

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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THEODORE D. WUGOFSKI

Appeal No. 2000-2210
Application No. 09/002,828

ON BRIEF

Before KRASS, RUGGIERO, and SAADAT, Administrative Patent Judges.
RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-19, which are all of the claims pending in the present application. An amendment filed February 7, 2000 after final rejection was denied entry by the Examiner.

The claimed invention relates to a software architecture for a convergence system which integrates the functionality of computers and other separate devices. More particularly, the architecture includes views, overlays, and system services. The

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views provide a graphical user interface associated with a particular application, while the overlays provide a partial screen graphical user interface cooperating with and consistent over the views. Further included are system services which provide common functionality and/or user interfaces shared by the views and overlays.

Independent claim 1 is illustrative of the invention and reads as follows:

1. A computerized convergence system comprising:

a hardware component providing a convergence environment;

a drivers component providing low-level functionality and cooperating directly with the hardware component;

a view component providing graphical user interface contexts;

an overlay component providing partial screen graphical user interfaces consistent across the graphical user interface contexts provided by the view component;

and,

a system services component interfacing with the drivers component and providing common functionality and user interfaces shared by the view component and the overlay component.

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The Examiner relies on the following prior art:

Harper et al. (Harper)	5,585,858	Dec. 17, 1996
Hellhake	5,877,755	Mar. 02, 1999
		(filed Aug. 22, 1996)

Claims 1-19 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Hellhake in view of Harper.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs¹ and Answer for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner, the arguments in support of the rejection and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the

¹ The Appeal Brief was filed May 12, 2000 (Paper No. 11). In response to the Examiner's Answer dated June 1, 2000 (Paper No. 12), a Reply Brief was filed August 3, 2000 (Paper No. 13), which was acknowledged and entered by the Examiner as indicated in the communication dated September 14, 2000 (Paper No. 14).

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particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-19. Accordingly, we affirm.

Appellant nominally indicates (Brief, page 3) that all of the appealed claims stand or fall separately. We will consider the claims separately only to the extent that separate arguments are of record in this appeal. Any dependent claim not separately argued will stand or fall with its base claim. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983).

As a general proposition 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 Appellant to overcome the prima facie case with arguments 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, 1051, 189 USPQ 143, 147 (CCPA 1976).

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With respect to independent claims 1, 7, 14, and 19, the Examiner, as the basis for the obviousness rejection, proposes to modify the interactive multimedia system disclosure of Hellhake. According to the Examiner, Hellhake discloses the claimed invention except for the overlay component. To address this deficiency, the Examiner turns to Harper which, in the Examiner's view, ". . . teaches that graphics can be overlaid onto the video at the subscriber site through the use of a character generator 624" (Answer, page 4). In the Examiner's line of reasoning (id.), the resultant increased ease of operator interaction would suggest to the skilled artisan the obviousness of adding the screen overlay feature of Harper to the system of Hellhake.

After reviewing the Examiner's analysis, it is our view that such analysis carefully points out the teachings of the Hellhake and Harper references, reasonably indicates the perceived differences between this prior art and the claimed invention, and provides reasons as to how and why the prior art teachings would have been modified and/or combined to arrive at the claimed invention. In our opinion, the Examiner's analysis is sufficiently reasonable that we find that the Examiner has at least satisfied the burden of presenting a prima facie case of

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obviousness. The burden is, therefore, upon Appellant to come forward with evidence and/or arguments which persuasively rebut the Examiner's prima facie case of obviousness. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered (see 37 CFR § 1.192(a)).

In response, Appellant offers several arguments in support of the contention that the Examiner has failed to establish a prima facie case of obviousness. Initially, Appellant contends (Brief, pages 6 and 7) that lack of motivation exists for the Examiner's proposed combination since, in contrast to Hellhake which describes a communication return path from the end user to the network broadcast system, Harper provides for only one-way communication. In Appellant's view (id. at 7), " . . . if Hellhake and Harper were somehow combined, the result would be unworkable and frustrate the purposes purportedly solved by one or the other of the cited documents." Appellant further amplifies this argument at page 3 of the Reply Brief where it is asserted " . . . a broadcast suitable for use with Harper differs from that of Hellhake, and thus, the proposed combination will frustrate one or the other of Harper and Hellhake."

After careful review of the applied prior art references in light of the arguments of record, we are in agreement with the Examiner's analysis and position as stated in the Answer. It is apparent to us from the line of reasoning expressed in the Answer that the Examiner is not suggesting the bodily incorporation of Harper's screen overlay feature into the interactive system of Hellhake. Rather, it is the advantages described in Harper of interactive enhancement capability attendant to the use of trigger points which call up graphical interfaces and screen overlays that is being relied upon as a suggestion for the proposed combination. "The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art." In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). See also In re Sneed, 710 F.2d 1544, 1550, 218 USPQ 385, 389 (Fed. Cir. 1983), and In re Nievelt, 482 F.2d 965, 968, 179 USPQ 224, 226 (CCPA 1973).² We would also point out that Hellhake also

² We also disagree with Appellant's assertion that Harper lacks a communication "return path." In the passage beginning at column 23, line 8 of Harper, a "return path" for information from the subscribers to the operations center is described.

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contemplates the use of screen overlays, albeit limited to textual content, as described at column 6, lines 50-52.

We further find to be unpersuasive Appellant's contention (Brief, page 7; Reply Brief, page 3) that the applied Hellhake and Harper references are from non-analogous art. The test for non-analogous art is first whether the art is within the field of the inventor's endeavor and, if not, whether it is reasonably pertinent to the problem with which the inventor was involved. In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it logically would have commended itself to an inventor's attention in considering his problem because of the matter with which it deals. In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992). Our review of the disclosures of Hellhake and Harper finds it apparent that both references are directed to user interactive features in a broadcast television multimedia environment. In our view, the skilled artisan, when considering the recognized problems associated with facilitating user interaction with the multimedia communication system as disclosed by Hellhake, would logically have consulted the teachings of Harper to address the problem.

We further find to be without merit Appellant's apparent assertion (Brief, pages 8-12; Reply Brief, pages 3-5) that, even assuming, arguendo, that Hellhake and Harper could be combined, the Examiner's obviousness rejection would fail since the proposed combination would not teach or suggest all of the claim limitations. At the outset, Appellant asserts error in the Examiner's position that Hellhake discloses a computerized convergence system providing a convergence environment by contending that Hellhake's control box merely ". . . serves a single purpose." (Brief, page 8). We agree with the Examiner (Answer, page 9), however, that Hellhake clearly contemplates a multimedia device (such as in appealed independent claim 14) in a convergence environment since the end user station is disclosed as including ". . . a television, a computer, a video-cassette recorder, a keyboard, or a hand-held controller." (Hellhake, column 7, lines 60-62). Further, although it would have been appropriate for the Examiner to cite an authority for the definition of "convergence" set forth at page 9 of the Answer, we find that the Examiner's proffered definition is not inconsistent with the accepted definition of such a term.³

³ "Convergence" is defined in Computer Dictionary, p. 96 (2nd Ed., Microsoft Press, Redmond, WA, 1994), as "[a] coming together. Convergence can occur between different disciplines and technologies, as when telephone

Further, as to Appellant's argument (Brief, page 9; Reply Brief, page 4) with regard to the claimed "drivers component," we are in accord with the Examiner's observation (Answer, page 9) that Hellhake's disclosed Applications Program Interface (API) 44 corresponds to Appellant's example of a driver component at page 6 of the specification. We also agree with the Examiner that the examples of screen displays presented to an end user at Figures 6-8 of Hellhake and described beginning at column 6, line 4 of Hellhake correspond to the claimed ". . . a view component providing graphical user interface contexts," despite the fact that, as argued by Appellant, the terminology "view component" is not used by Hellhake. Similarly, contrary to Appellant's assertions (Brief, page 11; Reply Brief, page 4), Harper provides for a partial screen overlay at column 11, lines 62-63 which states that ". . . graphics can be utilized to overlay any portion of the screen of the television screen." Further, as alluded to by the Examiner (Answer, page 12), Hellhake also contemplates (column 4, lines 48-51) full or partial screen displays.

communications and computing converge in the field of telecommunications."

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We further find to be unpersuasive Appellant's arguments with regard to the claimed "system services component." We are in agreement with the Examiner that the screen displays disclosed in relation to Figures 6-8 of Hellhake which suggest available "services" such as on-line catalogs, ordering and shipping, feedback contact information, etc., clearly provide a disclosure of a "system services component" as broadly set forth in Appellant's claims. We are also of the opinion that Appellant's argument alleging Hellhake's lack of a disclosure of a system services component" improperly attempts to narrow the scope of the claim by implicitly adding disclosed limitations which have no basis in the claim. See In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). We find no language in any of the appealed independent claims 1, 7, 14, and 19 which requires any of the particular system services argued by Appellant to be lacking in Hellhake.

For the above reasons, it is our opinion that, since the Examiner's prima facie case of obviousness has not been rebutted by any convincing arguments from Appellant, the Examiner's 35 U.S.C. § 103(a) rejection of independent claims 1, 7, 14, and 19 is sustained.

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Turning to a discussion of the appealed dependent claims, we note initially that, although Appellant has indicated that all of the appealed claims are to be considered separately, no separate arguments for patentability have been asserted for dependent claims 2, 6, 8, 11, and 15-18. Instead, Appellant's arguments in the Briefs, aside from a general assertion that these claims recite unspecified "further limitations" over their base claims, rely on the arguments previously made with respect to independent claims 1, 7, 14, and 19. Since, as discussed supra, we find Appellant's arguments to be unpersuasive in overcoming the Examiner's prima facie case of obviousness, the 35 U.S.C. § 103(a) rejection of dependent claims 2, 6, 8, 11, and 15-18 is sustained.

We also sustain the Examiner's obviousness rejection of dependent claim 3, directed to the particulars of the drivers component, and claims 4 and 5, which set forth the partial screen overlay and full screen display features. We refer to our previous discussion supra which points out that Hellhake's disclosed API element 44 corresponds to Appellant's disclosed example of a driver, as well as our comments related to Harper's discussion of partial screen overlays and Hellhake's description of full or partial screen interfaces.

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As to the system services and overlay features of claims 9 and 10, respectively, we sustain the obviousness rejection of these claims as well. In our view, the user interface examples provided by Hellhake in Figures 6-8 suggest, at the very least, user interface and opportunities services. Further, we find that Hellhake's suggestion of a textual overlay, as well as the explicit description of graphical overlays in Harper, provide a clear guidance to the skilled artisan to present access instructions (menus) to the user in the form of screen overlays.

In the same vein, we find that Hellhake's end user station is explicitly disclosed as a television or a personal computer which provide TV and PC views as set forth in dependent claim 12. Similarly, we agree with the Examiner that the access screen items described in Hellhake's Figures 6-8 examples provide functionality to the system services they represent. Accordingly, the Examiner's 35 U.S.C. § 103(a) rejection of dependent claims 12 and 13 is sustained.

In conclusion, for all of the reasons discussed supra, we have sustained the Examiner's 35 U.S.C. § 103(a) rejection of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-19 is affirmed.

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

AFFIRMED

ERROL A. KRASS)	
Administrative Patent Judge)	
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JOSEPH F. RUGGIERO)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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