

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TYROL R. GRAHAM and G. ERIC ENGSTROM

Appeal No. 2005-0709
Application No. 09/767,197

ON BRIEF

Before KRASS, SAADAT and NAPPI, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

Decision On Appeal

This is a decision on appeal from the final rejection of claims 1-3, 5-24, 26-42, and 46. Claims 4, 25, 43-45, and 47 have been indicated by the examiner as allowable and form no part of the appeal herein.

The invention pertains to entering alphanumeric data or commands with an input keypad on a wireless mobile phone. In

Appeal No. 2005-0709
Application No. 09/767,197

particular, the data and/or commands are entered through selected ones of down, up, right, left, and other patterns of stroking touch sensitive keys. The employment of two stroking directions is sufficient to represent the 26 letters of the English alphabet, with additional key stroking patterns available to represent selected numbers of punctuations and commands.

Representative independent claim 1 is reproduced as follows:

1. A wireless mobile phone comprising:

an input keypad having a plurality of touch sensitive keys;
and

means coupled to the input keypad to interpret key stroking patterns of said touch sensitive keys by a user to facilitate entry of alphanumeric data or commands, wherein each key stroking pattern is composed of one or more stroke pattern directions with each stroke pattern direction defined by a stroking of two or more adjacent ones of said touch sensitive keys.

The examiner relies on the following references:

Kushler et al. (Kushler)	5,945,928	Aug. 31, 1999
Smith	5,982,303	Nov. 9, 1999

Claims 1-3, 5-24, 26-42, and 46 stand rejected under 35 U.S.C. § 103 as unpatentable over Smith in view of Kushler.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

OPINION

At the outset, we note that, in accordance with appellants' grouping of the claims at page 2 of the principal brief, all claims will stand or fall together.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). To reach a conclusion of obviousness under § 103, the examiner must produce a factual basis supported by a teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a prima facie case. In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). The examiner may satisfy his/her burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead the individual to combine the relevant teachings of the references. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

It is the examiner's contention that Smith teaches the instant claimed subject matter (for the reasons enunciated at page 4 of the answer) but for an explicit disclosure that the

Appeal No. 2005-0709
Application No. 09/767,197

device may be a wireless mobile telephone. Thus, the examiner relies on Kushler for a teaching of a touch sensitive keypad on a cellular telephone, and concludes that it would have been obvious to combine the teachings of Smith and Kushler to provide for Smith's disclosed method of entering data and commands on a wireless mobile phone keypad.

Appellants argue that the examiner has not pointed to any suggestion in the cited references related to the desirability of the combination of the cited references (see page 5 of the principal brief). We disagree and find that in view of Smith's disclosure of entering data/commands into a keypad, and Smith's further disclosure of such keypads to be "telephone keypads" (column 1, line 29), and that "a variety of apparatus can be used to provide the eight key keypad including. . . a touch-tone telephone" (column 4, lines 15-18), taken together with Kushler's disclosure of a touch sensitive keypad on a cellular telephone, the skilled artisan clearly would have been led to apply Smith's data/command entry method to the keypad of a wireless mobile telephone. Thus, we find appellants' argument regarding no suggestion to combine the references to be unconvincing.

On the other hand, we do find convincing of nonobviousness, appellants' arguments regarding the "key stroking patterns" of

Appeal No. 2005-0709
Application No. 09/767,197

the instant invention being different from, and unobvious over, Smith's disclosure.

Each of the instant independent claims 1, 22, 43, and 46 requires a "stroke pattern direction" with "each stroke pattern direction defined by a stroking of two or more adjacent ones of said touch sensitive keys." While appellants distinguish a "keystroke" from a "stroking" of a key by defining the former as a "strike" or a "pressing" of a key, with the latter not requiring the user to depress a key, but merely to caress the key to indicate direction, the examiner gives a broad meaning to the term "stroking."

While we agree with the examiner that "stroking" a key may broadly include a depression of a key, the claims require more than this. The claims call for "key stroking patterns."

Smith represents a character by a two stroke pictographic figure, where a first stroke proceeds from the position of a first key pressed to the center of the keypad, while a second stroke proceeds from the center of the keypad to the position of the second key to be pressed. It might broadly be said that if the pressing of a key is, broadly, a stroke, then Smith may be broadly interpreted as teaching a "key stroking pattern," as the first and second keys to be pressed, each set of two keys

Appeal No. 2005-0709
Application No. 09/767,197

representing a "key stroke pattern," present a "pattern."

But the instant claims go on to require that each key stroke pattern is composed of "one or more stroke pattern directions with each stroke pattern defined by a stroking of two or more adjacent ones of said touch sensitive keys." We fail to see how one may conceivably contend that the pressing of a first and then a second key in Smith indicates a "stroke pattern direction." The position of the second key may be in some particular "direction" from the first key, but this is clearly not a "stroke pattern direction," as used in the instant claims, because the keys are not stroked in a particular direction, e.g., like stroking the bristles of a hairbrush in one direction or the other; but, rather the keys in Smith are pressed individually. In our view, "stroking," as used in the instant claims, requires a continuous movement of the user's finger, or of whatever instrument is being applied to the keys, between the adjacent keys.

The instant claims also define what is meant by a "stroke pattern direction," i.e., "a stroking of two or more adjacent ones of said touch sensitive keys."

Smith fails to suggest such a "stroke pattern direction defined by a stroking of two or more adjacent ones of said touch sensitive keys." When Smith shows that the letter A is

Appeal No. 2005-0709
Application No. 09/767,197

represented by first pressing key 7 and then pressing key 9, these keys are clearly not adjacent each other, as required by the definition in the instant claims. However, in Smith's example of representing the letter V by first pressing key 1 and then pressing key 2, these keys are clearly adjacent each other, but we fail to see how pressing key 1 and then lifting one's finger to press key 2 amounts to a "stroke pattern direction" because there is no continuous movement.

While the instant claims do not specifically require a "continuous" movement, it is clear from the instant specification that "stroking" requires a "gliding pattern" (page 5, line 4) and whether one calls it a continuous movement, or a gliding pattern, it is clear that the pressing of one key, lifting the finger and discontinuously pressing another key is not a "stroking" and does not comprise a "stroking pattern direction," as those terms are used in the instant claims.

Accordingly, we will not sustain the rejection of claims 1-3, 5-24, 26-42, and 46 under 35 U.S.C. § 103.

Appeal No. 2005-0709
Application No. 09/767,197

The examiner's decision is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
)	
)	
)	
)	
MAHSHID D. SAADAT)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
)	
ROBERT NAPPI)	
Administrative Patent Judge)	

EK/RWK

Appeal No. 2005-0709
Application No. 09/767,197

SCHWABE, WILLIAMSON & WYATT, P.C.
PACWEST CENTER, SUITES 1600-1900
1211 SW FIFTH AVENUE
PORTLAND, OR 97204