

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 ERIK NELSON and JEFFREY TEACHOUT

Appeal No. 2001-0287
Application No. 09/107,056

ON BRIEF

Before CALVERT, McQUADE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 10-17 and 19, which are all of the claims pending in this application. Claims 1-9 and 18 were canceled subsequent to the final rejection (see Paper Nos. 8 and 9).

BACKGROUND

The appellants' invention relates to a pivoting platform in an electronic equipment cabinet. In particular, such a

platform pivotably mounted on a door of a cabinet is illustrated in Figures 1a, 1b and 14-17 in appellants' application. A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

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

Frank et al. (Frank)	1,790,468	Jan. 27, 1931
Swanson	2,031,287	Feb. 18, 1936
Mulvaney	3,813,074	May 28, 1974
Cullinan	5,281,018	Jan. 25, 1994

The following rejections are before us for review.¹

Claims 10, 11 and 13-17 stand rejected under 35 U.S.C.

§ 103(a) as being unpatentable over Frank in view of Swanson and Cullinan.

Claims 12² and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Frank in view of Swanson, Cullinan and Mulvaney.

¹ According to the examiner (Paper No. 9) the rejection under 35 U.S.C. § 112, second paragraph, was overcome by the amendment of Paper No. 8.

² It is apparent from the record as a whole that the examiner's omission of claim 12 in the statement of the rejections on page 3 of the answer was inadvertent.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the final rejection and answer (Paper Nos. 7 and 13) for the examiner's complete reasoning in support of the rejections and to the brief and reply brief (Paper Nos. 12 and 14) for the appellants' arguments thereagainst.

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. As a consequence of our review, we make the determinations which follow.

Independent claim 10 requires, inter alia, a hinge attaching the rear edge portion of the platform to a wall of the cabinet, wherein the platform is rotatable between a retracted vertical position and an extended horizontal position such that the forward edge portion of the platform is disposed beneath the rear edge portion of the platform when the platform is in the retracted position, a bracket defining a slot having a curved section disposed above an elongated

section, and a brace having a second end attached to the platform and a first end extending through the slot and disposed at a terminal end of the curved section of the slot when the platform is in an extended position and disposed along the straight section³ of the slot when the platform is in a retracted position.

Frank discloses a table which is movable between an extended horizontal position (Figure 2) and a retracted vertical position (Figure 3) contained within a recess (space 12), a bracket formed by rails 16, 17 having vertical elongate sections and generally curved sections (notches 26, 27) and a pair of braces 37. As pointed out by appellants (brief, p. 6), the forward edge portion (top edge 52) of Frank's table is disposed above the rear edge portion (back edge 36), rather than beneath the rear edge portion as required by claim 10, when the table is in the retracted position.

Swanson discloses a table which pivots from a horizontal position to a vertical position about a fixed pivot or hinge,

³ We interpret "the straight section of the slot" in claim 10 to refer to the "elongate section." Reading the claim as a whole, we understand the elongate section of the slot to be a straight elongate section. However, in the event of further prosecution, claim 10 is deserving of correction to provide consistency and clear antecedent basis.

such that the forward edge portion (remote from the hinged edge portion) is disposed beneath the rear edge portion when the table is in the retracted vertical position. However, the slot of Swanson's bracket 13, through which the first end (pin 23)⁴ of the brace 22 extends, lacks a curved section above an elongated section as required by claim 10.

Frank and Swanson each disclose different arrangements for attaching a platform to a substantially vertical surface so as to permit movement of the platform between an extended horizontal position and a retracted vertical position, the Frank arrangement permitting a combination of sliding and pivoting and the Swanson arrangement being a fixed pivot type. Frank's arrangement, with its bracket having notches 26, 27 and braces 37 fixed at one end to the table 31, would not work with a fixed pivotal attachment of the table to the vertical support as taught by Swanson. Likewise, it is not apparent to us why one skilled in the art would have been led to replace the bracket 13 of Swanson with a bracket of the type taught by Frank. There is nothing in the teachings of Frank and Swanson

⁴ The pin 23 responds to the first end of the brace as recited in claims 10 and 19 because it is the end opposite the end of the brace attached to the platform (table).

which would have suggested the arbitrary picking and choosing of elements from each necessary to arrive at the claimed invention.

Cullinan, the third reference relied upon by the examiner in rejecting claim 10, discloses a platform pivotably attached to the door of a computer enclosure with what appears to be a fixed pivot point and a brace means 60 comprising two collapsible braces. We find nothing in the teachings of Cullinan which overcomes the deficiencies in the combination of Frank and Swanson discussed above. Accordingly, we shall not sustain the examiner's rejection of claim 10 or of claims 11 and 13-17 which depend from claim 10.

Mulvaney also provides no cure for the deficiencies of Frank in view of Swanson and Cullinan discussed above. Therefore, we shall not sustain the examiner's rejection of claim 12, which depends from claim 10, or of independent claim 19, which includes all of the limitations of claim 10 discussed above, with the exception that the slot of claim 19 is recited as having a straight section rather than an elongate section.

CONCLUSION

To summarize, the decision of the examiner to reject claims 10-17 and 19 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JENNIFER D. BAHR)	
Administrative Patent Judge)	

Appeal No. 2001-0287
Application No. 09/107,056

Page 8

Richard M. Sharkansky
Fish & Richardson
225 Franklin Street
Boston, MA 02110-2804

JDB:caw