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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID A. COBBLEY
and NITIN GUPTA

Appeal No. 2005-2526
Application No. 09/754,553

ON BRIEF

Before HAIRSTON, KRASS and DIXON, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-20.

The invention pertains to the display of soft keyboard images on a display. In particular, the keyboard display is prevented from overlying important information on the screen by the movement of a data entry area on the screen.

Representative independent claim 1 is reproduced as follows:

1. A method comprising:

displaying a keyboard image on a user interface; and

moving a data entry area on said interface to display said keyboard image.

The examiner relies on the following references:

Zellweger et al. (Zellweger)	6,230,170	May 8, 2001 (filed Jun. 17, 1998)
Vale	6,359,572	Mar. 19, 2002 (filed Sep. 3, 1998)
Kobayashi	6,424,359	Jul. 23, 2002 (filed Nov. 24, 1999)

Claims 1-20 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner offers Vale and Zellweger with regard to claims 1-5, 7-11, and 13-19, adding Kobayashi with regard to claims 6, 12, and 20.

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 claims at page 4 of the principal brief, claims 2, 5-8, 11-14, and 17-20 are grouped with claim 1, and claims 3, 4, 9, 10, 15, and 16 are grouped with claim 3. Accordingly, we will consider claims 1 and 3.

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 teachings, suggestions or implications 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 Hosp. Sys., Inc. v. Montefiore Hosp., 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). If that burden is met, the burden then shifts to the applicant 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 Id.; In re Hedges, 783 F.2d 1038, 1040, 228 USPQ 685, 687 (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, 1051, 189 USPQ 143, 146-147 (CCPA 1976). 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 and are deemed to be waived [see 37 CFR §41.67(c)(1)(vii)].

With regard to independent claim 1, the examiner contends that Vale displays a data entry area and a keyboard image on a user

interface (citing Figures 5-7, and data entry area 68, at column 5, lines 35-50, wherein the data entry area 68 comprises “Seattle, WA,” “Tokyo,” the data selection arrow, and the images of the clocks representing the data entered by the user). The examiner recognizes that Vale did not teach moving the data entry area on the user interface to display the keyboard image, but the examiner cited Zellweger for a teaching of adding more data to the display and moving the data in area 150 of Figure 13, in order to accommodate area 158 of Figure 14 without obstructing any displayed area (citing Figures 13 and 14, and column 2, lines 29-39, and 49-50, as well as column 11, lines 13-29 and column 12, lines 33-38).

The examiner concluded that the artisan would have found it obvious to incorporate the feature of Zellweger, wherein data is added to a display and a data area is moved, into Vale “because in Vale the images of the clocks are removed from the display. It would be desirable to be able to keep them on the display. For example shrinking, compressing, or repositioning the image area (also taught by Zellweger, see col. 2, lines 29-39 and lines 49-50) would affect this” (answer-page 3).

Appellants argue that Zellweger teaches only the movement of text to allow text interlineations and it does not teach a data entry area and a keyboard image, therefore failing to teach the movement of a data entry area to accommodate a keyboard image. Moreover, argue appellants, Zellweger provides no rationale from within the reference itself to modify Vale.

Furthermore, appellants argue that the “data entry area” 68 in Vale (and appellants questions whether this may be considered a “data entry area”) is a distinct entered data area which is separate and distinct from the keyboard image 66; therefore there would have been no reason to provide for movement of a data entry area on an interface to display a keyboard image.

Claim 1 calls for merely two steps. The first step, “displaying a keyboard image on a user interface,” is clearly taught by Vale in Figure 7 and the attendant text. The examiner agrees that Vale does not teach the second claimed step, “moving a data entry area on said interface to display said keyboard image.”

Accordingly, the outcome will depend on whether Zellweger teaches this claimed second step, as alleged by the examiner, and,

if so, whether the artisan would have been led to modify Vale's teaching with such a teaching by Zellweger of moving a data entry area on the interface to display the keyboard image.

With regard to appellants' first argument that Zellweger teaches only movement of text to allow text interlineations, we agree with appellants. While "data," as broadly construed, may comprise textual data as in Zellweger, what is being moved in Zellweger is text, or "data," in order to make room for text interlineations. Thus, "data" is being moved in Zellweger, but a "data entry area" is not moved. The text, or data, being moved makes room for new text, or new data, and that new data will be entered in an area one may designate as a "data entry area," but it is not the "data entry area" that is being moved in order to make room for the new data. Rather it is previously entered data that is being moved.

Accordingly, we do not find that Zellweger provides for the claim limitation of "moving a data entry area on said interface to display said keyboard image." Since the examiner admits that Vale also does not teach this limitation, it is clear that neither of the applied references provides for one of the instant claim limitations. Accordingly, no prima facie case of obviousness has

been established by the examiner and we will not sustain the rejection of claim 1 under 35 U.S.C. § 103. Since independent claims 7 and 13 contain a similar limitation, we will not sustain the rejection of any of the claims under 35 U.S.C. § 103.

Assuming, arguendo, however, that Zellweger did provide for a movement of a data entry area, we also do not find the requisite motivation for modifying Vale with the teachings of Zellweger. In other words, merely because Zellweger moves text in order to accommodate other text, we find nothing in such a teaching which would have led the artisan to modify Vale such that a data entry area in Vale should be moved to accommodate the display of a soft keyboard in such a manner so as not to overlay the data entry area.

The decision of the examiner rejecting claims 1-20 under 35 U.S.C. § 103 is reversed.

REVERSED

KENNETH W. HAIRSTON Administrative Patent Judge	)	
ERROL A. KRASS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JOSEPH L. DIXON Administrative Patent Judge	)	

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