

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOACHIM MANKE and GERHARD SCHUMACHER

Appeal No. 2003-0815
Application 09/160,744

HEARD: OCTOBER 23, 2003

Before KRASS, JERRY SMITH and BARRY, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 22-42, which constitute all the claims remaining in the application.

The disclosed invention pertains to a device and method for operating a technical medical apparatus. The device includes a display screen and a touchscreen surface. The components of the apparatus are schematically displayed as well as the

functional relationship between the components. The treatment for a patient is controlled by a user touching various components on the touchscreen surface.

Representative claim 22 is reproduced as follows:

22. A device for operating technical medical apparatus comprising:

a display screen;

a touchscreen surface;

second means for displaying a schematic representation of at least two components of the apparatus and functional relationships between the components, using a separate characteristic symbol to represent each of the at least two components of the apparatus, each of the components selected from the group consisting of pumps, cut-off devices, sensors, and heating devices, the functional relationships comprising at least one of electrical and fluid connections between the components; and

first means for displaying and/or for allowing a user to alter treatment parameters related to the components, wherein touching by the user of the characteristics symbol displayed by the second means allows display and/or alteration via the first means of the treatment parameters corresponding to the component represented by the characteristic symbol, the parameters comprising at least one of actual and desired flow, temperature, on/off status and valve opening status.

The examiner relies on the following references:

Stein et al. (Stein)	5,589,856	Dec. 31, 1996
Rosa et al. (Rosa)	5,620,608	Apr. 15, 1997
Barkan et al. (Barkan)	5,656,804	Aug. 12, 1997
Wallace et al. (Wallace)	5,881,723	Mar. 16, 1999
		(filed Mar. 14, 1997)

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Claims 22-26, 28-31, 33, 35-37 and 40-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Wallace and Rosa. Claims 27, 32, 38 and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Wallace and Rosa in view of Stein. Claim 34 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Wallace and Rosa in view of Barkan.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections 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 particular art would not have suggested to one of ordinary skill

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in the art the obviousness of the invention as set forth in claims 22-42. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness.

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Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden 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 Id.; 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). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR § 1.192(a)].

We consider first the rejection of claims 22-26, 28-31, 33, 35-37 and 40-42 based on the teachings of Wallace and Rosa. These claims stand or fall together as a single group [brief, page 5], and we will consider the rejection with respect to independent claim 22 as representative of all the claims subject to this rejection.

The examiner's rejection essentially finds that Wallace teaches the invention of claim 22 except for the display of functional relationships specific to electrical and fluid

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connections. The examiner asserts, however, that the graphical user interface (GUI) of Wallace suggests a need for displaying functional relationships for tracking the flow of fluids. The examiner Cites Rosa as teaching functional relationships comprising electrical and fluid connections. The examiner finds that the buttons on Rosa's device are activated by electrical signals which establish fluid connections. The examiner concludes that it would have been obvious to the artisan to combine the user friendly touchscreen of Wallace with the GUI taught by Rosa [answer, pages 4-5].

Appellants argue that neither Wallace nor Rosa teaches the display of any functional relationship between the components of the medical apparatus. Appellants urge that the examiner has missed the point of the claimed invention when he asserts that the buttons in Rosa can be deemed a type of schematic for depicting the relationships between fluid and electrical connections. Thus, appellants argue that the GUIs of Wallace and Rosa do not indicate any functional relationship between the displayed components as recited in the claims on appeal [brief, pages 5-10].

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The examiner responds that the buttons of Rosa in themselves depict electrical connections while their references to various fluid actions such as dialysis flow and heparin rate correspond to fluid connections [answer, page 11].

Appellants respond that the numerical settings of Wallace are not separate characteristic symbols to represent each of the components of the system as claimed. Appellants also respond that the buttons of Rosa do not teach or suggest the schematic representation of the functional relationships as claimed [reply brief].

We will not sustain the examiner's rejection of independent claim 22 or of the other claims that are grouped therewith. We essentially agree with appellants' arguments as set forth in the briefs. Claim 22 recites a "means for displaying a schematic representation of at least two components of the apparatus and [a means for displaying] functional relationships between the components." Thus, claim 22 requires that functional relationships between components be displayed wherein the functional relationships comprise "at least one of electrical and fluid connections between the components." The buttons of Rosa do not indicate how the various components of Rosa are functionally connected. The display itself must show

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the functional relationship between the components that are represented on the display. Although the activation of buttons in Rosa would cause electrical or fluid connections of the medical apparatus to occur, there is still no display of how the components within the medical apparatus are functionally connected. Since there is no teaching within the applied art of the claimed means for displaying the functional relationships between the components of the apparatus, the examiner's rejection has failed to establish a prima facie case of the obviousness of claim 22.

Although claims 27, 32, 34, 38 and 39 are rejected using the additional teachings of Stein or Barkan, neither Stein nor Barkan overcomes the basic deficiencies in the main combination of Wallace and Rosa. Therefore, the examiner's rejection of these claims is not sustained for the same reasons discussed above with respect to claim 22.

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In summary, we have not sustained any of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 22-42 is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
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JERRY SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
LANCE LEONARD BARRY)	
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