

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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte REYNOLD B. JOHNSON, KENNETH A. FESLER,
and EUGENE W. WEBER

Appeal No. 1998-2866
Application No. 08/548,441

ON BRIEF

Before COHEN, STAAB, and BARRETT, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is taken from the final rejection of claims 1 through 16 (Paper No. 7), all of the claims in the application.

The invention before us relates to a keyboard and to a method of providing character codes to a computer or other data processing device. A basic understanding of the invention can be gained from a reading of exemplary claims 1, 5, 9, and 13,

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respective copies of which appear in the "Appendix A" of the main brief (Paper No. 9).

As evidence of obviousness, the examiner has relied upon the references listed below:

Johnson	4,722,621	Feb. 2, 1988
Obata	5,550,363	Aug. 27, 1996
		(filed Feb. 24, 1994)

The following rejections are before us for review.

Claims 1 through 3, 5 through 7, 9 through 11, and 13 through 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Johnson.

Claims 4, 8, 12, and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Johnson, as applied to the claims above, further in view of Obata.

The examiner's rejections and response to the argument presented by appellants appears in the answer (Paper No. 10),

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while appellants' argument can be found in the main and reply briefs (Paper Nos. 9 and 11).

OPINION

In reaching our conclusion on the obviousness issues raised in this appeal, we have fully considered appellants' specification and claims, the applied teachings,¹ and the viewpoints of appellants and the examiner, respectively. As a consequence of our review, we make the determination which appears below.

We do not sustain the examiner's respective rejections of appellants' claims.

¹ In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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Each of appellants' independent keyboard claims 1 and 9 require, inter alia, the broadly recited feature of "optically readable data" corresponding to characters printed on a panel, while appellants' independent method claims respectively broadly mandate, inter alia, "optically readable data" corresponding to a visual representation of a character on a panel (claim 5) and characters on a first side of a panel and "optically readable data" on a second side of the panel (claim 13).

The examiner recognizes that the patent to Johnson addresses magnetically readable data and not optically readable data (answer, page 4). However, based upon the examiner's recognition that other types of readable data arrangements are known, the conclusion is reached to the effect that it would have been obvious to substitute any type of readable data arrangement, e.g., an optically readable data arrangement, for the magnetically readable data arrangement of Johnson (answer, pages 4, 5, and 8).

At this point, it is well worthy of noting that a determination of patentability must be based on evidence. Thus, following the law of the Court of Appeals for the Federal

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Circuit, even if there is reference in a rejection to knowledge in the art or common knowledge, this does not in and of itself make it so, absent evidence of such knowledge. See In re Lee, 277 F.3d 994, 1342-43, 61 USPQ 1430, 1434 (Fed. Cir. 2002).

Clearly, what is lacking in the examiner's respective rejections based upon Johnson alone and in combination with Obata is evidence that, at the time of appellants' invention, those having ordinary skill in the art considered magnetically readable data arrangements and optically readable data arrangements as alternatives. In other words, while Johnson explicitly teaches a magnetically readable data system and Obata focuses upon an optical information reading apparatus, there is nothing in the relied upon body of evidence that reveals magnetically readable data systems and optically readable data systems as recognized alternatives in the art and, hence, suggestive of a modification of the Johnson teaching. Absent the requisite evidence of obviousness, the examiner's rejections as cast cannot be sustained.

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The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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)	
LEE E. BARRETT)	
Administrative Patent Judge)	

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