

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STUART T. MAYNARD JR.

Appeal No. 1999-1995
Application No. 08/772,840

ON BRIEF

Before DIXON, GROSS, and BARRY, Administrative Patent Judges.
GROSS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 72, 73, and 75 through 77. Claim 74 is objected as dependent upon a rejected base claim.

Appellant's invention relates to a support for an appendage of an operator at a work station. Claim 72 is illustrative of the claimed invention, and it reads as follows:

72. An apparatus for supporting a human operator appendage at a work station and allowing support of said appendage during motions imparted generally in front of said operator both

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laterally and forward and back in relation to said operator wherein

at least one roller is mounted on an axle,

said axle is mounted on at least one bracket in proximity to said work station,

said roller is enabled to rotate and slide upon said axle,

said appendage is engaged to bear generally on an upper cylindrical surface of said roller, during any movement.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Culver 1987	4,712,101	Dec. 08,
Avila 1989	4,799,049	Jan. 17,

Claim 72 stands rejected under 35 U.S.C. § 103 as being unpatentable over Culver.

Claims 73 and 75 through 77 stand rejected under 35 U.S.C.

§ 103 as being unpatentable over Culver in view of Avila.

Reference is made to the Examiner's Answer (Paper No. 11, mailed February 8, 1999) for the examiner's complete reasoning in support of the rejections, and to appellant's Brief (Paper

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No. 10, filed January 16, 1999) for appellant's arguments thereagainst.

OPINION

We have carefully considered the claims, the applied prior art references, and the respective positions articulated by appellant and the examiner. As a consequence of our review, we will reverse the obviousness rejections of claims 72, 73, and 75 through 77.

Independent claim 72 recites "[a]n apparatus for supporting a human operator appendage at a work station and allowing support of said appendage during motions imparted generally in front of said operator" (underlining added for emphasis). The examiner admits (Answer, page 4) that "Culver fails to teach explicitly that his computer input apparatus can be used for supporting a human operator appendage at a work station." Nonetheless, the examiner asserts (Answer, page 4) that "the action of pressing on the bar of the Culver device is a deliberate application of a certain amount of downward force. Whether the bar switch or sensor has been enable [sic, enabled] or not is of no consequence. The bar

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Appellant (Brief, page 4) points to column 9, lines 5-10, of Culver as evidence that the cylinder cannot be a support for an appendage. Specifically, Culver states (column 8, line 68- column 9, line 5) that "a downward push by the hand on cylinder **64**, on shaft **62**, or on either of a pair of end pads **165** (FIG. 3) coupled to frame **68** is sufficient to actuate switch **156**, the switch being normally open and is closed when cylinder **64** moves downwardly." In other words, pressure on the cylinder enables the mouse input circuit. For the cylinder to "support" the user's hand or arm, the cylinder must be able to withstand a certain amount of downward force or pressure without actuating switch 156. Thus, we agree with appellant that Culver appears to teach away from using the cylinder to support a user's appendage, and any other interpretation of Culver would be unreasonable.

In addition, appellant (Brief, page 4) points to Culver's use of an additional element on which to rest the palm of the hand as further evidence that Culver's cylinder is not to be used for support for a user's appendage. In particular,

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Culver (column 10, lines 63-64) adds palm rest 262 "to provide additional comfort for the user of the system." Thus, Culver specifically provides for support of a user's appendage separate from the cylinder. Consequently, we find that Culver's cylinder does not support a user's appendage. Therefore, the examiner has failed to establish a *prima facie* case of obviousness, and we will not sustain the obviousness rejection of claim 72.

As to claims 73 and 75 through 77, the examiner adds Avila to Culver to reject the claims. However, Avila fails to cure the deficiency of Culver noted above. Therefore, we cannot sustain the obviousness rejection of claims 73 and 75 through 77.

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CONCLUSION

The decision of the examiner rejecting claims 72, 73, and 75 through 77 under 35 U.S.C. § 103 is reversed.

REVERSED

JOSEPH L. DIXON)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
ANITA PELLMAN GROSS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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LANCE LEONARD BARRY)	
Administrative Patent Judge)	

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