Paper No. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte TANTEK I. CELIK

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Appeal No. 2000-0467
Application 08/511,645

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ON BRIEF

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Before FLEMING, RUGGIERO, and LALL, ***Administrative Patent Judges.***

FLEMING, ***Administrative Patent Judge***.

Decision on Appeal

This is a decision on appeal from the final rejection of claims 1 through 6 and 10 through 28. Claims 7 through 9 have been cancelled.

The invention relates to a method of manipulating objects in a graphical user interface for a computer. Specifically, the representations of objects stored in a memory are displayed to a user on a display via the following method steps. The method steps include selecting a first object whose representation is

displayed on a display and dragging the representation of the first object from a first location on the display to a second location associated with a second object. See Appellant's specification page 6, lines 27 through page 7, line 7 and Figures, 2A, 2B, 3A and 3B. The method further includes determining whether the second object is either a service object or a container object. See Appellant's specification page 7, line 15 through page 8, line 4. Then the method performs either a service with respect to the first object if the second object is a service object or moves the representation of the first object from the first location to a location associated with the second object if the second object is a container object. *Id.* A further embodiment relates to detecting when a user's capabilities are limited to reading the object and then prohibiting movement of the first object to a second location. See Appellant's specification page 9, lines 3-13 and Figure 4.

Independent claims 1, 18 and 26 are reproduced as follows:

1. A method for manipulating objects in a graphical user interface for a computer, of the type in which representations of objects stored in a memory are displayed to a user on a display, comprising the steps of:

selecting a first object whose representation is displayed on said display;

dragging the representation of the first object from a first location on the display to a second location associated with a second object;

determining whether said second object is either a service object which performs a service that provides a computational result on data or a container object;

performing a service with respect to said first object if said second object is a service object; and

moving the representation of the first object from said first location to a new location associated with said second object if said second object is a container object, regardless of a source of the first object.

18. A method for manipulating objects in a graphical user interface for a computer, of the type in which representations of objects stored in a memory are displayed to a user on a display, comprising the steps of:

selecting a first object whose representation is displayed on said display;

dragging the representation of the first object from a first location on the display to a second location associated with a second object;

determining whether said second object is a container object;

detecting whether there is an indication of a user-initiated modified operation; and

if said second object is a container object, always performing a move operation if there is no indication of a user-initiated modified operation, regardless of a source of the first object.

26. A method for manipulating objects in a graphical user interface for a computer, of the type in which representations of objects stored in a memory are displayed to a user on a display, comprising the steps of:

selecting a first object whose representation is displayed on said display;

dragging the representation of the first object form a first location on the display to a second location associated with a second object;

determining whether said second object is either a service object or a container object;

performing a service with respect to said first object if said second object is a service object;

detecting whether access to said first object is limited;

moving the representation of the first object from said first location to a new location associated with said second object if said second object is a container object, regardless of a source of the first object if access to said first object is not limited; and

prohibiting the movement of the representation of the first object to said new location if access to said first object is limited.

References

The references relied on by the Examiner are as follows:

Owens et al. (Owens) 5,530,865 Jun. 25, 1996

R. E. Berry, The Designer's Model of The CUA Workplace, IBM Systems Journal Vol. 31, No. 3, pp. 429-458, 1992.

Rejections at Issue

Claims 1 through 3, 5, 6, 10 through 22, 24 and 25 stand rejected under 35 U.S.C. § 103 as being unpatentable over Berry. Claims 4, 23 and 26 through 28 stand rejected under 35 U.S.C. § 103 as being unpatentable over Berry and Owens.

Before us for our consideration are Appellant's Brief and Reply Brief[1] as well as the Examiner's Answer.

OPINION

After a careful review of the evidence before us, we agree with the Examiner that claims 1 through 6 and 10 through 25 are properly rejected under 35 U.S.C. § 103. Thus, we will sustain the rejection of these claims but we will reverse the rejection of the remaining claims 26 through 28 on appeal for the reasons set forth *infra*.

First, we will consider the rejection of claims 1 through 3, 5, 6, 10 through 22, 24 and 25 under 35 U.S.C. § 103 as being unpatentable over Berry. With regards to Appellant's grouping of

[1] Appellant filed an Appeal Brief, on July 12, 1999. Appellant then filed a Substitute Appeal Brief (hereinafter referred to as the Brief) on September 8, 1999. Appellants filed a Reply Brief on November 15, 1999. The Examiner mailed an office communication on November 29, 1999 stating that the reply brief has been entered.

claims as standing and falling together, we see that, on page 5, lines 10-12 of the brief, that Appellant has provided a statement that "[a]ppellant does not consider all rejected claims which have been grouped in a single ground of rejection to stand or fall together. The bases for the separate patentability of various claims are set forth in the following arguments." Further, we note that in the Brief, Appellant has argued claims 1 through 6 and 10 through 17 as a single group with the arguments drawn to the subject matter in claim 1. See page 5, line 16 through page 7, line 21. We also note that Appellant has argued claims 18 through 25 as a single group with the arguments drawn to the subject matter of claim 18. See page 7, line 21 through page 8, line 26. Lastly we note that Appellant has argued claims 26 through 28 as a single group with the arguments drawn to the subject matter in claim 26.

Therefore, in light of Appellant's arguments, we have determined that claims 1 through 6 and 10 through 17 stand and fall together, claims 18 through 25 stand and fall together, and claims 26 though 28 stand or fall together. 37 CFR § 1.192 (c)(7) (July 1, 1999) ***as amended at*** 62 Fed. Reg. 53196 (October 10, 1997), which was controlling at the time of Appellant's filing the brief, states:

> For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

In addressing claim 1, as a representative claim of the group of claims 1 through 6 and 10 through 17 for the reasons set forth *supra*, we see that Appellant states that "the rejected claims are not obvious in view of the Berry document, since Berry does not disclose or suggest each and every element of those claims." See page 5, lines 16-17 of the Brief. Appellant then argues, with regards to Berry, that,

> [i]f both the source and destination are *within* the same workplace, the result is to move the source object. However, if the source and destination are not within the same workplace, the result is a *copy* operation. (Page 450, right column, first three full paragraphs.) The workplace is described on page 441, left column, as the area within the computer screen. A removable storage device such as a floppy disk is considered to be outside of the workplace. See page 6, lines 14-19 of the Brief.

Appellant further argues that "the Berry article explicitly teaches away from the claimed invention. For example, Berry, in pages 449-450, expressly discloses a drag and drop technique

wherein the type of drag and drop operation performed depends upon a plurality of factors." See page 7, lines 3-6 of the Brief. Appellant finally argues that Berry states on page 450 that,

> 'dragging a data object, container object, or device object to a workplace container results in moving the source object into the target container.' Later in the same column, when discussing containers that are *outside* the current workspace, Berry states the following: 'If the target is a device that provides containment behavior, the source object is **copied** into the target container. For example, dragging an object to a . . . folder on a diskette causes the source object to be **copied** into the target object. (emphasis added).' Thus, it can be seen that the outcome is dependent upon whether the source of the object is in the same workspace as the destination for the object. **In contrast, the operation performed on the object being manipulated, in accordance with the present invention, is a MOVE (when the destination is a container object), whether or not the source document or media volume is the same as the destination.** (Emphasis added). See page 7, lines 9-21 of the Brief.

As pointed out by our reviewing court, we must first determine the scope of the claims. "[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).

We note that Appellant's claim 1 recites the following:

> determining whether said second object is either a service object which performs a service that provides a computational result on data or a container object;

> performing a service with respect to said first object if said first object is a service object; and
>
> moving the representation of the first object from said first location to a new location associated with said second object if said second object is a container object, regardless of a source of the first object.

In reviewing Appellant's disclosure to understand Appellant's claim limitations, we note on pages 6-8 of the specification that Appellant defines the service object and the container object. Further, Appellant also uses examples to define a first object and a second object, original locations and destination objects (*i.e.*, the first and second locations). Specifically, Appellant discloses,

> Figure 3A illustrates some examples of **different types of container objects that can serve as destinations** for a drag-and-drop operation. Referring thereto, a **window 52** contains a **file 54** which the user has selected with a cursor. This file can be **dragged to another window 56 on the desktop**. Alternatively, it can be **dragged to a folder 58**, which could **reside within a window or on the desktop** itself. As a third alternative, the **file 54 can be dragged into a text document 60 which might be displayed in another window. Each of the objects to which the file 54 is moved in the examples of Figure 3A, namely the window 56, the folder 58 and the document 60, is a 'container' object. These objects have the ability to embed objects within their contents.** (Emphasis added). See page 6, line 28 to page 7, line 6 of Appellant's specification.

We also note that Appellant discloses,

> [i]n addition to container objects, a given **object can also be dragged to a service object.** Referring to Figure 3B, the file 54 can be dragged onto an icon 62 which represents a **printer.** As an alternative, the file 54 can be dragged onto an icon 64 that represents a **word count service.** When the file is dropped onto the printer icon 62, it causes the **contents of the file to be printed** at a particular printer associated with the icon. When it is dropped on the work count service icon 64, an application is launched which **counts the number of words in the file,** and reports the results of the count to the user. **Whenever either of these services is performed, the dropped object remains intact, i.e., it is not consumed by the service.** (Emphasis added). See page 7, lines 17-27 of the specification.

Finally we note that Appellant discloses,

> [t]he specific action that is performed is determined by the destination for the dragged object. **If the destination is a container object, such as any of the examples illustrated in Figure 3A,** the dragged object is moved from its original location to the destination object. Alternatively, **if the destination object is a service provider, as illustrated in Figure 3B,** the associated service is carried out with respect to the dragged object, but the perceived location of the object does not change. In other words, in the example of Figure 3B, the icon 54 returns to its original location in the window 52. See page 7, line 30 through page 8, line 5 of the specification.

Therefore, interpreting Appellant's claim in light of the disclosure, we find that the scope of Appellant's claim 1 includes: **first**) determining whether the second object is either a service object (***i.e.*, an object that provides a service result**

(for example printing or word counting) on the first object wherein the object remains intact and is not consumed by the service) or a container object (***i.e.*, an object to which the file is moved such as a window, folder or document**); **second**) performing a service with respect to said first object if said second object is a service object (***i.e.*, a printer**); and, **third**) moving the representation of the first object from said first location to a new location associated with said second object if said second object is a container object (***i.e.*, a folder**), regardless of a source of the first object.

Upon careful review of Berry, we find that Berry clearly teaches the step of "determining whether the second object is either a service object which performs a service that provides a computational result on data or a container object." In particular, we find that Berry discloses this limitation when defining that the second object can have either **container behavior (*i.e., folder)*** or **device behavior (*i.e.*, service object or printer)**. We further find that "[a]n object's behavior determines such aspects as which views are provided, which user actions are supported, and what should happen in data transfer operations, such as when another object's icon is dragged to and

dropped on that object's icon." See Berry, page 435, first column, first, second and fourth full paragraphs. Therefore, we find that Berry teaches both container objects and device (service) objects and that each functions differently. Hence, we find that Berry's system needs to make a determination on the type of the several objects of interest (***i.e.***, container object or device object) so that the appropriate processes can be performed.

Next, we find that Berry clearly teaches the step of "performing a service with respect to said first object if said second object is a service object." In particular, we find that Berry teaches this limitation when disclosing that "[a] printer, for example is a device object" (see page 435, second column, first full paragraph of Berry) and that "[o]bjects that are dragged to a printer **are *copied***." (Emphasis added). See page 435, second column, third full paragraph of Berry. More specifically, we find that Berry teaches that, "[f]or example, dragging the icon of a spreadsheet to the icon of a printer would cause a view of the spreadsheet to be printed." See page 449, second column, fourth full paragraph of Berry. Therefore, we find that Berry's function of performing a service with respect

to the first object, such as printing, reads on Appellant's limitation of performing a service with respect to said first object if said first object is a service object.

Lastly, we find that Berry teaches the step of "moving the representation of the first object from said first location to a new location associated with said second object if said second object is a container object, regardless of a source of the first object. In particular, we find that Berry teaches this limitation when disclosing that, "[a] container object, such as a folder, is used primarily as a place to store other objects . . . [and] objects that are dropped on a container's icon **are moved** into that container." (Emphasis added). See page 435, first column, last paragraph through second column, first paragraph of Berry. Therefore, we find that Berry's function of moving an object to a container, such as the folder, reads on Appellant's limitation of moving the representation of the first object from said first location to a new location when the second object is a container object. Finally, we fail to find anything in Berry that teaches that the first object would not be moved when the second object is a folder, without regard to the source of the first object.

As stated *supra*, Appellant argues that in reference to the

containers in Berry's system, the "outcome is dependent upon whether the source of the object is in the same workspace as the destination for the object." See page 7, lines 17-18 of the Brief.

We fail to find that this limitation is set forth in Appellant's claim language of claim 1.

Further, Appellant argues that, "the operation performed on the object being manipulated, in accordance with the present invention, is a MOVE (when the destination is a container object), whether or not the source document or media volume is the same as the destination." See page 7, lines 18-21 of the Brief.

Again, we fail to find that this limitation is set forth in Appellant's claim language of claim 1. Specifically, having determined the scope of the claim, we find nothing in Appellant's claim language that precludes the reading of Berry's teaching on the claim as stated *supra*. We are relying on Berry's teaching of the second object being a folder which enables Berry's system to operate in the same way as Appellant's claim. Further, we note that Appellant's claim does not preclude other features such as a diskette.

Hence, we find that Appellant's claim language does not preclude the reading of the Berry's teaching on Appellant's claim 1 and therefore we find that the teachings of Berry meet Appellant's claimed limitation of the steps of determining whether the second object is a service or container object, then either performing a service or performing a move as argued and set forth *supra*.

For claims 1 through 6 and 10 through 17, Appellant has not made any other arguments. 37 CFR § 1.192 (a) states:

> Appellant must, within two months from the date of the notice of appeal under § 1.191 or within the time allowed for reply to the action from which the appeal was taken, if such time is later, file a brief in triplicate. The brief must be accompanied by the fee set forth in § 1.17 (c) and must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

Thus, 37 CFR § 1.192 provides that only the arguments made by Appellant in the brief will be considered and that failure to make an argument constitutes a waiver on that particular point. Support for this rule has been demonstrated by our reviewing court in ***In re Berger***, 279 F.3d 975 (Fed. Cir. 2002), wherein the

Federal Circuit Court stated that because the Appellant did not contest the merits of the rejections in his brief to the Federal Circuit court, the issue is waived.

We have carefully considered the objective evidence as well as the prior art relied upon by the Examiner. We find that Appellant's claim 1 is properly rejected under 35 U.S.C. § 103. In view of the foregoing, we will sustain the decision of the Examiner rejecting claims 1 through 6 and 10 through 17 under 35 U.S.C. § 103.

Now we turn to the rejection of claims 18 through 25 under 35 U.S.C. § 103 as being unpatentable over Berry and Owens.

Appellant argues that "[c]laim 18 specifically recites that the operation is 'always' a move if the user has not initiated a modification." See page 7, lines 21-22 of the Brief. Appellant further argues that "[t]he technique described in the Berry reference does not provide such consistent behavior across all forms of source and target media, as does the claimed invention." See page 7, lines 22-25 of the Brief. Appellant then argues that Berry,

> (See, for example, page 435, right column, third full paragraph; and page 450, right column, first full paragraph.) . . . [does] not suggest that a move operation is always performed when an object is dropped on a container. Rather, these portions of the

> reference pertain only to actions which are carried out when the source and destination for the target are *within* the same workplace. They do not suggest that a move operation is always performed, regardless of the source of the object." See page 8, lines 5-11 of the Brief.

We note that Appellant's claim 18 recites the following:

> determining whether the said second object is a container object;
>
> detecting whether there is an indication of a user-initiated modified operation; and
>
> if said second object is a container object, **always** performing a move operation if there is no indication of a user-initiated modified operation, regardless of a source of the first object.

In reviewing Appellant's disclosure, we note that on page 7, line 31 to page 8, line 2 of the specification, Appellant discloses that, "[i]f the destination is a **container object**, such as any of the examples illustrated in Figure 3A, the dragged object **is moved** from its original location to the destination object." Appellant further discloses that,

> [o]f course, there may be instances when the user desires to place a copy of a selected object at the destination, and leave the original version of the object intact, rather than move it. For example, referring to Figure 3A, the user may desire to place a copy of the file 54 in the folder 58. **In this situation, the user can indicate the desire to make a copy by performing a specified action during the drag-and-drop operation.** See page 8, lines 10-15 of the specification.

Upon careful review of Berry, and for the reasons set forth *supra* in addressing claim 1, we find that Berry clearly teaches "determining whether the said second object is a container object." Next, we find that Berry also clearly teaches "detecting whether there is an indication of a user-initiated modified operation." In particular, we find that Berry discloses this limitation when addressing the concept of drag-and-drop based on container and device distinctions by stating that, "[o]verrides should be available to allow users to explicitly request useful alternative results." See Berry page 450, first column, fourth and fifth paragraphs. Further, we find that Berry discloses, "[u]sers can override the impending result, shown by the appearance of the source outline and pointer, to explicitly cause a move, a copy, or a link." See Berry page 450, second column, fourth full paragraph. Therefore, since there is a user-initiated modified operation performed when the override is initiated, we find that Berry's system would need to detect such a user interaction so as to perform the appropriate action such as a move, a copy, or a link.

Lastly, we find that Berry also clearly teaches "if said second object is a container object, **always** performing a move operation if there is no indication of a user-initiated modified

operation, regardless of a source of the first object." In particular, as stated with respect to the limitations above, we find that Berry only discloses a move when the second object is a container object (***i.e.***, a folder) unless, as later disclosed by Berry, that a user override is initiated when a move may not be desired (i.e. the user wants to perform a copy function). Therefore, we find that Berry's system **always** performs a move operation, as argued *supra* if the second object is a container object (***i.e.***, a folder) and if there is no indication of a user-initiated modified operation, regardless of a source of the first object.

Addressing Appellant's argument that "the Berry reference does not provide such consistent behavior across all forms of source and target media . . ." (see page 7, lines 22-25 of the Brief), we fail to find that this limitation is set forth in Appellant's claim language of claim 1.

We further note that Appellant also argues that,

> [s]pecifically, on page 450, left column, the last sentence of the third paragraph states: 'The result of drag and drop depends on the classes of the *source* and target objects. (emphasis added).' . . . Hence, when the Berry reference is viewed as a whole for what it fairly teaches to one of ordinary skill in the art, it cannot be properly interpreted to suggest that a move operation is performed when an object is dragged and

> dropped onto a container object, regardless of the source of the object, since the relationship between the source and the destination determines whether the object is moved or copied. See page 8, lines 13-15 and lines 19-24 of the Brief.

We fail to find that Appellant's claim limitations preclude other embodiments such as Berry's teaching wherein "**objects that are dropped on a container's icon are moved into that container.**" See page 435, second column, first part paragraph of Berry. Further, we find that Berry discloses a multitude of independent embodiments with respect to drag, drop, copy and move. Hence, we find that Appellant's claim language does not preclude Berry's teaching of, **always moving the object when the second object is a container object such as a folder**, as reading on Appellant's claim 18. Further, since Appellant has not made any other arguments in regard to the Berry reference and claim 18, we therefore find that the teachings of Berry meet Appellant's claimed limitation.

As stated above, we have carefully considered the objective evidence as well as the prior art relied upon by the Examiner. We find that Appellant's claim 18 is properly rejected under

35 U.S.C. § 103. In view of the foregoing, we will sustain the decision of the Examiner rejecting claims 18 through 25 under 35 U.S.C. § 103.

Now we turn to the rejection of claims 26 through 28 under 35 U.S.C. § 103 as being unpatentable over Berry and Owens. We note that Appellant argues that the Owens reference "does not disclose that a move operation is prohibited if a drag is performed on an object with limited access." See page 9, lines 13-14 of the brief. Appellant further argues that,

> [t]he [Owens] patent goes on to state that, in cases where the copy operation is not applicable, the depression of the Option key 'can be something else,' such as overriding a confirmation dialogue. This description of the alternative operations that are carried out when the Option key is depressed **do not suggest the subject matter of claim 26**, wherein a determination is made whether access to the dragged object is limited, and if so the movement of the representation of the object is prohibited. (Emphasis added). See page 9, lines 17-23 of the Brief.

On page 3 lines 6-8 of the Answer, reference to the Final Office action found in Paper No. 16, the Examiner sets forth the rejection of Appellant's claims 26 through 28 under 35 U.S.C. § 103 over Berry and Owens. In the rejection the Examiner states that, "Berry fails to explicitly teach the prohibiting of the Move operation is [sic, if] the first object has limit access." See page 3, lines 9-10 of the Final rejection. In meeting the

shortcoming of Berry, the Examiner states that, "Owens et al teach the determining whether the object is to be copied if the object has limit access (col. 18, lines 15-21)."

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a ***prima facie*** case of obviousness. ***In re Oetiker***, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Further, our reviewing court in ***In re Dembiczak***, 175 F.3d 994, 999-00, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) has said,

> Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.' *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."); ***In re Sichert***, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977).

We note that Appellant's claim 26 recites the following:

> detecting whether access to said first object is limited;
>
> moving the representation of the first object from said first location to a new location associated with said second object if said second object is a container object, regardless of a source of the first object if access to said first object is not limited; and
>
> prohibiting the movement of the representation of the first object to said new location if access to said first object is limited.

Upon careful review of Berry, we find there is no dispute that Berry fails to teach the aforementioned limitation of claim 26. Further, upon careful review of Owens, we find that Owens does disclose the concept of "read-only" and the use of an option key to provide a secondary function when performing a drag operation. However, we fail to find anything in Owens that would suggest the aforementioned limitation of claim 26 as the Examiner asserts in the office action.

Therefore, upon reviewing each of Berry and Owens, *supra*, we find nothing in any of the references that supports the Examiner's position that the combination of these references teaches the limitations of claim 26 as previously discussed.

The Federal Circuit states that, "[t]he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." ***In re Fritch***, 972 F.2d 1260, 1266 n.14, 23 USPQ2d 1780, 1783-84 n.14 (Fed. Cir 1992), ***citing In re Gordon***, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). In addition, our reviewing court stated in ***In re Lee***, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002), that when making an obviousness rejection based on

combination, "there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant", (quoting ***In re Dance***, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998).

Having reviewed the Berry and Owens references, we find no factual basis or motivation for suggesting their combination even in light of the Examiner's contention that the motivation to combine Owens and Berry is "for access protection." Therefore, we will not sustain the Examiner's rejection of claim 26 under 35 U.S.C. § 103. Further, claims 27 and 28 are dependent upon claim 26 and therefore include all the limitations of claim 26. Hence, we will not sustain the Examiner's rejection of claims 27 and 28 under 35 U.S.C. § 103.

In view of the foregoing, the decision of the Examiner rejecting claims 1 through 6 and 10 through 25 under 35 U.S.C. § 103 is affirmed; however, the decision of the Examiner rejecting claims 26 through 28 under 35 U.S.C. § 103 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED IN PART

MICHAEL R. FLEMING Administrative Patent Judge	)	
JOSEPH F. RUGGIERO Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
PARSHOTAM S. LALL Administrative Patent Judge	)	

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