stores the revised customer order in the database 42, 46.

Ex. 1005 ¶ 101; Petition, 43-44.

PO: no disclosure of “*approval of the purchase*”

Because a customer order in Carr is no more than an offer for and payment of the goods over the seller’s website, the customer completes the transaction, not Carr’s assemblers. Accordingly, Carr’s assemblers do not receive notifications of the “approval of the purchase” prompting them to complete the transaction (purchase the goods) during the “acquiring” step, as required by the Challenged Claims. *See* § V.B.1.a, *supra* (establishing that “acquiring” entails completing the transaction in the context of an agent shopping for goods on behalf of a customer); Ex. 2004 (the

PO Response, 44.

Claim language does **not** require agent purchase

sending the information for the customer to approve the purchase of the replacement product based on the information determined from the bar or QR code; and
upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent.

'465 Patent, Claim 1 (partial).

Carr discloses “*approval of the purchase*” and then “*acquiring*”

customer. In one embodiment, the list of substitute goods is sent to the customer device using the preferred method of communication. For example, the preferred method of communication may include an automated telephone call, an email, an instant message, a multimedia message service message, a message sent to a specific application on the customer device, or any suitable communications channel. The method of communication allows the customer to select one of the substitute goods as the alternative good. Alternatively, a link to a web-

Ex. 1005 ¶ 99; Petition, 43.

[0101] In another aspect of the present invention, the chosen one of the substitute goods is selected as the alternative good. The alternative good is communicated back to the assembler. The assembler includes the alternative good in the customer order. The order fulfillment system 12 modifies the customer order to include the alternative good and stores the revised customer order in the database 42, 46.

Ex. 1005 ¶ 101; Petition, 43-44.

HAYNES BOONE

INSTACART V. CONSUMERON, LLC

IPR2023-00865 (11,238,465)

Apple Inc. v. Aire Technology, Ltd., Case IPR2022-01135

Scott T. Jarratt, Laura Vu
Counsel for Petitioner



DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

Additional Slides

'465 Patent, Claim 4

4. The method of claim 1, further comprising:
obtaining consent from the customer to acquire the identified product using the communication device;
acquiring the identified product, via the one or more agents; and
providing for delivery of the identified product to a delivery site.

Specification: acquisition is **broad**er than purchase

Preferably, the user specifies the exact location from which the selected delivery agent is to **purchase or otherwise** acquire the product, such as a retail store location. Alterna-

'465 Patent, 5:34-36; Reply to POPR, 4.

119. If the product is approved at **120**, the delivery agent will **purchase or otherwise** acquire the product on behalf of the customer at **121** and deliver the product based on the delivery options specified in the customer's profile, or amended delivery instructions provided by the customer at the beginning of a particular shopping request or at some time during a particular shopping request. In one embodi-

'465 Patent, 7:65-8:4; Reply to POPR, 4.

the product. A mobile delivery agent assigned to the user, familiar with the type of product and/or in close proximity to the shopping location will receive the request for **purchase or acquisition** from the system, and the delivery agent will proceed to the shopping location. The GPS preferably tracks

'465 Patent, 2:37-41; Reply to POPR, 5.

Specification: acquisition includes pre-payment/pickup

Alternatively, the customer has the option of paying the retailer or seller directly, in which case the customer will only be billed for the pick-up and delivery services provided. For payment by proxy, the delivery agent may utilize printer 49 to produce a pre-authorization purchasing document including billing information which allows the delivery agent to pay at pick-up. If pre-purchased by the customer, the delivery agent obtains a receipt showing proof of pre-payment by the customer. In one example, if a customer

'465 Patent, 8:25-33; Reply to POPR, 5.

Extrinsic evidence: acquisition ≠ purchase

Merriam-Webster Dictionary: “to come into possession or control of [something] often by unspecified means”

Ex.1031; Reply, 20.

Collins English Dictionary: “If you acquire something, you buy or obtain it for yourself, or someone gives it to you.”

Ex.1034; Reply, 20.

Knowledge of problem does not provide 112 support

“[K]nowledge of ordinary artisans” may not be used “to teach limitations that are not in the specification.”

Rivera v. ITC,
857 F.3d 1315, 1322 (Fed. Cir. 2017)

Knowledge of problem alone does not provide 112 support

“It is an old custom in the woods to mark trails by making blaze marks on the trees. It is no help in finding a trail or in finding one's way through the woods where the trails have disappeared— or have not yet been made, which is more like the case here— to be confronted simply by a large number of unmarked trees. Appellants are pointing to trees. We are looking for blaze marks which single out particular trees. We see none.”

In re Ruschig, 379 F.2d 990, 995 (C.C.P.A. 1967);
see also Nike, Inc. v. Adidas AG, 812 F.3d 1326, 1347 (Fed. Cir. 2016).

Stock-outs

47. A POSITA comes to the patent with the knowledge that desired products may be out of stock and, consequently, that the agent will sometimes fail to locate them. As was known in the art and plain real-world experience establish that “stock-outs” were and remain a commonplace nuisance. *See* Ex. 2009 at 325; Ex. 2010 at 91. And because stock-outs occurred regularly, order pickers or assemblers were often faced with a problem: of whether to substitute the ordered product for a different one or to assume that the customer would prefer nothing at all. Ex. 2009 at 325 (explaining that an order assembler “could not make a judgment for a customer as to whether that customer would like a close substitute or would prefer to do without them.”). In making this judgment call, the assembler could

Ex. 2008 ¶ 47 (Mitzenmacher Decl.); PO Response, 18-19.



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(19) **United States**

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Carr et al.

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(54) **SYSTEM, METHOD, AND NON-TRANSITORY
COMPUTER-READABLE STORAGE MEDIA
FOR ALLOWING A CUSTOMER TO PLACE
ORDERS REMOTELY AND FOR THE ORDER
ASSEMBLER TO COMMUNICATE
DIRECTLY WITH THE CUSTOMER**

Publication Classification

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CPC **G06Q 30/0635** (2013.01)

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(21) Appl. No.: **14/549,277**

(22) Filed: **Nov. 20, 2014**

(57) **ABSTRACT**

Techniques for allowing a customer to order goods on-line or remotely and to pick-up the goods at a desired location or store are disclosed. The techniques include receiving a customer order. The customer order includes at least one good. The techniques further include establishing a list of alternative goods if one or more of the goods in the customer order are unavailable and allowing the customer to choose one of the alternative goods as a substitute good and establishing a revised customer order.

Ex. 1005; Petition, 29.

Lauka



US010592962B1

(12) **United States Patent**
Lauka et al.

(10) **Patent No.: US 10,592,962 B1**

(45) **Date of Patent: Mar. 17, 2020**

(54) **SYSTEMS AND METHODS FOR
PARALLELIZING CUSTOMER INPUT WITH
REAL-TIME PICKING FOR ITEM
SUBSTITUTIONS**

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(*) Notice: Subject to any disclaimer, the term of this
patent is extended or adjusted under 35
U.S.C. 154(b) by 789 days.

(21) Appl. No.: **15/192,469**

(22) Filed: **Jun. 24, 2016**

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(57) **ABSTRACT**

Ex. 1006; Petition, 29.

Exhibit 2013

We have developed several recognition algorithms that allow for the creation of links from nearly arbitrary parts of paper documents [3, 4]. Both text patches and blocks of image data can be associated with individualized information. Furthermore, the recognition algorithms reliably recognize the low quality images produced by most mobile cameras. This allows us to provide "clickable paper" that can be utilized almost anywhere. The user only needs a paper document, a camera phone, and a network connection. An alternative solution would use 2-d bar codes such as QR codes. However, QR codes take up valuable space on a page, are impossible to change after a document is printed, and disrupt its appearance. Moreover, visual search can index arbitrary locations within a passage of text. Many QR-Codes could be needed to provide the same capabilities, which is unrealistic.

Ex. 2013, 1; PO Response, 29.