

The opinion in support of the decision entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JULIE COUTURIER

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Appeal No. 2004-0473  
Application No. 10/034,527

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ON BRIEF

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Before COHEN, STAAB, and MCQUADE, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

DECISION ON APPEAL

Julie Couturier appeals from the examiner's final rejection of claim 1, the sole claim currently pending in the application.

Appellant's invention pertains to a device that assists in keeping score of a Euchre game. As explained in the "Summary of the Invention" section on pages 1-2 of the specification:

The device includes a tablet with two types of spots and markers. The first type keeps track of the score of the two different "teams." As an example, there are typically ten of this type of spots aligned on each side of the tablet. Pins or other markers can be inserted into the spots and moved as the score changes.

Further, there are preferably four markers for identifying . . . what suit is trump, and which will also identify which of the two teams named the trump.

Also, the tablet has a slidable cover which can be moved to expose a storage space for the cards and the market [sic, marking] pegs.

A further understanding of appellant's invention can be derived from a reading of claim 1, which appears in the appendix to appellant's main brief.

The following references have been relied upon by the examiner as evidence of obviousness:

Smith	1,714,929	May 28, 1929
Townsend	4,332,386	June 1, 1982
Price	WO 90/10480	Sept. 20, 1990

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Price in view of Smith and Townsend.

Attention is directed to appellant's main and reply briefs (Paper Nos. 8 and 10) and to the examiner's final rejection and answer (Paper Nos. 6 and 9) for the respective positions of appellant and the examiner regarding the merits of this rejection.

Discussion

Price, the examiner's primary reference, pertains to a device designed specifically for the use of persons engaged in the game of Bridge (page 1, lines 6-7). The device includes a box (Figure 1) for accommodating two decks of playing cards, and a pair of identical boards (Figures 2 and 3), each board comprising several groups of holes that are adapted to receive pegs for keeping score. With reference to Figure 4, the groups of holes are divided into two substantially mirror image tabulation areas. These areas include two first groups of holes arranged on the lower left and right corners of the board comprising eight holes numbered 20 through 90 for scores "below the line." Also, there are two second groups of holes, each comprising three columns of nine holes, made in the upper left and right corners of the board for scores "above the line." In addition, there are two holes adjacent the lower edge of the board inboard of the first groups of holes for indicating when a side is vulnerable. Finally, there are two further groups of six holes inboard of the first groups of holes and below the second groups of holes, one being provided in an area delimited by a "heart" symbol and the other being provided in an area delimited by a "spade" symbol. As explained at page 3, lines 10-12, these groups of six holes are for storing unused scoring pegs during the course of play.

In rejecting the appealed claim as being unpatentable over the applied references, we understand the examiner as conceding that Price does not teach (1) “an indicia of the four types of card suits, with trump identification spots associated with each of said suits, and for identifying which of said teams named one of said suits as trump,” as called for in claim 1, or (2) the use of the device to keep score of the game of Euchre. To overcome these deficiencies, the examiner turns to Smith and Townsend, respectively.

Smith is directed to a device for indicating the current bid of a Bridge player. Smith’s device includes, in pertinent part, an indicating card 17 divided into five areas 20, with each area having indicia 21 representing one of the four suits (clubs, diamonds, hearts, spades) and no trump. Each of the five areas also includes a legend 20 comprising numbers 1 through 7 arranged vertically down the right side of the area. To the right of the indicating card is a slidable pointer 27 for indicating the current bid of the player. For example, in Figure 1 the pointer 27 points to the number 2 in the “hearts” area, thereby indicating a bid of two hearts. To the left of the five areas there is a legend 30 designating the positions of the players (north, east, south and west) and a second pointer 33. Smith envisions that each player will have one of the disclosed devices, in order to indicate that player’s current bid as the bidding progresses (page 2, lines 85-97). After bidding, the pointer 27 of each device is moved into the proper position to denote the successful bidder (page 2, lines 98-101). The pointer 33 of each device is moved into the proper position to denote the dealer of the hand being played (page 2, lines 102-105).

Townsend pertains to a Euchre score board. The device comprises a centrally located legend 50 numbered 1 through 10 that divides the board into two tabulation areas. Starting at the legend 50 and proceeding outward, each area comprises a first vertical column of ten peg receiving holes 54 or 56 immediately adjacent the centrally located legend, followed by a second vertical column of four peg receiving holes 58 or 60 immediately adjacent the first vertical column, followed by an additional legend 62 or 64 numbered 1 through 10, followed by a third vertical column of the ten peg receiving holes 70 or 72. The first vertical columns are used to indicate each team's score (from 1 to 10) in the course of a single game, the second vertical columns are used to indicate the number of "euchres" scored (from 1 to 4) by a team in the course of a single game, and the third vertical columns are used to indicate the number of games won (from 1 to 10) by a team. In addition, a series of six holes 78 is provide across the bottom edge of the board for storing unused pegs during the course of play.

In rejecting claim 1, the examiner takes the position that it would have been obvious to one of ordinary skill in the art in view of the teachings of Smith to modify the scoring device of Price "to include the suits and a process to allow identification of such for simplicity" (final rejection, page 3), and that it also would have been obvious to use Smith's device as a Euchre score board in view of Townsend. Implicit in the above is the examiner's determination that the modified scoring device of Price would correspond to the subject matter of claim 1 in all respects.

The examiner's position is unsound. More particularly, the examiner has failed to advance any convincing line of reasoning as to why, or how, one of ordinary skill in the art would have modified Price in view of Smith and/or Townsend to arrive at the claimed scoring device, which comprises, among other things, scorekeeping spots for keeping the teams' scores for the game of Euchre and indicia of the four types of card suits that identify both what suit is trump and which team named that suit as trump. Price is directed to a scoring device particularly directed to persons engaged in playing the game of Bridge and does not include indicia for indicated which suit is trump, much less which team named trump. In this regard, the "heart" and "spade" areas noted by the examiner are merely for storing unused scoring pegs. As to Smith, while this reference discloses indicia of the four types of card suits and means for identifying which suit is trump (i.e., the sliding point 27 along the right side of the card suit areas 20) during the course of play of the game of Bridge, there is no teaching of a corresponding identifying means arranged along the other side of the card suit areas, as called for in the last paragraph of claim 1. In this regard, the legend 30 and sliding pointer 33 to the left of the areas 20 do not suffice. Townsend at best teaches the concept of using a scoring device for keeping score of the game of Euchre, but this broad concept does not make up for the collective deficiencies of Price and Smith.

Accordingly, we see no basis in the combined teachings of the applied references for their combination in a manner that would have resulted in the claimed subject matter and consider that the examiner has engaged in a hindsight reconstruction of appellant's

claimed device by impermissibly utilizing appellant's own disclosure and claim as a target to be hit by invention-guided manipulation of the disparate teachings of the applied prior art. In that regard, we note, as our court of review indicated in *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992), that it is impermissible to use the claimed invention as an instruction manual or "template" in attempting to piece together isolated disclosures and teachings of the prior art so that the claimed invention is rendered obvious.

In light of the foregoing, it is our determination that the examiner's rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Price in view of Smith and Townsend will not be sustained.

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN  
Administrative Patent Judge

LAWRENCE J. STAAB  
Administrative Patent Judge

JOHN P. MCQUADE  
Administrative Patent Judge

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