

1 UNITED STATES PATENT AND TRADEMARK OFFICE

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3
4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
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8 *Ex parte* KENNETH E. FLICK, MICHAEL STEPHEN THOMPSON,
9 and ROBERT FLOYD DREW
10

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12 Appeal 2008-3546
13 Application 10/236,369
14 Technology Center 3600
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17 Decided: September 30, 2008
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20 *Before:* MURRIEL E. CRAWFORD, ANTON W. FETTING, and JOSEPH
21 A. FISCHETTI, *Administrative Patent Judges.*

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23 CRAWFORD, *Administrative Patent Judge.*
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26 DECISION ON APPEAL
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28 STATEMENT OF THE CASE

29 Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection
30 of claims 1 to 48. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

1 Appellant invented a method and system for vehicle control
2 (Specification 2).

3 Claim 1 under appeal reads as follows:

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5 1. A vehicle remote control system
6 comprising:
7 a controller to be installed within the vehicle
8 and at least one remote device for wireless
9 communication therewith, said at least one remote
10 device comprising
11 a portable handheld housing to be carried by
12 a user when away from the vehicle, and
13 a Liquid Crystal Display (LCD) mounted on
14 said portable housing for displaying a selected
15 vehicle style image from among a plurality of
16 different selectable vehicle style images.
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18 The Examiner rejected claims 1 to 3, 6 to 11, 13 to 17, 20 to 28, 30 to
19 41, and 44 to 47 under 35 U.S.C. § 103(a) as being unpatentable over Chetty
20 in view of Ben-Ze'ev,

21 The Examiner rejected claims 4, 5, 12, 18, 19, 29, 42, 43, and 48
22 under 35 U.S.C. § 103(a) as being unpatentable over Chetty in view of Ben-
23 Ze'ev and Brinkmeyer.

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

26 Brinkmeyer	US 5,940,007	Aug. 17, 1999
27 Chetty	US 2002/0052193 A1	May 2, 2002
28 Ben-Ze'ev	US 6,791,467 B1	Sep. 14, 2004

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30 Appellants contend that the Examiner erred in rejecting the claims
31 because the prior art does not suggest a portable housing that displays a

1 selected vehicle style image from among a plurality of different selectable
2 vehicle style images or any vehicle style image.

3 Appellants also contend there is no motivation to combine the
4 teachings of Chetty and Ben-Ze'ev.

5 Appellants lastly contend that the prior art cited teaches away from
6 the invention.

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ISSUES

9 The first issue is whether the Appellants have shown that the
10 Examiner erred in rejecting the claims because the prior art does not suggest
11 a portable housing that displays a selected vehicle style image from among a
12 plurality of different selectable vehicle style images or any vehicle style
13 image.

14 The second issue is whether the Appellants have shown that the
15 Examiner erred in rejecting the claims because there is no motivation to
16 combine the teachings of Chetty and Ben-Ze'ev.

17 The last issue is whether the Appellant has shown that the Examiner
18 erred in rejecting the claims because the prior art cited teaches away from
19 the invention.

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FINDINGS OF FACT

22 Chetty discloses a universal remote control [0002]. The remote
23 control device is portable and includes an LCD (210) for displaying a choice
24 of a plurality of devices to control such as auto, garage, home, office, and

1 other (Figures 2 and 15). Each choice may have a subchoice, e.g., the auto
2 choice may include a list of autos [0093].

3 Ben-Ze'ev discloses a remote control for controlling a plurality of
4 devices with graphic indicators or icons to reference each controllable
5 device (Figure 6). The graphic indicators or icons are depressed to control
6 the associated device (col. 11, ll. 29 to 34). The device is adaptable for use
7 outdoors and is portable in that it moves with the user (col. 1, l. 9 to 11; col.
8 2, ll. 56 to 67).

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ANALYSIS

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We are not persuaded of error on the part of the Examiner by Appellants' argument that the prior art does not suggest a portable housing that displays a selected vehicle style image from among a plurality of different selectable vehicle style images or any vehicle style image. As Chetty discloses that it was known to control several vehicles with one remote and Ben-Ze'ev discloses that different devices can be identified by an icon on the remote, it would have been obvious to provide a remote control device that distinguished each vehicle by a different icon. The Examiner is further supported by the disclosure in Ben-Ze'ev that the icon for a chandelier is different from the light bulb when both devices are lights. Therefore, we disagree with the Appellants that the combined teachings of Chetty and Ben-Ze'ev would result in identical style images for vehicles to be selected. We also disagree with the Appellant that the Ben-Ze'ev device relates to indoor appliances only because as we found above, Ben-Ze'ev specifically discloses that the remote control device therein described may

1 be used outside. Therefore, Ben-Ze'ev does suggest using the device to
2 display icons representative of outdoor devices. In any case, the particular
3 image displayed on the remote control device is not related to the function of
4 the remote and is therefore non-functional descriptive material.

5 Nonfunctional descriptive material cannot render nonobvious an invention
6 that otherwise would have been obvious. *In re Ngai*, 367 F.3d 1336, 1339
7 (Fed. Cir. 2004); *cf. In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983)
8 (when descriptive material is not functionally related to the substrate, the
9 descriptive material will not distinguish the invention from the prior art in
10 terms of patentability)

11 We are not persuaded of error of the Examiner by Appellants'
12 argument that there is no motivation to combine the teachings of Chetty and
13 Ben-Ze'ev. As Chetty discloses a remote control device that controls
14 several devices and Ben-Ze'ev discloses that devices controlled by a remote
15 control can be distinguished on the remote control by icons representative of
16 the devices, there is ample motivation to combine the references in order to
17 achieve the advantage of having an easy way to distinguish and control each
18 device. Ben-Ze'ev is cited for teaching that devices under the control of a
19 remote control can be distinguished on the remote control itself by the use of
20 icons.

21 We are not persuaded of error on the part of the Examiner by
22 Appellants' argument that the prior art cited teaches away from the invention
23 because it would be impractical for the user to carry the device. A reference
24 would be said to teach away if it criticizes, discredits, or otherwise
25 discourages the combination. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed.

1 Cir. 2004) (“The prior art's mere disclosure of more than one alternative
2 does not constitute a teaching away from any of these alternatives because
3 such disclosure does not criticize, discredit, or otherwise discourage the
4 solution claimed in the ... application.”); *see also In re Gurley*, 27 F.3d 551,
5 552-53 (Fed. Cir. 1994) (“[A] reference will teach away if it suggests that
6 the line of development flowing from the reference's disclosure is unlikely to
7 be productive of the result sought by the applicant.”). There is nothing in
8 either reference which discourages or criticizes the use of icons to represent
9 devices under the control of a portable remote control. In addition, Ben-
10 Ze’ev discloses that therein described device moves with the user and thus
11 like the Chetty device is portable. In addition, it is our view that an ordinary
12 skilled artisan would be capable of adapting the size of the remote control to
13 suit the particular purpose and therefore such size adjustment would not
14 patentably distinguish the claims.

15 In view of the foregoing, we will sustain the Examiner’s rejection of
16 claim 1. We will also sustain the Examiner’s rejection of claims 2 to 3, 6 to
17 11, 13 to 17, 20 to 28, 30 to 41 and 44 to 47 because the Appellant has not
18 argued the separate patentability of these claims. We will also sustain the
19 Examiner’s rejection of claims 4, 5, 12, 18, 19, 29, 42, 43, and 48
20 as being unpatentable over Chetty in view Ben-Ze’ev and Bringmeyer
21 because the Appellants have not addressed this rejection separately but
22 instead states that no further discussion is required (Brief 8).

1 The decision of the Examiner is affirmed.

2 No time period for taking any subsequent action in connection with
3 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

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AFFIRMED

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