

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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PIT BURKARDT, ROY A. FEIGEL,
JUTTA LAND, HERBERT WESTERMANN

Appeal No. 1998-2603
Application 08/483,641

ON BRIEF

Before KRASS, FLEMING and HECKER, **Administrative Patent Judges**.

HECKER, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1, 3 through 5, 7 through 9 and 11 through 17, all of the claims pending in this application.

The invention relates to a system for displaying a plurality of graphic objects. In particular, referring to Figure 3, a display contains a view 100 (e.g., Germany) which

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contains a plurality of rectangular regions 110a-110c (e.g.,
Frankfurt,

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Berlin and Stuttgart) within which graphic objects 180 (Figure 5) are displayed. Within each region, graphic objects 180 are dynamically positioned in a selected pattern such as those of Figures 4A-4H.

Representative independent claim 1 is reproduced as follows:

1. An apparatus for displaying a plurality of graphic objects within a view on a display, comprising:

a) means for defining a view having a plurality of regions within which the graphic objects are to be displayed;

b) means for associating each graphic object with a particular region of the view to indicate the region within which the graphic object is to be displayed;

c) means for defining for each of said regions a pattern for the positioning of graphic objects within said region, said pattern being defined without regard to the number of graphic objects that may be associated with said region;

d) means for dynamically positioning the graphic objects associated with each of said regions within the region in accordance with the pattern defined for said region; and

e) display for displaying the view including the graphic objects within the associated regions.

The references relied on by the Examiner are as follows:

Beard et al. (Beard)	4,939,507	Jul. 3, 1990
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MS Windows 3.0, "Microsoft Windows User's Guide", Microsoft Corporation, version 3.0, 1990, pp.55-56, 80-86. (MsWin)

Claims 1, 3 through 5, 7 through 9 and 11 through 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over MsWin in view of Beard.¹

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the brief, reply brief and the answer for the details thereof.

OPINION

After a careful review of the evidence before us, we agree with the Examiner that claims 1, 3 through 5, 7 through 9, 11 and 12 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 remaining claims on appeal for the reasons set forth *infra*.

At the outset, we note that Appellants have indicated on page 4 of the brief the claims stand or fall together in three groups. Group I includes claims 1, 3 through 5, 7 through 9, 11 and 12. Group II includes claims

¹A rejection of claims 13 through 17 under 35 U.S.C. § 112, first paragraph, has been withdrawn (answer-page 3).

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16 and 17. Group III includes claims 13 through 15.

Therefore, we will consider claim 1 as representative of group I, claim 16 as representative of group II and claim 13 as representative of group III.

The Examiner reasons that MsWin teaches the claimed invention except for dynamically positioning the graphic objects within a region. Noting that Beard describes means for controlling the location of graphic objects, the Examiner concludes that Beard provides dynamic positioning of graphic objects. The Examiner cites an example in Beard as having a file folder icon representing a region which may have plural objects associated with its location (answer-pages 3 and 4).

The Examiner states:

It would have been obvious to provide the dynamic positioning of graphic objects as suggested by Beard with the MSWIN system. This would have been obvious for the reasons given in Beard. For example, it establishes a hierarchy or ranking of the graphic objects (icons) which can be changed in position according to applications, dependency on other graphic objects, special circumstances such as break icons or help icons, etc. Further, since MSWIN allows for multiple windows (regions) each with multiple graphic objects (icons) it would have been obvious to provide the dynamic location of these graphic objects so that a graphic object is not obscured by another. [Answer-pages 4 and 5.]

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With respect to claim 1, Appellants argue that neither of the references teaches dynamic positioning of the objects within a region. Appellants contend MsWin teaches a static approach in which the user must invoke a command to position an icon whenever one is added or a new window is opened (brief-page 8). Also, Beard merely teaches tracking the location of icons on the surface of a display, as opposed to system initiated (i.e., dynamic) rather than user initiated (i.e., static) **positioning** of the icons within a region.

We agree with the Examiner, the cited references teach dynamic positioning of icons. In MsWin, Resizing Group Windows, page 83, it states:

You can adjust the arrangement of the arrangement of the program icons in two ways. Choose the Arrange Icons command on Program Manager's Window menu each time you finish resizing a group window. Or select the Auto Arrange command on Program Manager's Options menu before you resize a group window (a checkmark beside Auto Arrange means it is active). With either command, **Program Manager rearranges the program item icons** to fit into the new group window size. If all the icons can't fit, a scroll bar is provided. When selected, **the Auto Arrange command rearranges program item icons automatically** every time the size of the group window changes. [Emphasis added.]

We find the arrangement of icons supra (i.e., positioning) to

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be dynamic (i.e., system initiated). Lack of novelty is the ultimate of obviousness. See *In re Fracalossi*, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982). The Board may rely on one reference alone in an obviousness rationale without designating it as a new ground of rejection. *In re Bush*, 296 F.2d 491, 496, 131 USPQ 263, 266-67 (CCPA 1961); *In re Boyer*, 363 F.2d 455, 458, n.2, 150 USPQ 441, 444, n.2 (CCPA 1966). The Examiner's explanation of dynamic positioning in Beard is considered cumulative.

Appellants argue that Beard and MsWin teach a "single layout" in which each group window consists of a single layout region. Appellants contend this contrasts with their "multiple layout" approach in which each view has a plurality of regions with independently defined positioning patterns. (Brief-page 10.)

We agree with the Examiner that the MsWin program manager, page 85 (e.g., lower figure), represents a view, with multiple regions (i.e., Games, Accessories, Main). The windows of Games, Accessories and Main can be viewed as multiple regions. At column 1, lines 45-50, Beard states:

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and the division of a bitmap display into several regions, also referred to in the art by many other terms such as viewports, files, ports, windows, pages or layered bitmaps, to provide separate display of video information in independent screen regions.

With respect to "independently defined positioning patterns" (brief-page 10), this argument fails at the outset because it is not based on limitations appearing in the claims. We find no "independently defined" requirement in claim 1. See ***In re Self***, 671 F.2d 1344, 1350, 213 USPQ 1, 5 ((CCPA 1982).

Therefore, we affirm the Examiner's rejection of claim 1, and likewise the Examiner's rejection of claims 3 through 5, 7 through 9, 11 and 12 which stand or fall therewith.

With respect to claim 13, Appellants argue the requirement that the pattern "is selected from a plurality of patterns" is not taught by the cited references (brief-page 11).

The Examiner contends that "a pattern selected from a plurality of patterns,... is equivalent to the 'permissible function' (col. 10 line 33-34)" of Beard (answer-page 6).

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We fail to see how Beard's allowing one icon to be, or not to be, placed on top of another icon meets the claimed requirement of selecting a pattern from a plurality of patterns. Also, we see nothing in MsWin that meets this requirement. We are not inclined to dispense with proof by evidence when the proposition at issue is not supported by a teaching in a prior art reference, common knowledge or unquestionable demonstration. Our reviewing court requires this evidence in order to establish a *prima facie* case. *In re Knapp-Monarch Co.*, 296 F.2d 230, 232, 132 USPQ 6, 8 (CCPA 1961); *In re Cofer*, 354 F.2d 664, 668, 148 USPQ 268, 271-72 (CCPA 1966). Accordingly, we will not sustain

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the Examiner's rejection of claim 13, and likewise claims 14 and 15 which stand or fall therewith and contain the same unmet limitation.

With respect to claims 16 and 17, we will not sustain the Examiner's rejection of these claims which also include the unmet limitation of selection of a pattern from a plurality of patterns.

In view of the foregoing, the decision of the Examiner rejecting claims 1, 3 through 5, 7 through 9, 11 and 12 under 35 U.S.C. § 103 is affirmed; however, the decision of the Examiner rejecting claims 13 through 17 under 35 U.S.C. § 103 is reversed.

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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

ERROL A. KRASS))
Administrative Patent Judge))
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MICHAEL R. FLEMING)) BOARD OF PATENT
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