

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN D. GANTT

Appeal No. 2004-0508
Application 09/464,557

ON BRIEF

Before RUGGIERO, LEVY and BLANKENSHIP, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the Examiner's rejection of claims 4, 14, and 22. Claims 7-9, 17-19, and 25-27 have been allowed. Claims 1-3, 5, 6, 10-13, 15, 16, 20, 21, 23, and 24 have been canceled. The amendment filed September 30, 2002 after final rejection has been approved for entry by the Examiner.

The disclosed invention relates to a computer-implemented graphics system which provides visual clues for navigating a three-dimensional space. A cursor is moved through a two-dimensional viewport of the three-dimensional space which is displayed on a monitor. The graphics system determines the position of the cursor and generates a visual representation of the cursor using human recognizable metaphors to indicate the cursor position within the three-dimensional space relative to the two-dimensional viewport.

Claim 4 is illustrative of the invention and reads as follows:

4. A computer-implemented method for providing visual clues for navigating a three-dimensional space represented in a computer-implemented graphics system, comprising:

(a) displaying a two-dimensional viewport of the three-dimensional space on a monitor attached to the computer;

(b) moving a cursor through the two-dimensional viewport of the three-dimensional space according to a position of an input device attached to the computer;

(c) determining a position of the cursor within the three-dimensional space relative to the two-dimensional viewport; and

(d) generating a visual representation of the cursor to indicate the position of the cursor within the three-dimensional space relative to the two-dimensional viewport, wherein the generating step comprises varying a reflectivity of the cursor to indicate the position of the cursor within the three-dimensional space relative to the two-dimensional viewport.

The Examiner relies on the following prior art:

Lumelsky et al. (Lumelsky)	5,162,779	Nov. 10, 1992
Frasier et al. (Frasier)	5,268,677	Dec. 07, 1993
Takeda	6,166,718	Dec. 26, 2000

(filed Jun. 10, 1997)

Claims 4, 14, and 22, all of the appealed claims, stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Takeda in view of Frasier and Lumelsky.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs¹ and the Answer 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 consideration, in reaching our decision, Appellant's arguments set forth in the Briefs 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

¹ The Appeal Brief was filed December 30, 2002 (Paper No. 10). In response to the Examiner's Answer mailed March 26, 2003 (Paper No. 11), a Reply Brief was filed May 23, 2003 (Paper No. 12), which was acknowledged and entered by the Examiner in the communication dated July 29, 2003 (Paper No. 13).

particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as recited in claims 4, 14, and 22. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of

obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

With respect to the Examiner's 35 U.S.C. § 103(a) rejection of appealed claims 4, 14, and 22, Appellant asserts that the Examiner has failed to establish a prima facie case of obviousness since all of the claimed limitations are not taught or suggested by any of the applied prior art references. In particular, Appellant contends (Brief, pages 7 and 8; Reply Brief, pages 2 and 3) that none of the applied prior art references teaches or suggests indicating the position of a cursor within a three-dimensional space relative to a two-dimensional viewport by "varying a reflectivity of the cursor," a feature appearing in each of the appealed claims. Appellant concludes that, with this asserted deficiency in the applied references, the references even if combined would not result in the invention as claimed.

After reviewing the arguments of record from Appellant and the Examiner, we are in general agreement with Appellant's position as stated in the Briefs. We find nothing in any of the applied prior art references which discloses the varying of the reflectivity characteristic of a cursor to indicate the position of a cursor in displayed space. While the Examiner has apparently asserted correspondence between Lumelsky's disclosure

(column 2, lines 34-37) of enhancing the depth perception of a cursor by varying the cursor's "color, size, transparency, and/or pattern," we find no indication from the Examiner as to how the varying of any of these cursor characteristics would satisfy the claimed limitation which specifies a reflectivity characteristic. The Examiner must not only make requisite findings, based on the evidence of record, but must also explain the reasoning by which the findings are deemed to support the asserted conclusion. See In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002).

In summary, since all of the claim limitations are not taught or suggested by the applied prior art, it is our opinion that the Examiner has not established a prima facie case of obviousness with respect to the claims on appeal. Accordingly, we do not sustain the Examiner's 35 U.S.C. § 103(a) rejection of

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appealed claims 4, 14, and 22. Therefore, the Examiner's
decision rejecting claims 4, 14, and 22 is reversed.

REVERSED

JOSEPH F. RUGGIERO)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
STUART S. LEVY)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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HOWARD B. BLANKENSHIP)	
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