The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

Paper No. 48

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte TAKESHI KITANAKA, ATSUSHI MASUDA
and YOSHIO UTSUGI

Appeal No. 2002-0074
Application No. 08/800,758

HEARD: March 21, 2002

Before COHEN, FRANKFORT, and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 11 to 16, which are all of the claims pending in this application.[1]

We AFFIRM.

[1] While the examiner has approved entry of the amendment after final rejection to claim 12 (Paper No. 34, filed January 12, 2001), we note that this amendment has not been clerically entered.

BACKGROUND

The appellants' invention relates to a vertical installation system in which information processing apparatuses are to be installed. A copy of the claims under appeal is set forth in the supplemental appendix to the appellants' appeal brief (Paper No. 41, filed April 27, 2001).

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Evans	3,567,039	March 2, 1971
Devening	4,941,578	July 17, 1990

Claims 11 and 14 to 16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Devening.

Claims 11 to 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Evans.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the final rejection (Paper No. 33, mailed August 15, 2000) and the answer (Paper No. 42, mailed

May 17, 2001) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 39, filed March 30, 2001) and reply brief (Paper No. 43, filed July 17, 2001) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection

We sustain the rejection of claims 11 and 14 to 16 under 35 U.S.C. § 102(b).

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert.

denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Devening's invention relates to a high density system of movable storage racks in which groups of racks are arranged side by side in a row with the racks being selectively movable individually or in groups so as to leave a loading and unloading space between any two of the racks. As shown in Figure 1, a high density, mobile storage system 10 comprises groups of shelving racks 13 arranged in rows 14. The shelving racks 13 each comprise four corner posts 15 which support multiple shelves 16. Casters 17 are mounted in the lower end of each of the four corner posts 15 of each rack. These casters support rotatable wheels 18 which rotate about a horizontal axis. The wheels of the casters, though, do not swivel or pivot about a vertical axis, but are fixed to the posts such that the wheels all rotate about parallel, horizontal axes, which axes extend perpendicular to the length of the rows of shelving racks. The endmost ones of the shelving racks 13 in each row of racks 14 are fixedly secured to guide rails 25 associated with that row. In the assembly of the shelving racks 13 to the guide rails 25, a loading and unloading space is left between two of the racks. Because of the presence of this unloading and loading space 35, all but the endmost racks may

be selectively moved individually or in groups so as to reposition the loading and unloading space between any two of the racks.

Figure 2 of Devening is a side elevational view of one row of racks employed in the system. Devening describes the method of assembling one row of shelving racks (column 3, lines 39-68) as follows:

> the guide blocks 20 of a first endmost rack are assembled to a pair of guide rails 25. This involves slipping the two endmost guide blocks 20 at one end of a rack 13 over one guide rail and slipping the two guide blocks 20 on the opposite end of the rack 13 over a second guide rail 25. Locking collars 30 are then placed over the guide rails 25 on opposite sides of the rack with the locking collars resting against the outer edge of each of the four guide blocks mounted in the upper ends of the four corner posts of this first shelf. The locking screws 31 of those four locking collars are then fixed to the shafts. The caster brakes 19 associated with the casters on the lower end of this first or endmost shelving rack are then locked to the floor so as to prevent movement of the endmost rack relative to the floor.
>
> All but the other end rack of the row of racks are then mounted over the guide rails 25 of the row of racks 14. This involves sliding two end guide blocks of each rack over one of the guide rails 25 until all of the guide blocks of all of the racks in the row are located over the rails, except for the second endmost rack. Before this second endmost rack is connected to the guide rails 25, a pair of collars 30 are fitted over the shafts 25. The guide blocks 20 of the endmost rack are then fitted over the guide rails 25, and end collars 30 are then positioned over the ends of the rails 25. The locking collars 30 associated with this second endmost rack are then fixed to the guide rails by the set screws 31.

The appellants argue (brief, p. 9; reply brief, p. 4) that Devening does not anticipate claims 11 and 14 to 16 since the moving structure as claimed in the rejected claims is not disclosed in Devening. We do not agree.

The moving structure as claimed in the rejected claims[2] is "readable on" one of Devening's middle shelving racks located between the two endmost shelving racks. For example, the moving structure as claimed in claim 15 is "readable on" the shelving row of racks shown in Figure 2 of Devening as follows (where the four shelving racks shown are designated shelving rack #1, shelving rack #2, shelving rack #3 and shelving rack #4, from left to right in the figure): a moving structure capable of moving horizontally in the longitudinal direction of said vertical installation structure (Devening's shelving rack #2 is capable of moving horizontally in the longitudinal direction of the row of racks),

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[2] E.g., as recited in claim 15,

> a moving structure capable of moving horizontally in the longitudinal direction of said vertical installation structure, said moving structure comprising: stages on which at least one information processing apparatus is to be placed, and
>
> prop supporting members supporting said stages so that said stages are vertically arranged and each of said stages corresponds vertically to each of said placing stages of said vertical installation structure and said stages are horizontally arranged at the same intervals as said placing stages of said vertical installation structure, whereby the information processing apparatus set on each of which said stages is transferrable to a corresponding one of said placing stage of said vertical installation structure by sliding the information processing apparatus along the stages of the moving structure to the placing stages of the vertical installation structure.

said moving structure comprising: stages on which at least one information processing apparatus is to be placed (Devening's shelving rack #2 has shelves 16 capable of supporting information processing apparatus), and prop supporting members supporting said stages so that said stages are vertically arranged (Devening's shelving rack #2 has four corner posts 15 that support the shelves 16 vertically) and each of said stages corresponds vertically to each of said placing stages of said vertical installation structure and said stages are horizontally arranged at the same intervals as said placing stages of said vertical installation structure (the shelves 16 of Devening's shelving rack #2 correspond vertically and are horizontally arranged at the same intervals as the shelves 16 on Devening's shelving racks #1 and #3), whereby the information processing apparatus set on each of which said stages is transferrable to a corresponding one of said placing stage of said vertical installation structure by sliding the information processing apparatus along the stages of the moving structure to the placing stages of the vertical installation structure (the shelves 16 of Devening's shelving rack #2 are capable of transferring information processing apparatus to a corresponding shelf by sliding the information processing apparatus along a shelf of Devening's shelving rack #2 to an adjacent shelf on either Devening's shelving rack #1 or Devening's shelving rack #3).

For the reasons set forth above, the decision of the examiner to reject claims 11 and 14 to 16 under 35 U.S.C. § 102(b) is affirmed.

The obviousness rejection

We sustain the rejection of claims 11 to 13, 15 and 16 under 35 U.S.C. § 103, but not the rejection of claim 14.

Evans discloses a system for storing articles in a rack having a plurality of shelves and removing them therefrom using a movable and adjustably elevated loading conveyor. The storage areas in the rack are provided with slide assemblies adapted to receive an article to be stored therein and the loading conveyor is movable to positions relative to said rack which directly align articles carried therein with storage areas in the rack so that the articles can be readily loaded and unloaded. As shown in the drawings (Figures 1-10), the system includes (1) a storage rack 20 to hold thirty-six caskets 22 stacked for ready removal six high on six shelves in three parallel rows of two caskets 22 each, and (2) an elevator conveyor including a casket platform or conveyor pallet 24 constructed to removably carry normally two stacked caskets 22 and a forklift truck 26 which can raise or lower the pallet 24 to predetermined positions relative to the storage rack 20 to load or unload caskets 22 therein. In order to facilitate movement of the

caskets 22 they are mounted on conveyors 50 when carried by the pallet 24 and a sliding support 40 when stored in the rack 20.

The storage rack 20 of Evans has a number of horizontal storage shelves and is a generally rectangular frame structure which is normally secured in a fixed position on a warehouse floor 28. Each of the storage shelves of the rack 20 include six equal length parallel and horizontal longitudinal stringers 30 disposed in the same plane in three sets of adjacent pairs of stringers 30. The pairs of stringers in a set are spaced from each other slightly less than the width of a casket 22 and from the next stringer 30 of a set, a sufficient distance to prevent caskets 22 mounted on one paired set of stringers 30 from touching caskets 22 mounted on an adjacent paired set of stringers 30. The length of each of the longitudinal stringers 30 is about twice as long as a casket 22. Support for the longitudinal stringers 30 is provided by means of four vertical end stringers 36, end stringers 32, a horizontal middle stringer 34, a pair of vertical middle stringers 38 and a pair of side stringers 38a.

The pallet 24 of the elevator conveyor of Evans (best viewed in Figures 8 and 9) is comprised essentially of a double deck frame structure in which each deck is just large enough to carry a casket 22 which is mounted for longitudinal movement on parallel conveyors 50. The pallet 24 is framed by a pair of parallel lower horizontal

longitudinal base beams 52, a pair of lower horizontal end beams 54, four vertical intermediate posts 62, four corner posts 60, a pair of upper horizontal end beams 64 and the conveyors 50.

Evans describes the method of operation of his system (column 5, lines 8-46) as follows:

> In operation, a pair of caskets 22 which are to be loaded in a rack 20 are rolled longitudinally through an end of pallet 24 onto the upper and lower decks formed by the conveyors 50. At this time the stop assemblies 78 are pivoted to open position on the end through which the caskets 22 are loaded. When the caskets 22 are fully mounted on the platforms of the pallet 24 the stop assemblies 78 are pivoted to closed position. Then a lift truck 26 is driven to the pallet 24 and its fork prongs 80 are guided into the fork receiving channels 56 of the pallet 24. The lift truck 26 carries the pallet 24 and caskets 22 loaded thereon to a rack 20 and is turned so that the longitudinal axis of pallet 24 is aligned with the longitudinal axis of rack 22 and is also positioned directly in alignment with one of the three rows of storage spaces on either end of the rack 20.
>
> Then the pallet 24 is elevated by the lift truck 26 until one of the decks thereof is substantially in horizontal alignment with a shelf of rack 20 having a vacant space in which a casket 22 is desired to be stored. At this time a workman opens the stop assembly 78 on the adjacent end of pallet 24 and rolls a casket 22 therefrom over a roller 48 in the rack 20 and lodges its forward end in a slide assembly 40 which has been slid outwardly to receive the casket 22. The job is completed by pushing casket 22 into the rack 20 which causes the engaged slide assembly 40 to slide inwardly until it rests against a slide stop 47.
>
> In a like manner as many caskets 22 as there are available vacant spaces in rack 20 may be loaded therein. To unload a casket 22 from rack 20 the loading procedure is reversed. That is, the forklift truck 26 carries a pallet 24 adjacent to an end of rack 20 so that one of the decks of pallet 24 is in longitudinal alignment with the space on a shelf of rack 20 from which a casket 22 is desired to be removed. The stop assembly 78 on the deck to be loaded is

opened and the casket 22 pulled from the rack 20 over roller 48 onto the deck of the pallet 24 which slides the slide assembly 40 outwardly into position to receive another casket for storage. When the caskets 22 are loaded on the pallet 24 the stop assemblies 78 on each end are closed.

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Claim 11

Claim 11 reads as follows:

> A vertical installation system comprising:
> a vertical installation structure extending in a longitudinal direction, comprising:
> placing stages on which information processing apparatuses are to be installed, and
> supporting members supporting said placing stages so that said placing stages are vertically arranged; and
> a moving structure capable of moving horizontally in the longitudinal direction of said vertical installation structure, said moving structure comprising: stages on each of which at least one information processing apparatus is to be placed, each of said stages being vertically arranged so as to correspond vertically to each of said placing stages of said vertical installation structure, and
> prop supporting members supporting said stages so that said stages are vertically arranged and each of said stages is level with a corresponding one of said placing stages of said vertical installation structure, wherein said stages and said placing stages are positioned to enable the transfer of the information processing apparatus from each of said stages of said moving structure to a corresponding one of said placing stages of said vertical installation structure.

Based on our analysis and review of Evans and claim 11, it is our opinion that there is no difference. In our view, claim 11 is anticipated by Evans when the pallet 24 is positioned as shown in Figure 1 of Evans.[3] In that regard claim 11 is readable on Evans as follows: A vertical installation system comprising:

(1) a vertical installation structure extending in a longitudinal direction, comprising: placing stages on which information processing apparatuses are to be installed, and supporting members supporting said placing stages so that said placing stages are vertically arranged (Evans' storage rack 20 which extends in a longitudinal direction along which the forklift truck 26 moves; the rack 20 includes stringers 30 on which information processing apparatuses are capable of being installed, and stringers 36 and 38 supporting the stringers 30 so that the stringers 30 are vertically arranged); and

(2) a moving structure capable of moving horizontally in the longitudinal direction of said vertical installation structure (Evans' pallet 24 is capable of moving horizontally in the longitudinal direction of the storage rack by the forklift truck 26), said moving structure comprising: stages on each of which at least one information processing apparatus is to be placed, each of said stages being vertically arranged so as to correspond vertically to each of said placing stages of said vertical installation structure (Evans' pallet 24 includes conveyors 50 which are vertically arranged so as to correspond vertically to

[3] The examiner on page 5 of the answer noted that "[t]his interpretation [i.e., the examiner's third interpretation of Evans which is set forth on pages 2-3 of the final rejection (Paper No. 33)] of Evans actually anticipates many of the appealed claims."

each of the adjacent stringers 30 of the rack 20), and prop supporting members supporting said stages so that said stages are vertically arranged (Evans' pallet 24 includes posts 60 and 62 which support the conveyors 50 so that the conveyors 50 are vertically arranged) and each of said stages is level with a corresponding one of said placing stages of said vertical installation structure (as shown in Figure 1, each of Evans' conveyors 50 is level with a corresponding one of the stringers 30 of the rack 20), wherein said stages and said placing stages are positioned to enable the transfer of the information processing apparatus from each of said stages of said moving structure to a corresponding one of said placing stages of said vertical installation structure (as shown in Figure 1, Evans' conveyors 50 and the corresponding stringers 30 of the rack 20 are positioned to be capable of transferring information processing apparatus from each of the conveyors 50 of the pallet 24 to a corresponding one of the stringers 30 of the rack 20).

In our view, the appellants argument (brief, p. 7; reply brief, pp. 3-4) that the limitation "said placing stages are positioned to enable the transfer of the information processing apparatus from each of said stages of said moving structure to a corresponding one of said placing stages of said vertical installation structure" is not met by Evans is in error. We disagree with the appellants that this limitation requires that the number of placing stages provided in the system **equal** the number of stages of

the moving structure. It is well settled that limitations are not to be read into the claims from the specification. In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993) citing In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). In our view, as noted in the above paragraph, the limitation relied upon by the appellants to distinguish over the teachings of Evans is readable on the arrangement of Evans' system depicted in Figure 1. In that regard, the upper conveyor 50 of Evans' pallet 24 "is positioned to enable the transfer of information processing apparatus" to a corresponding one of the stringers 30 of the rack 20 (i.e., the stringers 30 which are shown as receiving casket 22 from the upper conveyor 50) and the lower conveyor 50 of Evans' pallet 24 "is positioned to enable the transfer of information processing apparatus" to a corresponding one of the stringers 30 of the rack 20 (i.e., the stringers 30 which are shown as receiving casket 22 from the lower conveyor 50).

As noted above, Evans does teach all the limitations of claim 11. While this is, in effect, a holding that claim 11 is anticipated by Evans under 35 U.S.C. § 102(b), affirmance of the 35 U.S.C. § 103 rejection is appropriate, since it is well settled that a disclosure that anticipates under 35 U.S.C. § 102 also renders the claim unpatentable under 35 U.S.C. § 103, for "anticipation is the epitome of obviousness." Jones v. Hardy, 727 F.2d 1524, 1529, 220 USPQ 1021, 1025 (Fed. Cir. 1984). See also In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); In re Pearson, 494

F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974). Thus, we sustain the examiner's rejection of appealed claim 11 under 35 U.S.C. § 103.

Claim 12

With respect to dependent claim 12, the appellants argue (brief, p. 7) that the limitation "one of the stages of said moving structure which stage is level with said one of said placing stages of said vertical installation structure" is not met by Evans. We do not agree for the reasons adequately set forth above with respect to parent claim 11. Clearly, the stringers 30 of Evans which are shown as receiving casket 22 from the upper conveyor 50 of pallet 24 in Figure 1 are level with one another. Thus, we sustain the examiner's rejection of appealed claim 12 under 35 U.S.C. § 103.

Claim 13

Claim 13 which depends from claim 12 has not been separately argued by appellants as required in 37 CFR § 1.192(c)(7) and (8)(iv). Accordingly, we have determined that claim 13 must be treated as falling with claim 13. See In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987). Thus, it follows that we sustain the examiner's rejection of appealed claim 13 under 35 U.S.C. § 103.

Claim 14

With respect to independent claim 14, the appellants argue (brief, pp. 7-8) that the limitation "a moving structure capable of moving horizontally in the longitudinal direction of said two vertical installation structures" is not met by Evans. The two vertical installation structures are the two vertical installation structures arranged parallel to each other on opposite sides of an alley with each extending in a longitudinal direction as previously recited in claim 14. Claim 14 later recites that the moving structure is located in the alley. The examiner has not pointed out how these limitations are met by Evans or why these limitations would have been obvious at the time the invention was made to a person of ordinary skill in the art from the teachings of Evans. Thus, we do not sustain the examiner's rejection of appealed claim 14 under 35 U.S.C. § 103 since the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness[4] with respect to claim 14.

Claim 15

With respect to independent claim 15, the appellants argue (brief, p. 8) that the limitation "each of said stages is level with a corresponding one of said placing stages of said vertical installation structure" is not met by Evans. We do not agree for the

[4] In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993).

reasons adequately set forth above with respect to claims 11 and 12. Moreover, this language does not appear in claim 15. Additionally, as can be seen in Figure 1 of Evans, both the upper conveyor 50 and the lower conveyor 50 of pallet 24 are level with the adjacent stringers 30 of rack 20. Thus, we sustain the examiner's rejection of appealed claim 15 under 35 U.S.C. § 103.

Claim 16

With respect to independent claim 16, the appellants argue (brief, p. 8) that the limitation "a moving structure capable of moving horizontally in the longitudinal direction of said vertical installation structure, said moving structure including second stages on which at least one apparatus is to be placed, said second stages being vertically arranged and each of said second stages being level with a corresponding one of said first stages of said vertical installation structure" is not met by Evans. We do not agree for the reasons adequately set forth above with respect to claims 11, 12 and 15. Moreover, this language does not appear in claim 16. Thus, we sustain the examiner's rejection of appealed claim 16 under 35 U.S.C. § 103.

CONCLUSION

To summarize, the decision of the examiner to reject claims 11 and 14 to 16 under 35 U.S.C. § 102(b) is affirmed; the decision of the examiner to reject claims 11 to

13, 15 and 16 under 35 U.S.C. § 103 is affirmed; and the decision of the examiner to reject claim 14 under 35 U.S.C. § 103 is reversed.

Since at least one rejection of each of the appealed claims has been affirmed, the decision of the examiner is affirmed.

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

AFFIRMED

IRWIN CHARLES COHEN Administrative Patent Judge	)
CHARLES E. FRANKFORT Administrative Patent Judge	) BOARD OF PATENT) APPEALS) AND) INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)

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