

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TY R. SCHMITT and ANDREW W. WILKS

Appeal No. 1999-2660
Application No. 08/850,313

ON BRIEF

Before COHEN, STAAB, and JENNIFER D. BAHR, Administrative Patent Judges.
JENNIFER D. BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 20, which are all of the claims pending in this application. An amendment after final rejection filed February 4, 1999 (Paper No. 6) has not been entered (see Paper No. 7).

BACKGROUND

The appellants' invention relates to a pedestal or stabilizing apparatus for use with a computer tower unit having a generally narrow width with respect to its depth and height and a computer system comprising the pedestal and tower unit in combination. The pedestal is a single bar (110 or 160) having end portions (130 or 170, 180) which are adapted to interlace with one another so that tower units equipped with such pedestals can be placed closely together side by side with the fronts of the tower units being aligned. In a first embodiment, the end portions (130) are angled to have an S-shape in opposite directions, as illustrated in Figure 2, such that when two pedestals are placed in alignment with one another, the first end portion of one pedestal can be interlaced with the second end portion of the other pedestal. In a second embodiment, the first end portion (170) is a single end which is aligned with the middle portion of the bar and the second end portion (180) takes the form of a fork or double end, as illustrated in Figures 6A and 6B, such that when two pedestals are placed in alignment with one another, the double end portion of one pedestal branches out around the single end portion of the other pedestal to permit the two end portions to be interlaced. The claims on appeal are reproduced in the appendix to the appellants' brief.¹

¹ While the copies of the claims in the appendix to the appellants' brief are substantially correct reproductions of the claims of record, the copies of claims 9 and 15 in the appendix differ from the claims of record in that, in claim 9, line 6, "portion" has been omitted after "middle" and, in claim 15, line 1, "9" has been omitted after "claim."

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

Reiter	5,263,668	Nov. 23, 1993
Hardt et al. (Hardt)	5,020,768	Jun. 4, 1991

The following rejections are before us for review.

1. Claims 1-6, 9-14, 17 and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Reiter.
2. Claims 7, 8, 15, 16, 18 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Reiter in view of Hardt.

Reference is made to the brief and reply brief (Paper Nos. 9 and 11) and the answer (Paper No. 10) for the respective positions of the appellants and the examiner with regard to the merits of these rejections.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. While we, like the examiner, appreciate the close relationship of the applied prior art references to the appellants' invention, for the reasons discussed below, we cannot sustain the examiner's rejections.

In proceedings before it, the PTO applies to the verbiage of claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

Each of the appellants' claims requires, *inter alia*, a pedestal being a single bar having a first end portion, a second end portion and a middle portion, wherein the first end portion is adapted to interlace with a second end portion of an adjacent computer system tower unit. Based on the ordinary and customary usage of these terms, we understand a "bar" to be a piece of material that is longer than it is broad or wide and "to interlace" as to unite parts by passing over and under each other or to weave together.²

Our understanding of "bar" is consistent with the bar (110 or 160) illustrated in the appellants' drawings and described in the appellants' specification. In particular, the drawings illustrate a bar (110 or 160) which is considerably longer than it is wide and the appellants' specification (pages 4 and 5) describes the pedestal (110 or 160) as spanning the base of the tower unit in a direction transverse³ to the depth of the tower unit (100) and being a single bar

² Webster's New World Dictionary, Third College Edition (Simon & Schuster, Inc. 1988).

³ This would appear to describe the direction in which the longer dimension is intended to extend.

having two ends (130 or 170, 180) extending outwardly from opposite sides of the tower unit (100).

As for the term "interlace," as seen in Figure 3B, the two end portions (130) of the first embodiment are each angled twice from the middle portion to form a generally S-shape in opposite directions such that, when the middle portions of two such pedestals are aligned, the end portions weave around one another or intertwine to permit the pedestals to be effectively overlapped. Similarly, in the second embodiment, as seen in Figure 6B, one end portion (180) comprises two branches which form a fork or double end adapted to surround the other end portion (170) of an adjacent pedestal when the middle portions of two such pedestals are aligned. While the end portions of the pedestals illustrated in Figures 3B and 6B also pass over and under one another, by virtue of a downward angle, we note that the appellants' specification also contemplates planar end portions (specification, pages 4 and 5). In a planar configuration, the end portions, of course, would not pass over and under one another but would still weave laterally about one another so as to be intertwined. Therefore, the term "interlace," when read in light of the appellants' specification, appears to require a weaving or intertwinement but does not appear to specifically require a passage over and under.

Accordingly, consistent with the appellants' specification, we interpret "a single bar" as used in the appellants' claims as a single piece of material that is longer than it is broad or wide, and the claim terminology "adapted to interlace" as requiring structure which permits the

first and second end portions of adjacent pedestals to weave about one another to intertwine when brought together in alignment. Additionally, we interpret "end portions" as being those portions of the bar forming the extremities of the length dimension.

The teachings of Reiter are particularly pertinent to the appellants' invention in that Reiter, like the appellants, discloses pedestals (10a, 10b) for use with generally narrow and relatively high computer components (72, 74) to stabilize them while also permitting nesting of a plurality of the computer components in a side-by-side configuration (column 1, lines 6-9). Each pedestal comprises a base which is shaped substantially as a parallelepiped having a length (l) on the order of 18.5 inches and a width (w) on the order of about 8.75 inches (column 3, lines 45-52), a pair of spaced stabilizers (20, 22) extending from one side of the base and a single stabilizer (18) extending from the other side of the base. While the stabilizer (18) is adapted to nest in the channel between the stabilizers (20, 22) and the stabilizers (20, 22) are likewise adapted to nest in the channels bordering the stabilizer (18), we are of the opinion that one of ordinary skill in the art would reasonably consider these stabilizers to be side portions and not "end portions" as required by the claims, in that they form the extremities of the width (shorter dimension) and not the length (longer dimension) of the pedestal. Moreover, without the benefit of the appellants' disclosure, it is not apparent to us why one of ordinary skill in the art would have been motivated to change the shape of the Reiter pedestal, which is disclosed as

having a base length (l) and width (w) closely approximating the depth (d1) and width (w1), respectively, of a computer component (72) (column 6, lines 30-33).

In establishing a *prima facie* case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, e.g., Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988).

As the examiner, in rejecting claims 1-6, 9-14, 17 and 19, has not proffered any reason why one of ordinary skill in the art would have been led to modify Reiter so as to arrive at the claimed invention, we shall not sustain the examiner's rejection of independent claims 1, 9, 17 and 19, or of claims 2-6 and 10-14 which depend from claims 1 and 9, as being unpatentable over Reiter.

Turning next to the examiner's rejection of claims 7, 8, 15, 16, 18 and 20 under 35 U.S.C. § 103 as being unpatentable over Reiter in view of Hardt, we recognize that Hardt discloses a stabilizing apparatus (10) which extends only along a relatively short portion of the

depth of a tower unit (100) to which it is attached and a leveling bar (18) disposed near the front of the tower unit to maintain the tower unit in a horizontal position with the floor (F). In addition, we share the examiner's impression (answer, page 6) that to make the pedestal of Reiter smaller by shortening its length dimension (l) and to place a footpad at the other end of the computer component would not, as the appellants suggest (brief, page 6), appear to render inoperative the pedestal taught by Reiter. Nevertheless, the mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification. See In re Mills, 916 F.2d 680, 682, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990); In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). We fail to perceive any teaching, suggestion or incentive in the applied references which would have motivated an artisan to modify the pedestal of Reiter in such a fashion as to meet the terms of the claims. From our perspective, the only suggestion for putting the selected pieces from the references together in the manner proposed by the examiner is found in the luxury of hindsight accorded one who first viewed the appellants' disclosure. This, of course, is not a proper basis for a rejection. See In re Fritch, 972 F.2d 1260, 1264, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

Therefore, we shall not sustain the examiner's rejection of claims 7, 8, 15, 16, 18 and 20, which depend from independent claims 1, 9, 17 and 19, and thus also require that the "end portions" of the bar be adapted to interlace.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-20 under 35 U.S.C. §
103 is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
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JENNIFER D. BAHR)	
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