

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

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. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte EDWARD T. BULLISTER

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Appeal No. 1998-2571  
Application No. 08/515,383

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ON BRIEF

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Before BARRETT, LALL and DIXON, Administrative Patent Judges.

LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the final rejection of all the pending claims 26 to 37.

The invention is related to a portable computer in which the display folds down to be stored between two halves of a split keyboard. In the collapsed storage position, the inward facing keys protect the fragile glass display. The need for heavy plastic armor normally used to protect the display of a

standard laptop computer is obviated. The invention is further illustrated by claim 26 below.

26. A collapsible keyboard and display mechanism for a computer system comprising:

- a) a collapsible keyboard housing having at least two keyboard sections, said housing having a first hinge for enabling two of the keyboard sections to fold together in a face to face relationship, said two of the keyboard sections having movable keys projecting above the top surfaces of said two of the keyboard sections, and said first hinge having a first axis of rotation;
- b) a planar display connected to one of said at least two keyboard sections; and
- c) a second hinge, said second hinge:
  - i) connecting one of said at least two keyboard section to said planar display
  - ii) having a second axis of rotation, said second axis of rotation having a fixed, perpendicular orientation with respect to the said first axis of rotation.

The Examiner relies on the following references:

Davies 1978	4,075,702	Feb. 21,
Conway et al. (Conway) 1994	5,278,779	Jan. 11,

Claims 26 to 28, and 31 to 37 stand rejected under 35 U.S.C. § 102 as being anticipated by Conway. Claims 29 to 30 stand rejected under 35 U.S.C. § 103 over Conway and Davies.

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Rather than repeat the positions and the arguments of Appellant or the Examiner, we make reference to the briefs<sup>1</sup> and the answer for their respective positions.

OPINION

We have considered the rejections advanced by the Examiner. We have, likewise, reviewed Appellant's arguments against the rejections as set forth in the briefs.

It is our view, after consideration of the record before us, that the rejection of claims 26 to 28, 31 to 33 and 35 under

35 U.S.C. § 102 is sustained. The rejection of claims 34, 36 and 37 under 35 U.S.C. § 102 is not sustained. Also, the rejection of claims 29 and 30 under 35 U.S.C. § 103 is improper and reversed. Accordingly, we affirm-in-part. In addition, under

37 CFR § 1.196(b), we reject claims 29 and 30 under 35 U.S.C.

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<sup>1</sup> A reply brief was filed as paper no. 24 whose entry was approved by the Examiner without any response [paper no. 25].

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§ 112, second paragraph.

Rejection under 35 U.S.C. § 102

The Examiner has rejected claims 26 to 28, and 31 to 37 as being anticipated by Conway.

We note that a prior art reference anticipates the subject of a claim when the reference discloses every feature of the claimed invention, either explicitly or inherently (see Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed. Cir. 1997) and RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984)).

We have reviewed the positions of the Examiner [answer, pages 3 to 6] and Appellant [brief, pages 4 to 5 and reply brief, pages 1 and 2]. We first take claim 26. Appellant argues [brief, page 4] that "Conway's ball-in-socket joint is not a hinge with an axis of rotation fixed and perpendicular with respect to the first axis." We disagree. The American Heritage Dictionary, second college edition, defines a hinge as "[a] jointed or flexible device that allows the turning or pivoting of a part, such as a . . . lid, on a stationary frame." (Emphasis added). Conway also speaks of axis 28 is

fig. 2C as "hinge axis 28" (col. 2, bottom line). Therefore, joint 27 in fig. 2B of Conway can be considered as a second hinge. Further, looking at figs. 2B and 2C of Conway, we note that 29 defines the claimed first axis of rotation about which the two halves 22A, 22B and 24 of the keyboard can rotate [answer, page 3] and axis 28 defines the second hinge whose axis of rotation is fixed and is perpendicular to the first axis by virtue of the solt confining the direction of rotation of the display as shown in fig. 2B. Also, we note that the display 26 is connected to the keyboard section consisting of 22A and 22B. Thus, we sustain the anticipation rejection of claim 26 and claim 27 over Conway (no separate arguments having been presented by Appellant for claim 27).

With respect to claim 28, Conway in fig. 2D shows display 26 which can move toward the first keyboard section 22A and 22B or keyboard section 24. Of course, as the display is moved, the two keyboard sections will tend to open apart as is true in the collapsed configuration of the keyboard sections and the display in Appellant's figs. 2 and 5. Therefore, we sustain the anticipation rejection of claim 28 over Conway.

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Regarding the group of claims 31 and 32, we discuss claim 31. Appellant advocates [brief, page 5] that "Conway discloses no second hinge having an axis of rotation fixed and perpendicular with respect to the first axis of rotation." We have already discussed above that Conway does show a second hinge having an axis of rotation which is fixed and perpendicular with respect to the first axis of rotation. Therefore, we sustain the anticipation rejection of claims 31 and 32 over Conway.

With respect to claim 33 and 34, Appellant argues [brief, page 5] that "Conway et al. disclose no scissors mechanism nor other means to translate to (sic) the display to a position spaced from the top surface." Relating to claim 33, scissors mechanism is not claimed. Regarding the Appellant's argument that Conway has no "means to translate to (sic) the display to a position spaced from the top surface," we disagree with Appellant. Conway indeed has means to move the display to one orientation where it is parallel to the claimed top surface, see fig. 1A, and means to move the display to the claimed second orientation where it is not parallel to the claimed top surface, see fig. 1B. Also, Conway has means to translate the

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display to the claimed first position adjacent to said top surface, see

fig. 1B, and means to move the display to the claimed second position spaced from the claimed top surface, see fig. 1A.

The latter claimed position is also met by Conway since Conway has "[t]he ability to separate the keyboard halves from the base and screen . . ." (Col. 3, lines 19 to 22). Thus, Conway anticipates claim 33. However, with respect to claim 34, we agree with Appellant that Conway does not disclose the claimed scissors mechanism connecting the said display to the said first keyboard section. Therefore, we do not sustain the anticipation rejection of claim 34 over Conway. Claim 35 is not argued separately and it falls with the parent claim 33.

Regarding claims 36 and 37, we are convinced by Appellant's arguments. We find that Conway does not show a keyboard having the claimed sections which have the claimed "first hinge" and the "second hinge." This configuration yields a structure corresponding to that shown in fig. 6 of the specification. Conway does not disclose a structure of this type, where multiple sections of the keyboard can have different relative rotational movements. Therefore, we do not

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sustain the anticipation rejection of claims 36 and 37 over Conway.

Rejection under 35 U.S.C. § 103

Claims 29 and 30 have been rejected over Conway in view of Davies.

At the outset, we find that claims 29 and 30 do not distinctly claim the subject matter of the invention. See our rejection below under 35 U.S.C. § 112, second paragraph.

Since claims 29 and 30 contain unclear language which renders the subject matter thereof indefinite for the reasons stated infra under our discussion of the rejection under 35 U.S.C. § 112, second paragraph, we find that it is not possible to apply the prior art to claims 29 and 30 in deciding the question of obviousness under 35 U.S.C. § 103 without resorting to speculation and conjecture as to the meaning of the questioned limitation in claim 29 and claim 30. This being the case, we are therefore constrained to reverse the examiner's rejection of claims 29 and 30 under 35 U.S.C. § 103 in light of the holding in In re Steele, 305 F.2d 859, 862, 134 USPQ 292, 295 (CCPA 1962). This reversal of the Examiner's rejection is based only on the procedural ground

relating to the indefiniteness of these claims and therefore is not a reversal based on the merits of the rejection.

NEW GROUND OF REJECTION UNDER 37 CFR § 1.196(b)

We make the following new grounds of rejection.

Claims 29 and 30 are rejected under 35 U.S.C. § 112, second paragraph for failure to distinctly claim the subject matter of the invention. In particular, it is not clear what is meant by the following language of claim 29:

- b) a planar display section disposed between said two of the keyboard sections in the collapsed condition such that:
  - i) said planar display section is substantially coplanar with and movable in a direction perpendicular to the plane of the said planar display section toward each of said two of the keyboard sections; and
  - ii) said collapsible keyboard and display mechanism are oriented such that said planar display sections remains substantially planar during bending of said two of the keyboard sections.

The various claimed relative movements of the keyboard sections and the display are unclear. For example, the recited language does not explain clearly and distinctly how the "planar display sections remains (sic) substantially planar during bending of said two of the keyboard sections."

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In addition to affirming the examiner's rejection of one or more claims, this decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b)(amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53,131, 53,197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. & Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides, "A new ground of rejection shall not be considered final for purposes of judicial review."

Regarding any affirmed rejection, 37 CFR § 1.197(b) provides:

(b) Appellants may file a single request for rehearing within two months from the date of the original decision . . . .

37 CFR § 1.196(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of proceedings (37 CFR § 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

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Should the appellant elect to prosecute further before the Primary Examiner pursuant to 37 CFR § 1.196(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If the appellant elects prosecution before the examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Board of Patent Appeals and Interferences for final action on the affirmed rejection, including any timely request for rehearing thereof.

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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; 37 CFR § 1.196(b)

LEE E. BARRETT	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
PARSHOTAM S. LALL	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JOSEPH L. DIXON	)	
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