

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PAUL G. BEGUM

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Appeal No. 96-0300  
Application 08/090,285<sup>1</sup>

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ON BRIEF

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Before THOMAS, LEE and TORCZON, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

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<sup>1</sup> Application for patent filed July 12, 1993. According to the appellant, this application is a continuation-in-part of Application 07/821,079, filed January 16, 1992.

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Appellant has appealed to the Board from the examiner's final rejection of claims 2 to 11 and 13 to 26, which constitute all the claims remaining in the application.

Representative claim 8 is reproduced below:

8. An electronic, shopping-cart, informational device comprising:

an ergonomically designed display handle having two hand grip portions; a central display unit portion with the hand grip portions being arranged on each side of the display unit portion, the hand grip portions having ends connectable to a shopping cart frame, and the display unit portion having a display screen and user control means for displaying selected information on the display screen, wherein the user control means comprises thumb operated buttons located on each side of the display screen proximate the hand grip portions for scrolling information in the display screen using a thumb while the user is able to maintain a grip on the hand portion of the display handle with the hand operating thumb; automatic means for periodically displaying promotional product advertisements on the display screen; and unobtrusive cue means apart from the display screen for directing a user's attention to the display screen when a promotional product advertisement is displayed on the display screen.

The following references<sup>2</sup> are relied on by the examiner:

Hayasaka	4,786,889	Nov. 22,
1988		

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<sup>2</sup> Page 2 of the answer lists a reference to Havens, which has not been relied on in any rejection stated in the final rejection and the answer. As such, it has not been listed here and has not been considered. Note In re Hoch, 428 F.2d 1341, 1342 n. 3, 166 USPQ 406, 407 n. 3 (CCPA 1970).

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Vela et al. (Vela) 1989	4,882,724	Nov. 21,
Malec et al. (Malec) 1990	4,973,952	Nov. 27,
Tannehill et al. (Tannehill)	5,158,310	Oct. 27, 1992

All claims stand rejected under 35 U.S.C. § 103.<sup>3</sup> As to claims 5 to 7, 18 to 20 and 22 to 26, the examiner relies upon Vela alone, with the addition of Tannehill as to claims 2 to 4 and 17. On the other hand, to reject claims 8, 9, 11 and 13 to 16, the examiner relies upon the combination of Tannehill in view of Vela, with the addition of Hayasaka as to claim 10. Finally, the examiner considers claim 21 obvious over Malec alone.

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<sup>3</sup> We note in passing that dependent claim 13 depends from canceled claim 12. Some form of claim 12 appears to have been incorporated into an early version of claim 8 by amendment. Therefore, we construe claim 13 for purposes of our review as apparently intended to have been dependent from present claim 8. Additionally, we note that the features recited in dependent claims 9 through 11 relating to "the non-informational cue means" does not appear in the present version of independent claim 8. Therefore, there is no antecedent basis for the noted language in dependent claims 9 through 11. Again, for purposes of our review, we consider the noted feature in claims 9 to 11 as relating to the presently claimed "unobtrusive cue means" of claim 8.

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Rather than repeat the positions of the appellant and the examiner, reference is made to the briefs and the answers for the respective details thereof.

OPINION

Turning first to the rejection of independent claim 22 and its various dependent claims in light of Vela alone, as well as the separate rejection of additional dependent claims of claim 22 in light of Vela and Tannehill collectively, we reverse the rejection of all these claims.

At the top of page 4 of the examiner's answer, the examiner recognizes that Vela does not disclose that the control means of independent claim 22 is thumb operated while gripping the hand grip. The examiner considers that it would have been obvious to the artisan that the size and location of the display unit, the size of the user's thumbs and the location of placement of one's hands on the hand grip would have been arbitrary design choices to the extent recited in independent claim 22, since a user may be capable of operating the control means while gripping the hand grip if desired. The examiner further considers the exact location of the

display unit to be arbitrary since the location will depend upon the size and shape of the display device.

With respect to this reasoning we disagree simply because of the nature of the detailed recitations of the relationship of the thumb operated control means located on the display unit proximate at least one side of the display screen and also proximate the hand grip portion, with further recitations in claim 22 requiring that the thumb operating hand grip the hand grip portions for user selection of information and for all user selectable information functions. Thus, the examiner's position must be reversed. The extent and nature of detailed recitations in claim 22 go well beyond the examiner's rationale of arbitrary design choices detailed earlier.

Figure 10 of Vela shows that the plastic case 245 is connected to the handle of the cart by means of a mid section 268. To the extent the examiner's reasoning may be interpreted such that it would have been obvious to the artisan to vary the height and/or arrangement of the mid section 268 of the display case 245 in Fig. 10, we observe that col. 36, lines 48 through 50 state that "the case 245

extends upwardly from the handle 262 so as to avoid interference during nesting of the shopping carts for storage purposes." Certainly, without additional teachings from other references or a more persuasive rationale of the examiner, we find that based on these teachings the position of the examiner alternatively would not have been sustainable in the absence of some other evidence or line of reasoning which would have indicated a different physical arrangement to permit or overcome the nesting teaching just noted.

Turning next to the rejection of independent claim 8 and its respective dependent claims in light of Tannehill in view of Vela, with additional dependent claim 10 further rejected on the basis of this combination of references, further in view of Hayasaka, we reverse the rejection of each of these claims. As to this rejection the examiner's analysis begins with Tannehill with additional complementary teachings urged to be found in Vela in the same portions just discussed with respect to this reference alone as to claim 22.

As to independent claim 8, the examiner's position is expressed at pages 7 and 8 of the answer. The examiner's reasoning appears to make reference to different embodiments

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shown in Figs. 19-20 and 21-22. The noted "non-informational cue means" identified by the examiner does not presently appear in independent claim 8 but presently takes the form of "unobtrusive cue means". Since it does not matter for our analytical purposes whether the teachings and suggestions of Vela and Tannehill are considered in any order, the examiner-noted teachings and suggestions in Tannehill do not overcome the deficiencies of Vela and vice versa. Again, there are significant recitations in independent claim 8 relating to the thumb operated buttons being located on each side of the display screen proximate the hand grip portions for operating display functions with the thumb while the user maintains a hand grip on the display handle. Even given the teaching identified by the examiner at col. 14, lines 15 to 25 of Tannehill that the location of a display means may be placed in other locations about the cart, to the extent this location in Tannehill relates to the embodiments shown in Figs. 17 and 18, we conclude that the artisan would not have been led among the collective teachings and showings of both references to have arrived at the presently claimed subject matter detailed

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to the extent we just recited in the identified portion of claim 8.

Additionally, we note that the further statement at col. 14, lines 51 through 57 indicating that the display unit 260 in Figs. 17 and 18 may be utilized in conjunction with other types of display units illustrated in earlier Figs. 1 through 16 in this reference, there is no indication how the artisan would have modified the arrangement depicted in the embodiment shown in Fig. 11, which depicts a mechanically oriented rotary display unit integrated into the handle of a shopping cart. Again, these broad teachings would not have led the artisan to the subject matter as a whole of independent claim 8 on appeal.

Finally, as to the rejection of claim 21 under 35 U.S.C. § 103 in light of Malec alone, we sustain this rejection as set forth by the examiner in the answer. As noted by the examiner at page 13 of the answer, "appellant failed to present any arguments relevant to the basis of the rejection," the details of which have been set forth at pages 10 and 11 of the answer. Page 3 of the reply brief makes reference to the discussion in the principal Brief as to this rejection at page

12 of the brief. Appellant's collective arguments as to this rejection at pages 11 and 12 of the brief do not address the particulars of the rejection as stated by the examiner, but instead simply assert that the examiner is mixing two subsystem portions of the same reference, an unpersuasive argument.

Appellant's arguments do recognize that Malec does update the storage message data, however. This is consistent with the examiner's position. Appellant's position does not argue that the reference does not teach the claim limitations as argued by the examiner within 35 U.S.C. § 103. The updating feature is not recited with any degree of specificity such as to distinguish over the teachings isolated by the examiner and generally admitted by appellant to be in the Malec patent. The updating feature in this reference is consistent with the teachings of the summary of the invention of Malec, the normal operations of Figs. 1 through 5 of this reference, and particularly the edit operation at col. 6, lines 25 through 33 and the ability of the in-store computer to update program and data segments in the cart-based electronic units 514 depicted in Fig. 10 and discussed beginning at col. 16, line 11. To

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the extent recited in claim 21 the updating function may occur at anytime; it is not recited to be a function of a cart passing near a message sending unit or relate to any signal received from a message sending unit proximate the location of a promoted product.

Since we have reversed the rejection of independent claim 8 and its respective dependent claims and reversed the rejection of independent claim 22 and its respective dependent claims, we have reversed the rejection of claims 2 through 11, 13 through 20 and 22 through 26. Since we have sustained the rejection of independent claim 21, the decision of the examiner is therefore affirmed-in-part.

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

AFFIRMED-IN-PART

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Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
JAMESON LEE	)	
Administrative Patent Judge	)	APPEALS AND
	)	
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