

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte THOMAS E. DOWDY

Appeal No. 2002-1606
Application No. 08906,648

ON BRIEF

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

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-17, which are all of the claims pending in the present application. An amendment filed May 3, 1999 after final rejection was denied entry by the Examiner.

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The claimed invention relates to providing transparent compatibility and adaptation to differing format implementations in a computer system. According to Appellant (Specification, page 4), new formats are included in a computer system while maintaining compatibility with applications implementing old formats.

Representative claims 1 and 12 are reproduced as follows:

1. A method for providing transparent compatibility and adaptation to differing format implementations in a computer system, the method comprising the steps of:

providing a first format in a device list, the first format compatible with a format for an application program;

accessing the first format from the device list by the application program to allow data input in the first format from the application program;

providing a second format, the second format compatible with a format for an output device; and

transforming inputs from the application program from the first format to the second format for output on the output device to provide compatibility between the application program and the output device without substantially altering the application program.

12. A system for improving compatibility between an application program and a display device of a computer system, the system comprising:

a CPU;

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at least one real frame buffer coupled to the CPU and to the display device, the at least one real frame buffer having a first format compatible with the display device; and

at least one alternate frame buffer coupled to the at least one real frame buffer and the CPU, the at least one alternate frame buffer having a second format compatible with the application program and being provided in a device list for access by the application program, wherein the CPU controls transformations from the second format to the first format transparently to the application program to allow output to the display device from the at least one real frame buffer.

The Examiner relies on the following prior art:

Van Vliet et al. (Van Vliet)	4,439,762	Mar. 27, 1984
Howard et al. (Howard)	5,625,386	Apr. 29, 1997
		(filed Sep. 30, 1994)

Claims 1-17, all of the appealed claims stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Van Vliet in view of Howard.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Brief (Paper No. 19) and the Answer (Paper No. 20) for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into

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consideration, in reaching our decision, Appellant's arguments set forth in the Brief along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-11 and 17. We reach the opposite conclusion with respect to claims 12-16. Accordingly, we affirm-in-part.

Appellant's arguments in response to the Examiner's rejection of the appealed claims are organized according to a suggested grouping of claims indicated at page 5 of the Brief. We will consider the appealed claims separately only to the extent separate arguments for patentability are presented. Any dependent claim not separately argued will stand or fall with its base claim. Note 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).

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the

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burden of going forward then shifts to Appellant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

With respect to independent claim 1, the representative claim for Appellant's first suggested grouping (including claims 1-11), after reviewing the Examiner's analysis (Answer, pages 3 and 4), it is our view that such analysis points out the teachings of the Van Vliet and Howard references, reasonably indicates the perceived differences between this prior art and the claimed invention, and provides reasons as to how and why the prior art teachings would have been modified and/or combined to arrive at the claimed invention. In our opinion, the Examiner's analysis is sufficiently reasonable that we find that the Examiner has at least satisfied the burden of presenting a prima facie case of obviousness. The burden is, therefore, upon Appellant to come forward with evidence and/or arguments which

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persuasively rebut the Examiner's prima facie case of obviousness. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Brief have not been considered [see 37 CFR § 1.192(a)].

Appellant's arguments (Brief, pages 11 and 12) in response to the Examiner's obviousness rejection of representative claim 1, rather than attacking the combinability of the Van Vliet and Howard references, instead focus on the alleged deficiencies of the references in disclosing a key feature of the appealed claims, i.e., the transformation of application program inputs from a first format to a second format for output on a display device. In particular, Appellant asserts (id.) that Howard merely discloses two buffers which store and present data to a display in one format.

After careful review of the applied prior art references in light of the arguments of record, we are in general agreement with the Examiner's position as stated in the Answer. In particular, our interpretation of the disclosure of Howard generally coincides with that of the Examiner, i.e., in contrast to Appellant's assertions, the interleaved format data presented to the video controller 330 of the output display 335 is clearly

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in a different format from the application program data stored in either of the individual buffers 342 and 344. Further, contrary to Appellant's contention (Brief, page 11) that the differing buffer transfer rates in Howard are ". . . irrelevant to any transformation," it is our view that, as alluded to by the Examiner (Answer, pages 6 and 7), it is precisely these different transfer rates (Howard, Figures 5A through 6B) that give rise to a transformation of the buffer data to an interleaved format for presentation to the output display. Further, we find no error, and Appellant has pointed to none, in the Examiner's stated rationale for combining Van Vliet with Howard since, in our view, the data transformation technique described by Howard provides a clear suggestion to the skilled artisan of an obvious enhancement to the high and low resolution display system of Van Vliet.

We also note that our review of the disclosure in Van Vliet also reveals that the Examiner's 35 U.S.C. § 103(a) rejection of representative claim 1 is sustainable based on Van Vliet alone. In our opinion, the description in Van Vliet reveals a disclosure which can reasonably be interpreted as providing application data in a first format (low resolution buffer 18) which is transformed into data in a second format when combined with data in high resolution buffer 32 for presentation to output display 24. As

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discussed, for example, at column 3, line 47 et seq. in Van Vliet, the use of the high resolution buffer 32 provides additional address code information, i.e. sequential numbers corresponding to first and second blocks of address codes, a format which, in our view, can reasonably be interpreted as being in a different format than numbers output from low resolution memory 18 which use a single address code block.

In view of the above discussion and analysis, it is our opinion that the Van Vliet reference alone discloses all of the limitations of appealed representative claim 1. A disclosure that anticipates under 35 U.S.C. § 102 also renders the claim unpatentable under 35 U.S.C. § 103, for "anticipation is the epitome of obviousness." Jones v. Hardy, 727 F.2d 1524, 1529, 220 USPQ 1021, 1025 (Fed. Cir. 1984). See also In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); In re Pearson, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974). Therefore, since the Examiner's prima facie case of obviousness has not been overcome by any convincing arguments from Appellant, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of representative claim 1, as well as claims 2-11 which fall with claim 1.

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Turning to a consideration of the Examiner's 35 U.S.C. § 103(a) rejection of claim 17, we also sustain the Examiner's obviousness rejection of this claim based on Van Vliet alone. Although Appellant has grouped claim 17 separately, Appellant's arguments rely on assertions previously made with regard to the alleged lack of transformation of data in the applied prior art references, an argument we found to be unpersuasive as discussed supra.

Turning to a consideration of the Examiner's 35 U.S.C. § 103(a) rejection of claims 12-16, we note that while we found Appellant's arguments to be unpersuasive with respect to the obviousness rejection of claims 1-11 and 17, we reach the opposite conclusion with respect to claims 12-16. In contrast to independent claims 1 and 17 previously discussed which broadly recite data transformation from an application input first format to an output display second format, claims 12-16 require the transformation of data from a first format in one frame buffer to a second format in a second frame buffer. Our review of the descriptions in Van Vliet and Howard reveals no teaching or suggestion, either individually or collectively, which would satisfy this claimed requirement.

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With regard to Van Vliet, while, in our view, the combined data from the low and high resolution memories 18 and 32 when presented to display 24 is in a different format than the data in either of the individual memories 18 and 32, there is no transformation of data in one format in a first memory, i.e., low resolution memory 18, to a second format in a second memory, i.e., high resolution memory 32. In other words, the format of the data in the individual memories 18 and 32 in Van Vliet is the same and no buffer to buffer transformation takes place as claimed. Similarly, in Howard, while the interleaving of data read out from the two buffers 342 and 344 results in an interleaved format of data presented to video controller 330, the data in first format in buffer 342 is not transformed into a second format in buffer 344. Accordingly, since all of the claimed limitations are not taught or suggested by the applied prior art references, the Examiner's 35 U.S.C. § 103(a) rejection of claims 12-16 is not sustained.

In summary, we have sustained the Examiner's 35 U.S.C. § 103(a) rejection of claims 1-11 and 17, but have not sustained the 35 U.S.C. § 103(a) rejection of claims 12-16. Therefore, the Examiner's decision rejecting claims 1-17 is affirmed-in-part.

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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

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Administrative Patent Judge)	
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)	BOARD OF PATENT
Joseph L. Dixon)	
Administrative Patent Judge)	APPEALS AND
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