UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN S. HOMER,
PAUL J. DOCZY, and EARL MOORE

Appeal 2007-4282
Application 10/765,806
Technology Center 2800

Decided: May 21, 2008

Before JOSEPH F. RUGGIERO, MAHSHID D. SAADAT,
and KEVIN F. TURNER, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of claims 1-5, 8-13, 20-23, and 25. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' claimed invention relates to a computing device which includes a base, a lid, and a hinge structure having a clutch member which couples the base and the lid. More particularly, the hinge structure has a variable height which enables the lid to close over at least one removable center module disposed on the base. (Spec. 4).

Claim 1 is illustrative of the invention and reads as follows:

1. A computing device, comprising:

a base;

at least one removable center module disposed on and coupled to the base;

a lid; and

a hinge structure having a clutch member coupling the base and the lid, the clutch member having a variable height operable to enable the lid to close over the at least one removable center module.

The Examiner relies on the following prior art references to show unpatentability:

Christ, Jr. (Christ)	US 6,532,147 B1	Mar. 11, 2003
Adriaansen	US 6,700,773 B1	Mar. 2, 2004 (filed Nov. 3, 2000)

Claims 1-5, 8-13, 20-23, and 25, all of the appealed claims, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christ in view of Adriaansen.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs and Answer for the respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to

make in the Briefs have not been considered and are deemed to be waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

ISSUE

Under 35 U.S.C § 103(a), with respect to appealed claims 1-5, 8-13, 20-23, and 25, would one of ordinary skill in the art at the time of the invention have found it obvious to combine Christ and Adriaansen to render the claimed invention unpatentable?

PRINCIPLES OF LAW

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 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). "[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore,

> 'there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness' . . . [H]owever, 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. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

ANALYSIS

With respect to the Examiner's 35 U.S.C. § 103(a) rejection of appealed independent claims 1 and 13, based on the combination of Christ and Adriaansen, Appellants' arguments assert a failure to set forth a prima facie case of obviousness since the claimed limitations are not taught or suggested by the applied prior art references. Appellants' arguments initially focus on the contention that, in contrast to the claimed invention, the device of Christ has no disclosure of a hinge structure that has a variable height clutch member. According to Appellants (App. Br. 4-6: Reply Br. 4-5), the Examiner has not identified any clutch member that is part of the telescopic hinge structure 77, 84, and 86 illustrated in Figures 7-9 of Christ.

We do not find Appellants' arguments to be persuasive. We find no error in the Examiner's finding (Ans. 3 and 9) that the telescopic members 84 and 86, which are part of the hinge structure 77 illustrated in the Figures 7-9 embodiment of Christ, are members which perform a clutching or grabbing action which results in the members being held in "fixed relation under frictional forces." (Christ, col. 6, ll. 22-23). We simply find no particular definition of the term "clutch" in Appellants' Specification which would support an interpretation of the claim language "clutch member" that would distinguish over the structure disclosed by Christ. Further, Appellants' arguments to the contrary (Reply Br. 4-5) notwithstanding, we further find that the telescopic hinge structure of Christ has a variable height relative to the base 22 as it is raised and lowered to enable the lid 24 to close over the center module.

We further find that a review of the entirety of the disclosure of Christ reveals that Christ provides an unambiguous disclosure of a variable height

hinge clutch member which would satisfy even the more restrictive interpretation of the term "clutch" urged by Appellants, i.e., "any engagement/disengagement of elements." (App. Br. 6; Reply Br. 4). As illustrated, for example, in Christ's Figure 3a and described beginning at column 3, line 56 of Christ, a scissors-type hinge structure is disclosed which includes a "clutch" member 36 which is held in locking engagement/ disengagement relationship with slot 52 by lock nut 79. Further, contrary to Appellants' contention (App. Br. 5-6), the Examiner's statement of the rejection (Ans. 4) specifically identifies element 38 in Christ as a "clutch member" with reference to Christ's Figure 3a embodiment.

Further, we find no error, and there are no arguments to the contrary from Appellants, in the Examiner's finding (Ans. 4) that the ordinarily skilled artisan would have recognized and appreciated that the use of removable center modules as taught by Adriaansen would have served as an obvious enhancement to the device of Christ. Accordingly, for all of the above reasons, since the Examiner's prima facie case of obviousness has not been overcome by any convincing arguments from Appellants, we sustain the Examiner's 35 U.S.C. § 103(a) rejection, based on the combination of Christ and Adriaansen, of independent claims 1 and 13, as well as dependent claims 2-5 and 8-12 not separately argued by Appellants.[1]

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[1] Appellants' arguments in the Reply Brief nominally mention dependent claim 8 but do not mention any language in claim 8 for which patentability is asserted. In fact, it appears from the record that the reference to claim 8 was inadvertent and Appellants intended to make reference to independent claim 13 instead. In any case, our review of the Examiner's stated rejection against dependent claim 8 finds no error in the Examiner's finding (Ans. 5) that Christ discloses a lock button 34 as set forth in dependent claim 8.

Turning to a consideration of the Examiner's obviousness rejection of independent claim 20 based on the combination of Christ and Adriaansen, we also sustain this rejection as well as that of dependent claims 21-23 and 25 not separately argued by Appellants. Independent claim 20 differs from previously discussed independent claims 1 and 13 by requiring that a "plurality" of different size removable modules are accommodated by the claimed hinge structure.

Appellants' arguments (App. Br. 7; Reply Br. 5) in response contend that Adriaansen does not describe the claimed plurality of removable modules since Adriaansen, in the embodiment illustrated in Figure 23, discloses that only the keyboard module 111 is removable while the digitizer module 113 remains fixed. We do not find this persuasive, however, since Adriaansen also discloses multiple modular configurations such as that described at column 15, lines 10-22. In this described configuration, the digitizer module 113 is rotatably mounted and the keyboard 111 is fixedly mounted. In other words, the device resulting from the combined teachings of Christ and Adriaansen would accommodate a plurality of removable modules since Adriaansen discloses that the keyboard 111 and digitizer 113 are removable in the differing modular configurations. Further, it also our view that the ordinarily skilled artisan would have recognized and appreciated from Adriaansen's disclosure that different sizes of removable modules as claimed are contemplated since Adriaansen teaches (e.g., col. 5, ll. 53-58) that other types of keyless user interfaces such as scanners instead of a digitizer could be utilized.

CONCLUSION

In summary, we have sustained the Examiner's 35 U.S.C. § 103(a) rejections of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-5, 8-13, 20-23, and 25 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) (2006).

AFFIRMED

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