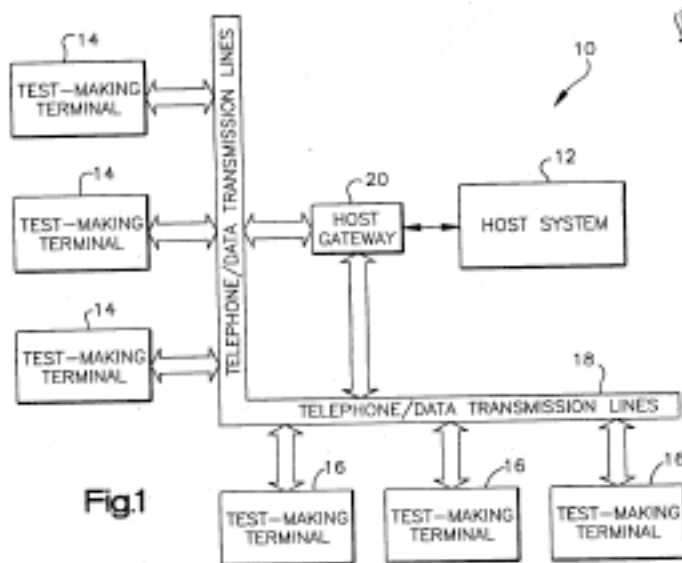


TEST.COM PATENT ON “INTERNET TEST-MAKING METHOD”
U.S. PATENT NO. 6,513,042

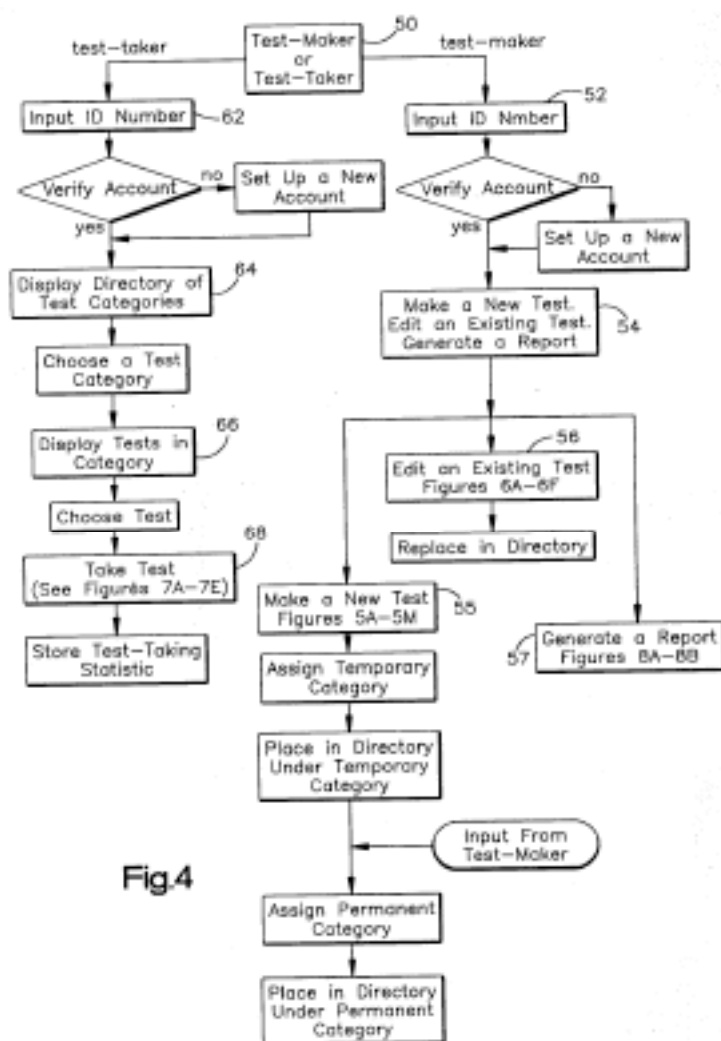
Latest Date That Material Can Qualify for Prior Art: FEBRUARY 10, 1999

I. General Description

The Test.com patent claims a very simple method of online test-taking. First, Person A makes a test on a computer (called a “test-making terminal” in the patent). Then Person A uploads the test onto a website (called a “host system in the patent). The administrator of the website then offers the test to users over a network (like the Internet) for a fee and splits that fee with Person A.



More specifically, the Test.com patent describes itself as “a method and system for making and administering tests on-line.”¹ A test-designer inputs questions onto a computer terminal that are then compiled by a “host system” (e.g. computer) to create a test. The test is then categorized and filed into a directory, and then made available online to test-takers. The test-taker may be charged for the right to take the test, with the test-maker and the host sharing in the fee.



II. Claims at Issue

The Test.com patent has 5 independent claims and 11 dependent claims that add additional elements. Each claim in a patent is a separate “invention” that can be used to threaten or sue someone. As their names imply, independent claims stand

¹ The patent defines “test” as meaning “any exam, assessment, survey, lesson plan, etc. comprising questions to be answered.”

alone in their descriptions listing all their necessary elements. Dependent claims reference back to another claim's elements and then add additional ones to the mix. We are most interested in busting claims 1, 12, and 13, which cover key variants of the patent.

Claim 1 covers a method for making a test and posting it on-line for potential test-takers. The method contains the following steps:

- providing a host system (e.g., computer) and remote terminals that are connected via the Internet;
- allowing people who want to make a test (“test-makers”) to use the remote terminals to input questions and related information (e.g. explanatory text) through a series of web page forms. The forms assist the test-maker by allowing her to select the type of question (multiple choice, short answer, etc.), assign values to responses, explain correct answers, etc. The questions are then compiled by the host system into a completed test, put into a database and posted online.
- Allowing third parties (“test-takers”) to pay generally (e.g. tuition) or specifically (e.g. pay-per-test) to take the test, preferably by accessing it through a web page, and
- Splitting any associated revenues between the test-maker and host-system.

Claim 12 also covers a method for posting tests online. It is like Claim 1 except in addition to all the above elements, the method must also:

- Place the test in a restricted directory that can only be accessed via password;
- Keep other academic practice tests in the directory; and
- Collect payment for the test-taking in the form of per-year student enrollment fees.

Claim 13 covers a *system*, (rather than a method) for making a test and posting it online.² It comprises:

- a first computer, linked to the Internet, that
 - has been loaded with software that can generate a test and post the test on the Internet (the software itself is not described) and
- a second computer that allows a user to take the test and receive results.
- A mechanism (most likely a web form or software program) for making the test-taker pay to take the test; and then
- A mechanism for splitting revenues between the test-maker and the owner of the first computer.

III. Prior Art Needed to Bust This Patent

The application for this patent was filed February 1999, so EFF is looking for prior art that was publicly available before that date. Prior art can be: a product, a published patent, a conference paper, or a printed publication (web page, newsgroup post, article, technical paper, etc.) Each piece of prior art must include all of the elements (or steps) of the claim it is going to bust. To bust the entire patent, we must find one or more pieces of prior art for every claim, but eliminating even one or two of the claims will narrow and weaken the patent.

Ideally, prior art to bust Claim 1 would contain:

A description of a network-based method of creating and administering tests or surveys where

[a] A remote user enters questions which are transmitted, via the network, to a host system that compiles them into a test which is then made available online for test-takers, AND

[b] Test-takers pay to take the test AND

[c] **The owner of the host system and the test-maker share the profits.**

This element is crucial—the patent examiner challenged this aspect of the patent several times before granting the patent, and EFF believes if we can find evidence of an electronic test system that splits revenue, the entire patent may fall. Note: such revenue sharing may be automatic and/or performed electronically, but even simply mentioning the idea of revenue sharing in a patent or printed publication may be enough to suffice. Also,

² A method is a kind of recipe for accomplishing a given task. A system is the machinery by which the method is implemented. For our purposes of this busting effort, the prior art may be either a system or a method, as long as it has the characteristics identified here.

while ideal prior art would contain every element of the claim as described above, any examples of revenue sharing via test-taking may help.

We anticipate that the prior art for this claim may be concentrated in the distance learning, certification and/or home-schooling context, e.g., an article describing a web-based system for testing students online. (Note that payment to take the test could include any kind of tuition or fee, not just a “payment per test.”).

Prior art for this claim might also include: an article or manual that describes a computer-based system for designing and conducting online “fan” polls, where fans pay a small fee to “vote” for bands, products, etc.; or a publication describing a usability testing system.

With respect to the “revenue-sharing” element in particular, prior art could describe any information access system where a person or company A provides information to a host system B, and a third party pays to access that information, so long as A and B share the payment.

Ideally, prior art to bust Claim 12 will be a description of an online test or survey that involves:

[a] placing the test or survey in some type of directory that can only be accessed with a password or other token; and

[b] a method of payment where people who want to access the test or survey should pay a set cost to access more than one test/survey/document (rather than being charged per-test).

Ideally, prior art to bust Claim 13 will be a description of a networked test-making or test-taking system similar to prior art for **Claim 1** specifically mentioning:

[a] at least two computers—a host and a remote user;

[b] some method of revenue collection and sharing.

Where to send information on prior art: [priorart at eff dot org](mailto:priorart@eff.org) or <http://www.eff.org/patent/wanted/prior.php?p=test>