

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 VLADIMIR DUNAEVSKY

Appeal 2006-2748
Application 10/123,268
Technology Center 3700

Decided: July 16, 2007

Before: MURRIEL E. CRAWFORD, JENNIFER D. BAHR and STUART S. LEVY, *Administrative Patent Judges.*

CRAWFORD, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 1, 2, 4, 8 to 11, 13, 14, 16, 20 to 23, 26, 27, 29, 33 to 36 and 38.

We have jurisdiction under 35 U.S.C. § 6(b) (2002).

34 Appellant invented a gaming device and method in which the results
35 of the game are displayed on adjacent concentric rings that are concurrently
36 displayed on a single video monitor (Specification 1).

1 Claim 1 under appeal reads as follows:

2 1. A gaming method comprising:

displaying results of a primary game, first ones of said results representing an award to a player, second ones of said results representing an opportunity to play a secondary game, said secondary game comprising at least a first display of a first selector of first indicia and an additional display of at least one additional selector of additional indicia, wherein said first selector and said at least one additional selector comprise adjacent concentric rings that are concurrently displayed on a single video monitor;

if said results of said primary game comprise said second ones of said results, displaying activation of said first selector of first indicia, some of said first indicia representing award amounts and at least one of said first indicia representing that said at least one additional selector of additional indicia is to select an award to a player, said additional indicia representing, on average, awards higher than awards represented by said first indicia;

if said at least one of said first indicia is selected, displaying activation of the one of said at least one additional selector that is directly adjacent the first selector for selecting said additional indicia; and

displaying an award to a player represented by selection of said first indicia or said additional indicia.

REJECTION

The Examiner rejected claims 1, 2, 4, 8 to 11, 13, 14, 16, 20 to 23, 26, 29, 33 to 36 and 38 under 35 U.S.C. § 103(a) as being unpatentable over Focher in view of Mangano.

1 The prior art relied upon by the Examiner in rejecting the claims on
2 appeal is:

3 Mangano U.S. 5,839,955 Nov. 24, 1998
4 Baerlocher U.S. 6,168,520 Jan. 02, 2001

5
6 Appellant contends that the combination of Baerlocher and Mangano
7 is improper.

8 Appellant contends in regard to claims 2, 14 and 27 that the
9 combination of Baerlocher and Mangano does not include a second wheel
10 wherein only a portion of the first wheel and the second wheel is displayed
11 on the video monitor.

12 Appellant also contends in regard to claims 4, 16 and 29 that
13 rectangular wheels would not have been obvious because rectangular wheels
14 are not conducive to spinning.

15 ISSUES

16 Has Appellant shown that the Examiner erred in combining the
17 teachings of Baerlocher and Mangano?

18 Has Appellant shown that the Examiner erred in determining that the
19 elements of the claims are unpatentable under 35 U.S.C. § 103(a) over the
20 combined teachings of Baerlocher and Mangano?

21 Has Appellant shown that the Examiner erred in holding that the
22 provision of rectangular wheels would have been an obvious design choice
23 because this choice solves no stated problem and produces no unexpected
24 result?

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26

FINDINGS OF FACT

2 Appellant's claim 1 is directed to a gaming method which includes a
3 first selector and at least one additional selector which together comprise
4 concentric rings that are concurrently displayed on a single video monitor
5 (see Figure 4).

6 Baerlocher discloses the game recited in Appellant's claim except that
7 Baerlocher does not disclose a first selector and at least one additional
8 selector which together comprise concentric rings that are concurrently
9 displayed on a single video monitor. Baerlocher discloses displaying a
10 portion of a wheel (see Figure 4).

11 Mangano discloses a spinning wheel card game which comprises a
12 plurality of wheel selectors which together comprise concentric rings that
13 are concurrently displayed on a single video display (Figure 6). The
14 concentric wheel display allows a gamer to spin five wheels
15 simultaneously and register indicia for each wheel (col. 6, lines 14 to 22).
16 By the use of spokes 26 a gamer can see all the wheels, and thus the
17 registered hand, on one display (Figures 1 and 6).

18 A person of ordinary skill in the art would recognize that were the
19 multiple concentric wheels described in Mangano used in the Baerlocher
20 game, a gamer would be able to view the wheels in a simplified unitary
21 display. A person of ordinary skill in the art would have been motivated
22 to display the wheels of Baerlocher in a concentric fashion as taught by
23 Mangano to obtain the self evident advantages of conserving display
24 space and reducing manufacturing costs.

1 PRINCIPLES OF LAW

2 Motivation to combine references “may be found in implicit factors,
3 such as ‘knowledge of one of ordinary skill in the art, and [what] the nature
4 of the problem to be solved as a whole would have suggested to those of
5 ordinary skill in the art.’” *Alza Corp. v. Mylan Labs.*, 464 F.3d 1286, 1291,
6 80 USPQ2d 1001, 1004 (Fed. Cir. 2006) (quoting *In re Kahn*, 441 F.3d 977,
7 988, 78 USPQ2d 1329, 1337 (Fed. Cir. 2006)). *See also KSR Int'l v.*
8 *Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385, 1396 (2007). (citing with
9 approval *In re Kahn*, 441 F.3d at 988, 78 USPQ2d at 1336).

10 If a technique has been used to improve one device, and a person of
11 ordinary skill in the art would recognize that it would improve similar
12 devices in the same way, using the technique is obvious unless its actual
13 application is beyond that person’s skills. It must be determined whether the
14 improvement is no more than the predictable use of prior art elements
15 according to their established functions. *KSR*, 127 S. Ct. at 1732, 82
16 USPQ2d at 1395.

17 “The presence or absence of a motivation to combine references in an
18 obviousness determination is a pure question of fact.” *In re Gartside*, 203
19 F.3d 1305, 1316, 53 USPQ2d 1769, 1776 (Fed. Cir. 2000).

20
21 ANALYSIS

22 Appellant is correct that Mangano involves a card game rather than a
23 wheel of fortune type game as is disclosed in Baerlocher. However, even
24 though Mangano utilizes the plurality of concentric wheels to display the
25 hand of the card player, one of ordinary skill would recognize the
26 advantages of such a display as applied to the wheel of fortune type game of

1 Baerlocher. The recognized advantages of conservation of display space and
2 reduction of costs would have been sufficient to motivate a person of
3 ordinary skill in the art to modify the Baerlocher device so as to display the
4 plurality of wheels in a concentric manner.

5 The use of concentric wheels in the Baerlocher context would have
6 been no more than the predictable use of prior art elements according to their
7 established functions.

8 In regard to the second issue, we note that Baerlocher explicitly
9 discloses displaying a portion of a wheel (Figure 4) as is recited in claim 2.

10 We also agree with the Examiner that the provision of rectangular
11 wheels rather than circular wheels would have been an obvious design
12 choice well within the skills of a person of ordinary skill. We are not
13 persuaded by Appellant's argument that the provision of rectangular wheels
14 would not have been obvious because rectangular wheels do not spin as is
15 required by Baerlocher and Mangano because both of these references
16 display the wheels on video monitors. Rectangular wheels can indeed spin
17 on a video monitor.

18 In view of the foregoing, we will sustain the Examiner's rejection of
19 claims 1 and 2. We will also sustain the rejection as it is directed to claims
20 4, 8 to 11, 13, 14, 16, 20 to 23, 26, 27, 29, 33 to 36 and 38 because the
21 Appellant has not argued the separate patentability of these claims.

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1 No time period for taking any subsequent action in connection with
2 this appeal may be extended under 37 CFR § 1.136(a) (1) (iv).

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4 AFFIRMED

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13 PATENT LAW GROUP LLP
14 2635 NORTH FIRST STREET
15 SUITE 223
16 SAN JOSE CA 95134