

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RENATE M. SOMBROEK and JAN D. GERLINGS

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Appeal No. 1998-3344  
Application No. 08/704,400

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ON BRIEF

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Before THOMAS, KRASS, and BARRY, Administrative Patent Judges.  
BARRY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the rejection of claims 1 and 3-11. We affirm.

BACKGROUND

The invention at issue in this appeal relates to cursor control. In many applications, a user interacts with the data processing system through control of a cursor. The position of the cursor on display can be changed by the user's manipulation of a user-interface means, e.g., a maneuvering device. Heretofore, the speed of the cursor for an application has

sometimes been too low to transfer the cursor over large distances rapidly or too high for accurate positioning. The appellants' invention displaces a cursor at a certain speed within a display during a predetermined interval upon activation of a user-interface means and displaces the cursor at a higher speed after the interval has elapsed.

Claim 1, which is representative for our purposes, follows:

1. A data processing system being comprised of:

a display;

a cursor control means connected to the display for displacement of a cursor represented on the display; and

a user-interface means, having a manually operable data input device coupled to the cursor control means for user manipulation of the cursor via the cursor control means, the manually operable data input device being operative to control the cursor control means by transmitting low speed data, effecting a relatively low cursor speed, to the cursor control means during a predetermined time interval, and by transmitting high speed data, effecting a relatively high cursor speed, to the cursor control means after the predetermined time interval has elapsed;

wherein the cursor control means is operative to displace the cursor at the relatively low speed relative to the display during the predetermined time interval upon activation of the manually operable data input device and to displace the cursor at the relatively high speed after the predetermined time interval has elapsed.

The references relied on in rejecting the claims follow:

Takahashi	5,153,571	Oct. 06, 1992
Kato	JP 1-200285	Aug. 11, 1989. <sup>1</sup>

Claims 1 and 3-11 stand rejected under 35 U.S.C. § 103(a) as obvious over Kato in view of Takahashi. Rather than repeat the arguments of the appellants or examiner in toto, we refer the reader to the brief and answer for the respective details thereof.

#### OPINION

In deciding this appeal, we considered the subject matter on appeal and the rejection advanced by the examiner. Furthermore, we duly considered the arguments and evidence of the appellants and examiner. After considering the record, we are persuaded that the examiner did not err in rejecting claims 1 and 3-11. Accordingly, we affirm. Our opinion addresses the grouping and obviousness of the claims.

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<sup>1</sup>A copy of the translation prepared by the U.S. Patent and Trademark Office is attached.

Grouping of the Claims

When the appeal brief was filed, 37 C.F.R. § 1.192(c) (7) (1997) included the following provisions.

For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and ... appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument ... why the claims are separately patentable.

In general, claims that are not argued separately stand or fall together. In re Kaslow, 707 F.2d 1366, 1376, 217 USPQ 1089, 1096 (Fed. Cir. 1983). When the patentability of dependent claims in particular is not argued separately, the claims stand or fall with the claims from which they depend. In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983).

Here, the appellants group claims 1, 3-7, and 9 together. (Appeal Br. at 3.) Although they group claims 8, 10, and 11 in a separate group, (id.), they fail to explain why the claims are believed to be separately patentable from claim 1. Therefore,

claims 1 and 3-11 stand or fall together. We select claim 1 to represent the group. With this representation in mind, we address the obviousness of the claims.

#### Obviousness of the Claims

We begin by noting the following principles from In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993).

In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).... "A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." In re Bell, 991 F.2d 781, 782, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)).

In addition, the references represent the level of ordinary skill in the art. See In re GPAC Inc., 57 F.3d 1573, 1579, 35 USPQ2d 1116, 1121 (Fed. Cir. 1995) (finding that the Board of Patent Appeals and Interference did not err in concluding that the level of ordinary skill was best determined by the references of record); In re Oelrich, 579 F.2d 86, 91, 198 USPQ 210, 214 (CCPA 1978) ("[T]he PTO usually must evaluate ... the level of ordinary skill solely on the cold words of the literature."). Of course,

"[e]very patent application and reference relies to some extent upon knowledge of persons skilled in the art to complement that [which is] disclosed ....'" In re Bode, 550 F.2d 656, 660, 193 USPQ 12, 16 (CCPA 1977) (quoting In re Wiggins, 488 F.2d 538, 543, 179 USPQ 421, 424 (CCPA 1973)). Those persons "must be presumed to know something" about the art "apart from what the references disclose." In re Jacoby, 309 F.2d 513, 516, 135 USPQ 317, 319 (CCPA 1962). With these principles in mind, we address the appellants' two arguments and the examiner's responses thereto.

First, the appellants argue, "the skilled person finds no reason, incentive or suggestion to combine Takahashi's inter-task control with Kato's intra-task control." (Appeal Br. at 5.) The examiner responds, "Takahashi is not limited to inter-task control of the cursor speed but includes intra-task control of the cursor speed because switch 8a may be depressed when the mouse is moving and if it is depressed when the mouse is moving then counter 7 will be changed and the timing of the 0 stage pulses sent to latch circuit 5 will change, thus, changing the rate at which the pulse signals are sent to the computer." (Examiner's Answer at 6.)

"'All of the disclosures in a reference must be evaluated for what they fairly teach one of ordinary skill in the art.' The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." In re Lemelson, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968) (quoting In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (1966)). Furthermore, Takahashi emphasizes that its "invention may be embodied in other specific forms without departing from the spirit or essential characteristics thereof. The present embodiments are therefore to be considered in all respects as illustrative and not restrictive ...." Col. 6, ll. 52-56.

Here, although Takahashi describes its cursor speed control in embodiments that the appellants label "inter-task control," the reference fairly teaches one of ordinary skill in the art that its invention could be used for intra-task control. While performing a task, a user would depress pushbutton switch **8a** to alter the speed of the cursor. Following the principles of Takahashi, "an increased operativity can be achieved," id. at l. 51, by such an intra-task control.

Second, the appellants argue, "Takahashi does not send high speed data or low speed data. Takahashi teaches scaling the count number." (Appeal Br. at 5.) The examiner responds, "[t]he more often the pulse signals are allowed to pass to the computer the faster the cursor will move. Therefore, Takahashi teaches outputting low speed cursor control data and high speed cursor control data." (Examiner's Answer at 5.)

"In the patentability context, claims are to be given their broadest reasonable interpretations. Moreover, 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)). Here, representative claim 1 specifies in pertinent part the following limitations: "the manually operable data input device being operative to control the cursor control means by transmitting low speed data, effecting a relatively low cursor speed, to the cursor control means ... and by transmitting high speed data, effecting a relatively high cursor speed, to the cursor control means ...." Giving the claim its broadest reasonable interpretation, the limitations require

transmitting low or high speed data to effect a low or high cursor speed, respectively.

The prior art would have suggested the limitations. In determining obviousness, a reference "must be read, not in isolation, but for what it fairly teaches in combination with the prior art as a whole." In re Merck & Co., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986) (citing In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981)).

Here, the appellants admit that in Takahashi, "the user can vary the count number of the pulse signals transmitted from the mouse to the computer (col.4, lines 50-53). Thus, the user can adapt the count number, and therefore the count number per amount of mouse movement, to the task envisaged." (Appeal Br. at 4.) For its part, the reference teaches transmitting a high count number, which is a high speed datum, to effect a high cursor speed. Specifically, "setting is conducted so as to output a high count number 1/1 (or 1/3) such that the quantity of pulses is sensible to the movement of the mouse 1. Therefore it is possible to conduct the works rapidly by moving the cursor at high speed." Col. 4, ll. 56-60. Takahashi also teaches

transmitting a low count number, which is a low speed datum, to effect a low cursor speed. Specifically, "setting is conducted so as to output a low count number  $1/5$  or  $1/7$  such that the quantity of pulses is slow to the movement of the mouse 1." Id. at ll. 62-64.

Because Takahashi teaches transmitting low or high speed data to effect a low or high cursor speed, respectively, we are persuaded that the teachings of Kato and Takahashi in combination with the prior art as a whole would have suggested the claimed limitations of "the manually operable data input device being operative to control the cursor control means by transmitting low speed data, effecting a relatively low cursor speed, to the cursor control means ... and by transmitting high speed data, effecting a relatively high cursor speed, to the cursor control means ...." Therefore, we affirm the rejection of claims 1 and 3-11 as obvious over Kato in view of Takahashi.

We end by noting that our affirmance is based only on the arguments made in the brief. Arguments not made therein are not before us, are not at issue, and are considered waived.

CONCLUSION

In summary, the rejection of claims 1 and 3-11 under 35 U.S.C. § 103(a) is affirmed.

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

AFFIRMED

JAMES D. THOMAS	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
ERROL A. KRASS	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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LANCE LEONARD BARRY	)	
Administrative Patent Judge	)	

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JACK E. HAKEN  
CORPORATE PATENT COUNSEL  
U.S. PHILIPS CORPORATION  
PATENT DEPT. 580  
WHITE PLAINS ROAD  
TARRYTOWN, NY 10591