

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte MICHELLE A. SZIRAKI

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Appeal No. 1998-1775  
Application 08/249,611<sup>1</sup>

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ON BRIEF

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Before ABRAMS, NASE, and CRAWFORD, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 3, 5 through 15, 18 and 19, which are all of the claims pending in this application. Claims 4, 16, 17 and 20 have been canceled.

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<sup>1</sup> Application for patent filed May 26, 1994.

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The appellant's invention relates to a forearm and wrist support. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellant's brief.

The prior art

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Nash	5,265,835	Nov. 30, 1993
Thomsen	5,335,888	Aug. 9, 1994 (filed Jul. 27, 1992)
Martin et al. (Martin) 1992)	5,340,067	Aug. 23, 1994 (filed Mar. 27,

The rejections

Claims 1, 3 and 5 through 8 stand rejected under 35 U.S.C.

§ 103 as being unpatentable over Nash in view of Martin.

Claims 2, 9 through 15, 18 and 19 stand rejected under

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35 U.S.C. § 103 as being unpatentable over Nash in view of Martin as applied to claims 1, 3, and 5 through 8 above, and further in view of Thomsen.<sup>2</sup>

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 15, mailed September 2, 1997) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 14, filed May 27, 1997) for the appellant's arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

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<sup>2</sup> A rejection of claims 7 through 15, 18 and 19 under 35 U.S.C. § 112, second paragraph was withdrawn in the examiner's answer (Examiner's Answer at page 3).

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We turn first to the examiner's rejection of claims 1, 3 and 5 through 8 under 35 U.S.C. § 103 as being unpatentable over Nash in view of Martin.

Nash discloses a forearm support to reduce fatigue during the extended manipulation of a computer mouse. The forearm support has a forward portion 12 which is supported at a declination to a rearward portion 14. Nash also discloses that:

It is intended that a forearm can be positioned lengthwise along the support **10** with the forward portion of the forearm of the user position[ed] at the forward portion **12** with the wrist of the user extending forwardly from the forward portion **12** of the support **10**. [Col. 2, lines 4 to 9].

Martin discloses a support block for supporting the hand and wrist of a computer user and a retainer for retaining a computer mouse in fixed relation to the support block. The examiner states:

It would have been obvious to one having ordinary skill in the art at the time of the invention was made to modify Nash '835 to include a computer mouse

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retaining and support means as taught by Martin '067 for the purpose of further facilitating the unitary movement of computer mouse and support while maintaining the support to the user's wrist and forearm.  
[Examiner's answer at page 4].

We do not agree with the conclusion of the examiner. Claim 1 requires that the support have an "outward incline from said bottom surface to said top surface." There is nothing in either Martin or Nash to suggest that the inward inclined surface of Martin be modified to form an outward inclined surface. In our view, the only suggestion for modifying the inward inclined surface of Martin so as to be an outward inclined surface stems from impermissible hindsight knowledge derived from appellant's own disclosure.

In addition, in our view, there is no suggestion to combine the teachings of Nash and Martin, as Nash discloses a forearm support and does not disclose, suggest, or teach that there is a the need for supporting the wrist or hand and Martin discloses a wrist and hand support and does not suggest, disclose or teach the need for supporting the forearm.

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In view of the foregoing, we will not sustain the examiner's rejection of claim 1 and claims 3 and 5 through 8 dependent therefrom under 35 U.S.C. § 103 as being unpatentable over Nash in view of Martin.

We will not sustain the rejection of claims 2, 9 through 13 under 35 U.S.C. § 103 as being unpatentable over Nash in view of Martin as applied to claims 1, 3 and 5 through 8 and further in view of Thomsen, as Thomsen like Nash and Martin does not disclose, teach or suggest a support having one outwardly inclined end.

In regard to this rejection as it is directed to independent claim 14, we note that claim 14 requires that the support comprises an inner cushion made of a foam having a density to resists bending. The examiner states:

. . . the nonbendable foam support of the present invention serves the same function as the rigid support taught by Nash. Since Nash encourages the use of cushion for supporting the forearm of the user, therefore to modify the material of one support for another is [an] obvious substitution, especially since both support[s] perform the same function. [Examiner's answer at page 7].

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We do not agree with the examiner. There is no suggestion to provide a forearm and wrist support which includes an inner cushion "made of foam having a density which resists bending" as required by claim 14. Nash does not disclose that the support is comprised of a material which resists bending or that the support is comprised of foam. Martin discloses that the support may be formed of modeling clay. Although Thomsen discloses that the body of the support is comprised of foam, Thomsen also discloses that the foam is non-rigid and resilient. [Col. 2, lines 30 to 33].

In view of the foregoing, we will not sustain the examiner's rejection under 35 U.S.C. § 103 of claims 14, 15, 18 and 19.

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The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
JEFFREY V. NASE	)	
Administrative Patent Judge	)	APPEALS AND
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	)	INTERFERENCES
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MURRIEL E. CRAWFORD	)	
Administrative Patent Judge	)	

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