The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 37

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NAOKI ITO, JIRO SUGIURA, TSUTOMU IKEDA, MITSUAKI USUI and MASAYUKI KOBAYASHI

Appeal No. 1998-0223
Application No. 08/351,749

ON BRIEF

Before HAIRSTON, JERRY SMITH, and LALL, Administrative Patent Judges.

LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. 134 from the Examiner's final rejection of claims 1 to 8, 15 and 16. Claims 9 to 14 have been indicated as allowed.

The present invention relates to a check-out device in a supermarket for reading an article code recorded on an article in a machine readable form, and performing registration of sold articles on the basis of the read article code. The

check-out device includes a self-service check-out counter having a pair of parallel check-out lanes, each including an input section, an entry section, an outfeed section, a stock section and a settlement section arranged between the lanes. The input section includes a stationary scanner for optically scanning an article to read an article code printed thereon, an operational panel to be used by a customer, and a shelf for temporarily stocking articles with article codes which the stationary scanner has failed to read. The operation panel includes start and stop buttons for instructing start and stop of article registration, and a display. The entry section includes an entry conveyor for conveying an article whose article code is read by the scanner, an electronic weigh scale, and an article sensor for optically sensing an article passing an exit portion of the entry conveyor. The weigh scale is vertically movable so as to be at a lower position when entry conveyor is operated, and at an upper position in contact with conveyor to automatically weigh an article when conveyor movement is stopped. The outfeed section includes an outfeed conveyor, and an inclined chute for supplying an article to a bagging area of a stock section. The entry

conveyor starts when an article whose article code is read by the scanner is identified in the stored data with that put on the entry conveyor, and stops when the article put on the entry conveyor passes the article sensor. The outfeed conveyor starts when a customer begins the registration of articles, and stops when the article registration is completed. The scanner supplies the read article code to the electronic cash register, and the electronic weigh scale supplies measured weight to the electronic cash register and, on such basis, determines that the article whose article code is read is put on the entry conveyor, and registers the article as a sales article by using the read article code. The article is then moved to the bagging area by the entry conveyor, the outfeed conveyor, and the inclined chute. The electronic cash register comprises a CPU, a ROM, a RAM, an interface, a keyboard controller, a scanner controller, a drawer controller, display controllers and printer controller which are all interconnected by means of a bus line. The CPU controls operations of the cash register, the ROM stores a control program for the CPU, and fixed data such as printing fonts, display fonts, and the like. When a customer puts

articles to purchase at the input section, and depresses a button to start, the article code is read by the scanner, and supplied to the cash register. The CPU stores the received article code in RAM, reads out reference weight data to article code from the article data table stored in RAM and temporarily stores the readout data. The weigh scale weighs the article on the entry conveyor and supplies the measured weight data to the cash register, which is temporarily stored in the RAM. This measured weight data is compared with reference weight data contained in the stored article data, and if the actual data is close to the reference data, the CPU identifies the article whose article code is read with the article put on the entry conveyor, and supplies a drive start instruction to the conveyor controller to start the operation of the entry conveyor so that the article on the entry conveyor is conveyed towards the outfeed conveyor. If the actual weight is not close to the reference weight, the CPU issues an instruction to remove the article from the entry conveyor which stands still without being operated. Since the entry conveyor and the outfeed conveyor are not driven at all times, the consumed electric power can be reduced. Further

understanding of the invention can be obtained by reading the following claim.

1. A check-out device comprising:

reading means for reading an article code affixed to an article;

conveyor means for conveying the article whose article code is read by said reading means;

weighing means for measuring a weight of the article on said conveyor means before the article is conveyed by said conveyor means, to produce measured weight data; and

processing means including:

means for obtaining reference weight data of the article corresponding to the article whose article code was read by said reading means; and

means for:

comparing the obtained reference weight data with the measured weight data produced by said weighing means,

producing a confirmation signal when the reference weight data substantially equals the measured weight data, and

performing a sales processing for the article whose article code is read by said reading means only after production of said confirmation signal indicating that the article whose article code is read is identical to the article whose weight is measured by said weighing means, and

conveyor control means for permitting said conveyor means to operate to convey the article whose article code is read by said reading means only after said confirmation signal is produced, and inhibiting operation of said conveyor means to prevent conveying of an article until said confirmation signal is produced.

The examiner relies on the following references:

Humble et al. (Humble '343)	4,676,343	Jun. 30, 1987
Humble et al. (Humble '018)	4,792,018	Dec. 20, 1988

Claims 1 to 4, 15 and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Humble '343 alone, while for the rejection of claims 5 to 8 the Examiner adds Humble '018.

Rather than repeat the arguments of Appellants and the Examiner, we make reference to the Briefs and the Answer for the

respective details thereof.

OPINION

We have considered the rejections advanced by the examiner and the supporting arguments. We have likewise reviewed the Appellants' arguments set forth in the Briefs.

We reverse.

In our analysis, we are guided by the general proposition that in an appeal involving a rejection under 35 U.S.C. § 103, an examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness, is

then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). We are further guided by the precedent of our reviewing court that the limitations from the disclosure are not to be imported into the claims. In re Lundberg, 244 F.2d 543, 113 USPQ 530 (CCPA 1957); In re Queener, 796 F.2d 461, 230 USPQ 438 (Fed. Cir. 1986). We also note that arguments not made separately for any individual claim or claims are considered waived. See 37 CFR § 1.192(a) and (c). In re Baxter Travenol Labs., 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991) ("It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobviousness distinctions over the prior art.");
In re Wiechert, 370 F.2d 927, 936, 152 USPQ 247, 254 (CCPA 1967)("This court has uniformly followed the sound rule that an issue raised below which is not argued in that court, even

if it has been properly brought here by reason of appeal is regarded as abandoned and will not be considered. It is our function as a court to decide disputed issues, not to create them.”).

ANALYSIS

At the outset, we note that Appellants elect claims 1 to 8, 15 and 16 to stand or fall together. Therefore we treat them as a single group. We take claim 1 as representative of the group. The Examiner gives a lucid explanation of the rejection at pages 3 to 5 of the Examiner's Answer. The Examiner asserts, id at page 5, that "[t]his teaching of Humble et al. ['343] would have made it obvious . . . , as a substitute of art recognized equivalents, to permit operation of the conveyor only after the weight and code of the article are found to coincide." The Examiner admits that Humble '343 does not show the claimed feature of the conveyor control means which permits the movement of the conveyor only after said confirmation signal is produced, and inhibits the operation of said conveyer means to prevent conveying of the article until said confirmation signal is produced. The Examiner relies on the assertion that this feature would have

been obvious as a substitute of art recognized equivalents (Answer at page 5). Appellants have drawn numerous distinctions between the claimed invention and the applied prior art, see pages 24 to 29 of the Brief. These argued distinctions point to the claimed features recited in the last two paragraphs of claim 1. With respect to the missing teaching in Humble '343, the Examiner merely relies on his own opinion that as a substitute of art recognized equivalents, it would have been obvious for an artisan to permit operation of the conveyer means only after the weight and the code of the article are found to coincide. However, we are not persuaded by the Examiner's contention. We find that the Examiner has presented no evidence to base the conclusion of obviousness other than an assumption that the suggested modification of Humble '343 would have been a matter of mere substitution of art recognized equivalents. Such assertion by the Examiner cannot replace the requirement of factual evidence. Therefore we cannot sustain the obviousness rejection of claim 1 and its dependent claims 2 to 4, 15 and 16 over Humble '343.

With regard to the rejection of claims 5 to 8, which depend on claim 1, the Examiner adds Humble '018 to Humble

'343. However, since Humble '018 does not cure the deficiency noted above, the obviousness rejection of claims 5 to 8 over Humble '343 and Humble '018 is also not sustained.

In conclusion, we reverse the rejection under 35 U.S.C. § 103 of claims 1 to 8 and 15 and 16.

REVERSED

KENNETH W. HAIRSTON Administrative Patent Judge	)	
JERRY SMITH Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
PARSHOTAM S. LALL Administrative Patent Judge	)	

lp

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Appeal No. 1998-0223
Application No. 08/351,749

APJ LALL

APJ HAIRSTON

APJ JERRY SMITH

DECISION: REVERSED
Send Reference(s): Yes No
or Translation (s)
Panel Change: Yes No
Index Sheet-2901 Rejection(s):
Prepared: January 29, 2002

Draft Final

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OB/HD GAU

PALM / ACTS 2 / BOOK
DISK (FOIA) / REPORT