

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ex parte RENATE M. SOMBROEK and JAN D. GERLINGS

Appeal No. 2004-1764
Application No. 08/704,400

ON BRIEF

Before THOMAS, KRASS, and BARRY, *Administrative Patent Judges*.
BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

A patent examiner rejected claims 34-43. The appellants appeal therefrom under 35 U.S.C. § 134(a). We reverse.

BACKGROUND

The invention at issue on appeal controls a cursor. In many applications, a user employs a cursor to interact with a data processing system. More specifically, he changes the position of the cursor on a display by manipulating a "user-interface means, e.g., a maneuvering device." (Spec. at 1.) Heretofore, the appellants have

sometimes found the speed of the cursor too low to transfer the cursor over large distances rapidly and, other times, too high to position the cursor accurately. (*Id.* at 2.)

Accordingly, upon activation of a user-interface means, the appellants' invention displaces a cursor with a certain range of speed during a predetermined interval. After the interval has elapsed, their invention displaces the cursor within a faster range of speed. (*Id.*) They assert that "[a]ccurate positioning of [the] cursor . . . is accomplished in a fairly simple way without being hindered by a too high cursor speed, whereas large distances can be traversed fairly rapidly, all within the same application." (*Id.* at 5.)

A further understanding of the invention can be achieved by reading the following claims.

34. A data processing system, comprising:

a display;

a cursor controller connected to said display for displacement of a cursor represented on said display; and

a user-interface coupled to said cursor controller, said user-interface operable to sense a user-desired manipulation of the cursor based on a time period of an application of force on said user-interface by a user,

wherein a displacement speed of the cursor as represented by said display is dependent upon the time period of the application of force on said user-interface by the user,

wherein, upon an initial application of force on said user-interface by the user, the actual displacement speed of the cursor is variable within a first speed range, and

wherein, upon a predetermined time interval after the initial application of force on said user-interface by the user, the actual displacement speed of the cursor is variably within a second speed range.

40. A data processing system, comprising:

a display;

a cursor controller connected to said display for displacement of a cursor represented on said display; and

a user-interface coupled to said cursor controller, said user-interface operable to sense a user-desired manipulation of the cursor based on a time period of an application of force on said user-interface by a user,

wherein, during the time period of the application of force on said user-interface by the user,

at least one timing signal indicative of the user-desired manipulation of the cursor as sensed by said user-interface is generated,

an actual displacement speed of the cursor as represented by said display is variable within a first speed range when a total generation of timing signals is less than a pre-specified number, and

the actual displacement speed of the cursor is variable within a second speed range when the total generation of timing signals is equal to or greater than the pre-specified number.

Claims 34-43 stand rejected under 35 U.S.C. § 102(b) as anticipated by European Patent Application Publication No. 0062133 A2 ("Levine").

OPINION

Rather than reiterate the positions of the examiner or the appellants *in toto*, we focus on the point of contention therebetween. Noting that "Levine teaches at page 6 lines 9 to 29 and page 7 lines 20 to 23 the cursor rate is proportional to voltage V1 and that cursor rate may change over time," (Examiner's Answer at 12), and that "[a] change in V1 causes a change in cursor rate and a change in Vc," (*id.*), the examiner finds, "thus, figure 2 is modified by this embodiment to show Vc varying by varying the slope of the curve from point A to point B to point C in order to change the speed of the cursor." (*Id.*) He then asserts, "from a voltage at point A to a voltage at point B the cursor's speed is within a first range and thus from a voltage at point B to a voltage at point C the cursor's speed is within a second range." (*Id.* at 12-13.) The appellants argue, "the arbitrary designation of midpoint B as the boundary between the 1st speed range and the 2nd speed range for *Levine* as asserted by Examiner Brier is determined **after a release of a cursor button 1** illustrated in FIG. 1 of *Levine* (i.e., a post-determination, not a pre-determination)." (Reply Br. at 8.)

In addressing the point of contention, the Board conducts a two-step analysis. First, we construe the claims at issue to determine their scope. Second, we determine whether the construed claims are anticipated.

1. CLAIM CONSTRUCTION

"Analysis begins with a key legal question — *what is the invention claimed?*" *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987). In answering the question, "[t]he Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art." *In re Lowry*, 32 F.3d 1579, 1582, 32 USPQ2d 1021, 1034 (Fed. Cir. 1994) (citing *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983)).

Here, claim 34 recites in pertinent part the following limitations: "upon an initial application of force on said user-interface by the user, the actual displacement speed of the cursor is variable within a first speed range, and . . . upon a predetermined time interval after the initial application of force on said user-interface by the user, the actual displacement speed of the cursor is variable within a second speed range." Similarly, claim 40 recites in pertinent part the following limitations: "an actual displacement speed of the cursor as represented by said display is variable within a first speed range when a total generation of timing signals is less than a pre-specified number, and the actual displacement speed of the cursor is variable within a second speed range when the total generation of timing signals is equal to or greater than the pre-specified number." Considering these limitations, claims 24 and 40 require displacing a cursor within a range of speed during a predetermined interval of time and, after the

predetermined interval has elapsed, displacing the cursor within a faster range of speed.

2. ANTICIPATION DETERMINATION

"Having construed the claim limitations at issue, we now compare the claims to the prior art to determine if the prior art anticipates those claims." *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349, 64 USPQ2d 1202, 1206 (Fed. Cir. 2002). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (citing *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715, 223 USPQ 1264, 1270 (Fed. Cir. 1984); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983); *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983)). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

Here, Levine discloses "a cursor controller for a display in which, by a psychomotor operation such as the depression of a key, the display apparatus causes a cursor to move from one portion of the viewing area to another. . . ." P. 2. The passage

of the reference cited by the examiner explains that "[f]or an accelerating cursor," p. 5, "the cursor speed is arranged to increase in time." P. 6. "When this is done, the ramp voltage in the region B in FIG. 2 will be quadratic." *Id.*

The examiner equates "an arbitrary point," (Examiner's Answer at 13), in Region B of the Figure to the claimed point at which "the first speed range becomes the second speed range." (*Id.*) We are unpersuaded that such an arbitrary point, however, is "predetermined." To the contrary, we agree with the appellants that the arbitrary point "is not predetermined because its value depends upon the actual depression time." (Appeal Br. at 11.) More specifically, it "is dynamically calculated during the depression of [Levine's] cursor button 1 with a final calculated value occurring upon a release of cursor button 1." (*Id.* at 10.)

The absence of displacing a cursor within a range of speed during a predetermined interval of time and, after the predetermined interval has elapsed, displacing the cursor within a faster range of speed negates anticipation. Therefore, we reverse the anticipation rejection of claim 34; of claims 35-39, which depend therefrom; of claim 40; and of claims 41-43, which depend therefrom.

CONCLUSION

In summary, the rejection of claims 34-43 under § 102(b) is reversed.

REVERSED

JAMES D. THOMAS
Administrative Patent Judge

ERROL A. KRASS
Administrative Patent Judge

LANCE LEONARD BARRY
Administrative Patent Judge

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Appeal No. 2004-1764
Application No. 08/704,400

Page 10

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