

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte THOMAS NEUHAUS

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Appeal No. 95-3411  
Application 08/040,960<sup>1</sup>

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ON BRIEF

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Before JERRY SMITH, LEE and TORCZON, Administrative Patent Judges.

LEE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 4-8 under 35 U.S.C. § 112, second paragraph, as being indefinite and also under 35 U.S.C. 103 under prior art.

References Relied on by the Examiner

Bado et al.            U.S. Patent No. 4,703,423            October 27, 1987  
(Bado)

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Application for patent filed March 31, 1993.

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"Well known cook books"

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### The Rejections on Appeal

Claims 1-8 stand finally rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to point out and distinctly claim that subject matter which the appellant regards as his invention.

Claims 1-8 stand finally rejected under 35 U.S.C. § 103 as being unpatentable over Bado and well known cook books.

However, only the rejection of claims 4-8 has been appealed (Br. at 2). Accordingly, only the rejection of claims 4-8 is before us in this appeal.

### The Invention

The invention is directed to a hierarchical, computerized cooking instruction system whereby a user may branch through multiple paths to access cultural information, menu category, ingredients and cooking methods entailed and involved in the preparation of a variety of dishes to be prepared. In one aspect of the claimed invention (claim 4), a video memory means is used which supplies cooking information in animated form. In another aspect of the invention, an audio memory means is used which supplies cooking information in audio form (claim 7).

Representative claims 4 and 7, the only independent claims on appeal, are reproduced below:

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4. A hierarchical, computerized cooking instruction system whereby a user can branch through multiple paths to access cultural information, menu category, ingredients and cooking methods entailed and involved in the preparation of a variety of dishes to be prepared, comprising:

processing means having a hierarchical-type program for accessing cooking information from at least one memory library;

a display operatively connected to said processing means, having a screen for displaying cooking information accessed by said processing means;

input means operatively connected to said processing means for instructing said processing means regarding types of cooking information to be accessed; and

said at least one memory library comprising a video library memory means connected to said processing means, said video library memory means being accessible by said processing means to supply cooking information in animated form.

7. A hierarchical, computerized cooking instruction system whereby a user can branch through multiple paths to access cultural information, menu category, ingredients and cooking methods entailed and involved in the preparation of a variety of dishes to be prepared, comprising:

processing means having a hierarchical-type program for accessing cooking information from at least one memory library;

A display operatively connected to said processing means, having a screen for displaying cooking information accessed by said processing means;

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at least one speaker operatively connected to said processing means for providing audio perception of cooking information accessed by said processing means;

input means operatively connected to said processing means for instructing said processing means regarding types of cooking information to be accessed; and

said at least one memory library comprising an audio library memory means connected to said processing means, said audio library memory means being accessible by said processing means to supply cooking information in audio form.

#### Opinion

We do not sustain the rejection of claims 4-8 as being indefinite under 35 U.S.C. § 112, second paragraph.

We also do not sustain the rejection of claims 4-8 under 35 U.S.C. § 103 as being unpatentable over Bado and well known cookbooks.

The rejection of claims 4-8 under 35 U.S.C. § 112, second paragraph

The test for compliance with 35 U.S.C. § 112, second paragraph, is:

[W]hether the claim language, when read by a person of ordinary skill in the art in light of the specification, describes the subject matter with sufficient precision that the bounds of the claimed

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subject matter are distinct. In re Merat, 519 F.2d

1390, 1396, 186 USPQ 471, 476 (CCPA 1975).

The purpose of the statutory section is to provide reasonable notice as to the boundaries of the patent protection involved.

In re Hammack, 427 F.2d 1378, 1382, 166 USPQ 204, 208

(CCPA 1970). Only a reasonable degree of certainty is required.

In re Johnson, 558 F.2d 1008, 1016, 194 USPQ 187, 194 (CCPA 1977).

The examiner stated (answer at 3): "In claims 4 and 7, the use of 'being accessible' is vague and indefinite since it does not positively point out the operation of the system." However, the issue raised by the examiner does not concern indefiniteness. We see nothing vague or indefinite about the term "being accessible." It may be broad in that it covers any manner of giving access or being accessed, but it is not indefinite. Breadth does not equal indefiniteness.

Additionally, the examiner stated (answer at 3-4): "[I]t is not clear what means provides the recited branching through multiple paths of information." The "branching" referred to by the examiner is evidently that recited in a whereby clause in the preamble of both independent claims 4 and 7. The whereby clause evidently provides a summary or general overview of the combined

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capabilities of the various structures and means recited in the body of the claims and puts them in an overall context. It is not necessary that the claims precisely specify which means is providing the branching ability. It is apparent that as a collective unit, the computerized system provides the branching. That is not a matter of indefiniteness, but breadth.

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For the foregoing reasons, the rejection of claims 4-8 under 35 U.S.C. § 112, second paragraph, as being vague and indefinite cannot be sustained.

The obviousness  
rejection of claims 4-8

Initially, we express the points with which we agree with the examiner. The examiner correctly stated (answer at 5):

While Bado does not specifically teach searching the recipes according to ingredient or method of preparation, as is well known in the art, common cook books include sections or at least indices arranged according to a main ingredient (i.e. beef) or a method of preparation (i.e. grilling). Further, some well known cook books are directed solely toward recipes including a particular ingredient (i.e. hamburger) or using a particular method of cooking (i.e. stir-frying).

The appellant does not dispute that well known conventional written or textual cook books have the foregoing features which the examiner finds to be possessed by them. We are somewhat troubled by the examiner's not particularly citing any cook books in support of his rationale based on well known conventional cook books. However, the appellant's not disputing or challenging the

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examiner's assertions as to what the "well known" cook books show makes this issue moot as far as this appeal is concerned.

Nevertheless, we do not go as far as assuming that well known conventional cook books give information in animated or audio form, without the examiner's citing a particular cook book. On this record, assuming that would be tantamount to speculation. The examiner may not, because he or she may doubt that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the reference. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

In claim 4, the video memory means supplies cooking information in animated form. The specification discusses animation only in the context of video as opposed to audio. See, for example, page 5, lines 3-6 and page 6, lines 10-12. Accordingly, consistent with the specification, we construe "animated" to mean video. In this context, "video" does not have to include audio signals. Rather, it can be satisfied by non-still images without sound.

With respect to Bado, the examiner expressly acknowledges (answer at 5) that Bado does not teach the use of audio or video (animated) outputs for the cooking information stored in the

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memory means. However, the examiner nevertheless concludes (answer at 6) that it would have been obvious to one with ordinary skill in the art to modify Bado to include audio and video (animated) presentations of the stored cooking information. We disagree with the examiner, because the conclusion is without factual support in the record.

Neither Bado nor well known conventional cook "books" present cooking information in video (animated) or audio form. The examiner points to nothing in Bado which talks about a desire to present the information in audio or video (animated) form. Without identifying a scintilla of evidence in Bado or conventional cook books for presenting cooking information in video (animated) or audio form, the examiner concludes that naturally one with ordinary skill in the art would have known to do so. The conclusion is unsupported by evidence in the record.

It is of no help for the rejection that the examiner further stated (answer at 6): "Note the art of record, particularly Baus, Kaplan, Bohrman and Reed as indication of the knowledge generally available to those in the art." It is wholly unclear which portions of any of these reference is the examiner relying on and for what specific purpose. To say that the references indicate the general knowledge available to those in the art is

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not very meaningful, when their teachings have not been specifically discussed and particularly when those references have not been made a part of the basis of the rejection. All references on which the examiner relies for making a rejection should be positively recited in the rejection. In re Hoch, 428 F.2d 1341, 1343 n.3, 166 USPQ2d 406, 407 n.3 (CCPA 1970); Ex parte Movva, 31 USPQ2d 1027, 1028 n.1 (Bd. Pat. App. & Int. 1993); Ex parte Hiyamizu, 10 USPQ2d 1393, 1394 (Bd. Pat. App. & Int. 1988). Here, the rejection on appeal is over Bado and well known cook books, and does not include Baus, Kaplan, Bohrman or Reed.

In any event, it should be noted that what is missing from Bado and well known cook books is the video (animated) or audio aspect of the claimed invention. Any prior art which discloses presenting cooking information in video (animated) or audio form would fit nicely with Bado. But the examiner has not applied such a reference.

For the foregoing reasons, the rejection of claims 4-8 under 35 U.S.C. § 103 as being unpatentable over Bado and well known cook books cannot be sustained.

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Conclusion

The rejection of claims 4-8 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim that subject matter which the appellant regards as his invention is reversed.

The rejection of claims 4-8 under 35 U.S.C. § 103 as being unpatentable over Bado and "well known cookbooks" is reversed.

REVERSED

JERRY SMITH	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
JAMESON LEE	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
RICHARD TORCZON	)	
Administrative Patent Judge	)	

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