

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CHRISTOPHER E. GRAHAM,  
ROSS A. HUNTER, and LISA R. JAMES

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Appeal 2007-3329  
Application 10/383,113<sup>1</sup>  
Technology Center 2600

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Decided: April 24, 2008

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Before JOSEPH F. RUGGIERO, SCOTT R. BOALICK,  
and JOHN A. JEFFERY, *Administrative Patent Judges*.

BOALICK, *Administrative Patent Judge*.

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<sup>1</sup> Application filed March 5, 2003. This application claims priority, through a series of continuation applications, to U.S. Patent Serial No. 07/815,656, filed December 31, 1991. The real party in interest is Microsoft Corporation.

## DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-8, all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## STATEMENT OF THE CASE

Appellants' invention relates to the manipulation of cells by a user of an electronic spreadsheet system. (Spec. 1:13-14.)

Claim 1 is exemplary:

1. In a computer system having a display device, a mouse having a predefined mouse button and controlling movement of a pointer displayed on the display device, and a spreadsheet having a plurality of cells, wherein at least one cell contains data manipulable by the spreadsheet, the spreadsheet being displayed on the display device, a method of transferring spreadsheet-manipulable contents associated with a first cell into a second cell, the method comprising the acts of:

transferring the spreadsheet-manipulable contents associated with the first cell to the second cell in response to user input commands consisting essentially of:

a first user command selecting the first cell in the spreadsheet;

a second user command comprising positioning a pointer over the first cell,

depressing the predefined mouse button, and dragging the first cell to the second cell; and

a third user command releasing the predefined mouse button.

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

Beard	US 4,939,507	Jul. 3, 1990
Torres	US 5,040,131	Aug. 13, 1991
Harris	US 5,276,607	Jan. 4, 1994 (filed Mar. 28, 1990)

IBM Technical Disclosure Bulletin, "Pause Preview: A Technique for Improving the Interactivity of Direct Manipulation," TDB-ACC-No. NA 911220, December, 1991 ("IBM")

Claims 1 and 3 stand rejected under 35 U.S.C. § 103(a) as being obvious over Torres.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being obvious over Torres and Harris.

Claims 4, 6, and 8 stand rejected under 35 U.S.C. § 103(a) as being obvious over Torres, IBM, and Beard.

Claims 5 and 7 stand rejected under 35 U.S.C. § 103(a) as being obvious over Torres, IBM, Beard, and Harris.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in

this decision. Arguments that Appellants did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R.

§ 41.37(c)(1)(vii).<sup>2</sup>

## ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting claims 1-8 under 35 U.S.C. § 103(a). That is, given the teachings of the prior art, have Appellants shown that the differences between the claims and the prior art are sufficient to render the claimed subject matter unobvious to a person skilled in the art at the time the invention was made?

## PRINCIPLES OF LAW

All timely filed evidence and properly presented arguments are considered by the Board in resolving an obviousness issue on appeal. *See In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984).

In the examination of a patent application, the Examiner bears the initial burden of showing a *prima facie* case of unpatentability. *Id.* at 1472. When that burden is met, the burden then shifts to the applicant to rebut. *Id.*; *see also In re Harris*, 409 F.3d 1339, 1343-44 (Fed. Cir. 2005) (finding rebuttal evidence unpersuasive). If the applicant produces rebuttal evidence of adequate weight, the *prima facie* case of unpatentability is dissipated. *In*

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<sup>2</sup> Except as will be noted in this opinion, Appellants have not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See* 37 C.F.R. § 41.37(c)(1)(vii).

*re Piasecki*, 745 F.2d at 1472. Thereafter, patentability is determined in view of the entire record. *Id.* However, on appeal to the Board it is an appellant's burden to establish that the Examiner did not sustain the necessary burden and to show that the Examiner erred. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [for obviousness] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). In *KSR*, the Supreme Court reaffirmed that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 1739. The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in

the same way, using the technique is obvious unless its actual application is beyond his or her skill.

*Id.* at 1740.

"[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d at 988. "To facilitate review, this analysis should be made explicit." *KSR*, 127 S. Ct. at 1741. However, "the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ."

*Id.*

The Supreme Court noted that "[i]n many fields it may be that there is little discussion of obvious techniques or combinations, and it often may be the case that market demand, rather than scientific literature, will drive design trends." *KSR*, 127 S. Ct. at 1741. "Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." *Id.* at 1742. The Court also noted that "[c]ommon sense teaches . . . that familiar items may have obvious uses beyond their primary purposes." *Id.* "A person of ordinary skill is also a person of ordinary creativity, not an automaton." *Id.*

During examination of a patent application, a claim is given its broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969). "[T]he words of a claim 'are

generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted). The "ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Id.* at 1313.

## ANALYSIS

Appellants contend that the Examiner erred in rejecting claims 1-8. Reviewing the record before us, we do not agree. In particular, we find that the Appellants have not shown that the Examiner failed to make a prima facie showing of obviousness with respect to claims 1-8. Appellants failed to meet the burden of overcoming that prima facie showing.

### *35 U.S.C. § 103(a) Rejection -- Torres*

Regarding independent claims 1 and 3, Appellants argue that "Torres does **not** teach or suggest copying/moving data from a first cell within a table to a second cell within the same table." (Br. 11-12.) In particular, Appellants argue that: (1) "the icon that is the subject of the drag-and-drop operation in Torres does not contain 'spreadsheet-manipulable data'" (Br. 12); (2) "the statistical icon cited by the Examiner is found in a toolbar . . . rather than in a 'first cell' of the spreadsheet or table" (Br. 12); and (3) "the act of dragging the statistical icon to a cell within the table does not actually 'transfer' or 'move' contents from one location to another in a spreadsheet" (Br. 13). We do not agree.

As the Examiner correctly found, Torres teaches transferring spreadsheet-manipulable contents associated with a first cell to a second cell in response to user input commands, as claimed. (Ans. 3-4; Torres Abstract, col. 2, ll. 22-35, col. 3, ll. 41-50, col. 4, ll. 50-52, col. 5, ll. 7-46, col. 6, l. 65 to col. 7, l. 34 , Figs. 1-5, 7C.) In particular, referring to Fig. 5, Torres teaches dragging an icon 24 from a cell of a statistical attribute bar 20 ("statistical icon") to a cell 26 of a data table 10. (Torres col. 5, ll. 7-31.) Torres also teaches that "[t]he user could just as easily have moved the icon to another position on the display, including another window supporting a different application program." (Torres, col. 5, ll. 28-31.)

We agree with the Examiner that the icon 24 of Torres is "spreadsheet-manipulable data." (Ans. 9.) Appellant has not pointed to a special definition of the broad term "spreadsheet-manipulable data" in the Specification, nor do we find one. Under a reasonable interpretation, therefore, the term spreadsheet-manipulable data covers data that is capable of being manipulated in a spreadsheet program. Torres teaches that an icon 24, which may be considered data under a broad but reasonable interpretation, is manipulated by being dragged from a cell of the statistical attribute bar 20 to a cell 26 of the data table 10. (Torres col. 5, ll. 7-31.) We also note that the caption of Torres Fig. 5 is "*DIRECT MANIPULATION OF THE ICON TO PLACE THE RESULT IN THE DATA TABLE*" (emphasis added). Therefore, under a broad but reasonable interpretation, the icon 24 of Torres is "spreadsheet-manipulable data," as claimed.

We also agree with the Examiner that, although the statistical attribute bar 20 is not described as a "spreadsheet" itself, it is part of the spreadsheet window that includes both a "table" and a "command bar" image and,

therefore, the recited first cell would be met by a cell of the command bar. (Ans. 9.) The icon 24 of Torres is a cell of the statistical attribute bar 20 (command bar) because it is at the intersection of a column and row and, as Appellants point out (Br. 12), the Specification defines a "cell" as an intersection of a column and a row of a worksheet (Spec. 4:19-21; *see also* Spec. 1:23-24). Thus, under a broad but reasonable interpretation, a cell of the statistical attribute bar 20 may be interpreted as a cell of a spreadsheet. Accordingly, the icon 24 in the statistical attribute bar 20 meets the recited "first cell" claim limitation.

We note that, contrary to Appellants' argument (Br. 12), the "second cell" recited by claim 1 is not required to be in the same "spreadsheet" as the recited "first cell." Moreover, even though the statistical attribute bar 20 and data table 10 are shown as being adjacent but separate, it would be no more than a predictable variation of the prior art to include the attribute bar 20 icons in the table 10 itself. *See KSR*, 127 S. Ct. at 1740.

Finally, we agree with the Examiner (Ans. 10) that dragging the icon 24 does transfer or move contents as claimed because, after dragging and dropping, the contents of the first cell (i.e., the icon) are transferred to the second cell 26. (Torres col. 5, ll. 7-46, col. 6, l. 65 to col. 7, l. 34 , Figs. 5, 7C.)

Appellants also argue that there is no motivation to modify Torres and that Torres teaches away from the claimed invention. (Br. 14-15.) We do not agree. As discussed, we find that Torres teaches the disputed claim limitations.

Accordingly, we conclude that Appellants have not shown that the Examiner erred in rejecting independent claims 1 and 3 under 35 U.S.C. § 103(a).

*35 U.S.C. § 103(a) Rejection -- Torres/Harris*

With respect to dependent claim 2, Appellants have not pointed out with particularity or explained why the limitations of this dependent claim are separately patentable. (Br. 15-16.) Instead, Appellants summarily allege that this claim is allowable "in light of the . . . arguments pertaining to the Examiner's failure to establish a prima facie case of obviousness with regard to the independent claims." (Br. 16.) Because Appellants have not persuasively rebutted the Examiner's prima facie case of obviousness for dependent claim 2 based on the teachings of Torres and Harris, we will sustain the rejection of claim 2 for the reasons discussed with respect to independent claim 1, from which claim 2 depends.

*35 U.S.C. § 103(a) Rejection -- Torres/IBM/Beard*

Regarding independent claim 4, Appellants present the same arguments as discussed with respect to independent claims 1 and 3. (Br. 11-15.) Accordingly, for the reasons discussed with respect to independent claims 1 and 3, we conclude that Appellants have not shown that the Examiner erred in rejecting independent claim 4 under 35 U.S.C. § 103(a).

Although Appellants nominally argue the rejection of dependent claims 6 and 8 separately (Br. 15-16), the arguments presented do not point out with particularity or explain why the limitations of the dependent claims

are separately patentable. Instead, Appellants summarily allege that these claims are allowable "in light of the . . . arguments pertaining to the Examiner's failure to establish a prima facie case of obviousness with regard to the independent claims." (Br. 16.) Because Appellants have not persuasively rebutted the Examiner's prima facie case of obviousness for dependent claims 6 and 8 based on the teachings of Torres, IBM, and Beard, we will sustain the rejection of claims 6 and 8 for the reasons discussed with respect to independent claim 4, from which claims 6 and 8 depend.

*35 U.S.C. § 103(a) Rejection -- Torres/IBM/Beard/Harris*

With respect to dependent claims 5 and 7, Appellants have not pointed out with particularity or explained why the limitations of these dependent claims are separately patentable. (Br. 15-16.) Instead, Appellants summarily allege that these claims are allowable "in light of the . . . arguments pertaining to the Examiner's failure to establish a prima facie case of obviousness with regard to the independent claims." (Br. 16.) Because Appellants have not persuasively rebutted the Examiner's prima facie case of obviousness for dependent claims 5 and 7 based on the teachings of Torres, IBM, Beard, and Harris, we will sustain the rejection of claims 5 and 7 for the reasons discussed with respect to independent claim 4, from which claims 5 and 7 depend.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellants have not shown that the Examiner erred in rejecting claims 1-8 for obviousness under 35 U.S.C. § 103.

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## DECISION

The rejection of claims 1-8 for obviousness under 35 U.S.C. § 103 is affirmed.

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

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AFFIRMED

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