

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte SCOTT A. MORGAN  
and CRAIG A. SWEARINGEN

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Appeal No. 2000-1913  
Application 08/753,081

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ON BRIEF

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Before THOMAS, BARRETT and LALL, Administrative Patent Judges.  
THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1-19.

Representative claim 1 is reproduced below:

1. A method of creating an interactive non-rectangular object for display on a data processing system having a program application running thereon, comprising the steps of:



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Representative independent claim 1 on appeal requires in part "said standard window having a size border, a rectangular client, a menu, a title bar, etc." The major dispute between appellants and the examiner involves the limitation of "removing areas of said standard window that are not part of said bitmap image of said non-rectangular object." Corresponding limitations appear in each of the other independent claims 7 and 14 on appeal.

The examiner's focus upon column 11, lines 12-34 of Bartok to support the examiner's view for the removing step noted earlier in the previous paragraph is misplaced. What appears to us to be more supportive of the examiner's view is the teaching at column 11, lines 6-11 which states that "a user may drag, such as by using a cursor 15 and input device 16, for example, a first object on the screen 46 from a location to drop the first object on a second object, thus incorporating within the second object the information contained within the first object."

It is this detailed drag and drop feature relied upon by the examiner at column 11, lines 12-34, which requires the noted incorporation of one object within another once an object is dropped, that the examiner apparently views corresponds to the removal of object areas of a standard window that are not part of

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a bitmap image of a non-rectangular object as claimed. However, this only teaches to the artisan that objects may be removed by the feature of incorporation of one object into another.

Although the noted removing step at the end of representative claim 1 on appeal does not require the removal of all areas of a standard window previously defined earlier in the claim as we quoted above, the teaching relied upon by the examiner clearly does not remove areas of a standard window, but only objects.

The examiner's remarks in the paragraph bridging pages 3 and 4 of the answer are not persuasive of the obviousness of the subject matter of the claims on appeal. The examiner's positions here are merely conjecture. No additional prior art reference is relied on by the examiner to apply the drag and drop removal feature of displayed objects to remove displayed areas of a standard window per se. In order for us to sustain the examiner's rejection under 35 U.S.C. § 103, we would need to resort to speculation or unfounded assumptions to supply deficiencies in the factual basis of the rejections. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968), reh'g denied, 390 U.S. 1000 (1968). This we decline to do.

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Notwithstanding these considerations, Figure 5 of Bartok shows selected graphical objects representing functional objects associated with hotspot objects within the template of Figure 3. The template 92 in Figure 5 shows various hotspot objects generally as element 96. Hotspot object 170 corresponds to the telephone icon 70 in Figure 2, where the telephone hotspot 170 is further detailed in Figure 6. To the extent the artisan would surmise from the teachings and suggestions of Bartok that the Figure 5 representation, for example, is inclusive within a window 48 on screen 46 of physical display device 14 in Figure 1, there is no indication at all in Bartok that the expanded object 210 in Figure 6 of the hotspot telephone object 170 in Figure 5, is shown of such size as to be indicative of the removal of areas of a standard window generally associated with its depiction in Bartok.

We therefore remain unpersuaded of the obviousness of the subject matter of representative claim 1 on appeal based upon our study of Bartok and the examiner's arguments with respect to this reference. As such, the decision of the examiner rejecting representative claim 1, as well as the corresponding independent

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claims 7 and 14 on appeal, is reversed as is the rejection of their respective dependent claims. Therefore, the decision of the examiner is reversed.

REVERSED

James D. Thomas	)	
Administrative Patent Judge	)	
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	)	
Lee E. Barrett	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
Parshotam S. Lall	)	
Administrative Patent Judge	)	

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