

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(2) is not binding precedent of the Board.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. 37

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PATRICK J. FRANZ, PHILIP D. BIEHL
DAVID H. STRAAYER and ROBERT H. DODIER

Appeal No. 1996-1385
Application 08/006,139¹

ON BRIEF

Before JERRY SMITH, BARRETT and RUGGIERO, Administrative
Patent Judges.

¹ Application for patent filed January 19, 1993. According to appellants this application is a continuation of 07/688,921, filed April 19, 1991 now abandoned, which is a continuation-in-part of 07/649,711 filed February 01, 1991, now United States Patent 5,189,403, issued February 23, 1993, which application is a continuation-in-part of 07/412,680, filed September 26, 1989, now United States Patent 5,124,689, issued June 23, 1992 and a continuation-in-part of 07/557,546, filed July 24, 1990; and a continuation-in-part of application 07/672,641, filed March 18, 1991.

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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 4-12, 15-25 and 28-34, which constitute all the claims remaining in the application. Amendments after final rejection were filed on March 6, 1995 and May 2, 1995. Neither of these amendments was entered by the examiner.

The disclosed invention pertains to a cursor positioning device for a graphical user interface. Force sensor means associated with an input switch means respond to operator actuation and determine desired cursor movement by the operator. A signal processing means provides differing time response characteristics of the cursor movement depending on whether a repositioning of the cursor or a dragging of the cursor is input by the operator.

Representative claim 28 is reproduced as follows:

28. A graphic cursor positioning device comprising:

force sensor means responsive to operator actuation to generate a first pair of cursor movement electrical signals, each of the first pair of cursor movement electrical signals

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having an associated direction;

signal processing means acting upon the first pair of cursor movement signals to produce a corresponding second pair of cursor movement signals;

display means for presenting a moveable cursor;

cursor generating means connected to said display means so as to cause movement of said cursor in correspondence to said second pair of cursor movement signals;

said signal processing means including means for providing differing time response characteristics of said cursor movement in correspondence to said operator actuation, the time response including a faster cursor movement while the operator actuation is a repositioning operation and a slower cursor movement while the operator actuation is a dragging operation.

The examiner relies on the following references:

Straayer et al. (Straayer)	4,680,577	July 14, 1987
Moore	4,816,810	Mar. 28, 1989

Edwards, "Modelling blind users' interactions with an auditory computer interface," Int. J. Man-Machine Studies, Volume 30, 1989, pages 575-589.

Claims 4-12, 15-25 and 32-34 were finally rejected under 35 U.S.C. § 101 as being directed to nonstatutory subject matter. In response to the appeal brief, this rejection has been withdrawn [supplemental answer, page 6].

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These claims were not subject to any other rejection by the examiner and, therefore, are no longer part of this appeal. Claims 28-31 stand rejected under 35 U.S.C. § 103. As evidence of obviousness the examiner

offers Straayer in view of Edwards with respect to claims 28, 30 and 31, and adds Moore with respect to claim 29.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answers 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 answers.

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

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skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 28-31. 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.

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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. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

We consider first the rejection of claims 28, 30 and 31 as being unpatentable over the teachings of Straayer in view of Edwards. These claims stand or fall together [brief, page 5]. With respect to each of these claims, the examiner notes that Straayer teaches a cursor positioning device in which an operator's force on a key switch means controls cursor movement on a display screen. The examiner also asserts that Straayer teaches controlling the speed of cursor movement (that is, differing time response characteristics) in correspondence to the operator actuation [supplemental answer, page 4]. The examiner notes that Straayer does not teach relating the speed characteristics to a repositioning

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operation and a dragging operation. Edwards is cited as a teaching that different mouse movements require different amounts of time. The examiner concludes that it would have been obvious to the artisan to use slower movement during dragging and faster movement during repositioning in Straayer based on the teachings of Edwards [id. page 5].

Appellants argue that Edwards merely measures the amount of time it takes a blind person to perform different mouse operations based on auditory signals. Appellants argue that there is no suggestion in Edwards of automatically varying the cursor speed according to either a cursor repositioning operation or a dragging operation [brief, page 14]. The examiner responds that Edwards teaches that cursor movement for a dragging operation is slower than for a cursor repositioning operation.

The examiner also notes that Straayer suggests varying the speed of cursor movement [answer, page 6].

We find ourselves in agreement with appellants. Edwards' findings that blind persons physically move a pointing device at different speeds for different operations has nothing to do with the automatic control of cursor speed

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movement based on the operator indicating a repositioning operation or a dragging operation. The claimed invention recites that the rate of cursor movement is adjusted based on the type of operation. Edwards relates to the rate of pointing device movement based on the type of operation. There is no suggestion in the applied prior art that pointing device movement for different operations should be reflected in different time responsive cursor movements. Although Straayer broadly indicates that speed of the cursor movement can be varied, there is no suggestion that the variation respond to a repositioning operation and a dragging operation as claimed.

In summary, we agree with appellants that the collective teachings of Straayer and Edwards do not suggest the claimed invention within the meaning of 35 U.S.C. § 103. Therefore, we do not sustain the rejection of claims 28, 30 and 31.

Dependent claim 29 has been rejected on prior art using the additional teachings of Moore. Since Moore does not overcome

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the deficiencies noted above in the Straayer-Edwards
combination, we also do not sustain the rejection of claim 29.

Accordingly, the decision of the examiner rejecting
claims 28-31 is reversed.

REVERSED

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Jerry Smith)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
Lee E. Barrett))
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
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Joseph F. Ruggiero)	
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