

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RANDALL A. LIPPS

Appeal No. 1997-2273
Application No. 08/320,585¹

HEARD: November 18, 1999

Before THOMAS, HAIRSTON, and DIXON, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed October 11, 1994. According to appellant, the application is a continuation of Application No. 08/095,619, filed July 21, 1993, now abandoned.

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This is an appeal from the final rejection of claims 31 through 53.

The disclosed invention relates to horizontally spaced-apart item switches located on at least some of the shelves of a cabinet.

Claim 31 is illustrative of the claimed invention, and it reads as follows:

31. A unit for dispensing items, said unit comprising:
a cabinet:

a plurality of shelves vertically spaced-apart in the cabinet;

a plurality of item switches horizontally spaced-apart on at least some of the shelves; and

a plurality of movable storage locations on at least some of the shelves, wherein at least one item switch is located adjacent to each storage location.

The references relied on by the examiner are:

Kimbrow 1988	4,737,910	Apr. 12,
McLaughlin et al. (McLaughlin) 1991	5,014,875	May 14,
Colson et al. (Colson) 1994	5,346,297	Sept. 13,
		(filed Jan. 4, 1993)

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Claims 31 through 53 stand rejected under 35 U.S.C. § 103 as being unpatentable over Colson (which incorporates McLaughlin² by reference) in view of Kimbrow.

Reference is made to the briefs and the answer for the respective positions of the appellant and the examiner.

OPINION

The obviousness rejection of claims 31 through 53 is reversed.

According to the examiner (Answer, pages 3 and 4), Colson was cited to show vertically spaced-apart shelves in a cabinet (Figure 1), and removable storage locations on some of the shelves (Figure 8). The examiner acknowledges (Answer, page 4) that "Colson does not disclose the appellant's limitation of a plurality of item switches horizontally spaced apart on some of the shelves."

Kimbrow discloses that it is known to mount a mechanically switch activated apparatus that keeps an inventory of items in stock "proximate to a shelf containing a

² Although McLaughlin is mentioned in the grounds of the rejection, the examiner never addresses this reference in the statement of the rejection. As a result thereof, we will not address this reference in our opinion.

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specified inventory of items" (column 1, lines 56 through 64). As with Colson, the examiner acknowledges (Answer, page 4) that "Kimbrow does not specifically disclose the appellant's placement of the switches horizontally as disclosed by the appellant." The examiner concludes (Answer, page 4), however, that "it is well known in the art to place switches in an optimal location," and that "[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to employ switches horizontally because this allows for easy eye hand coordination in inventory control."

Although the examiner does address the employment of "switches horizontally," he never presents any rationale for mounting such "switches horizontally" in shelves of a cabinet. Accordingly, we agree with the appellant (Brief, page 8) that:

[N]one of the art cited by the Examiner discloses the incorporation of switches into shelves, much less that the switches and associated storage locations be laid out in a way where one switch lies adjacent each storage location. Moreover, appellant believes that there would be no incentive in either Colson '297, Kimbrow '910, or generally in the art, which would suggest the claimed combination. Colson '297 specifically teaches that a stand-alone keyboard which is not associated with any particular storage location be used for inputting all required inventory data. While Kimbrow suggests that separate inventory devices may be distributed in a

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warehouse or other large facility, there is no suggestion that single switches be somehow removed from these devices and incorporated into shelves on particular dispensing units.

In summary, the obviousness rejection is reversed³ because the examiner "is using hindsight to judge the obviousness of the present invention" (Brief, page 11).

DECISION

The decision of the examiner rejecting claims 31 through 53 under 35 U.S.C. § 103 is reversed.

REVERSED

JAMES D. THOMAS)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
KENNETH W. HAIRSTON)	APPEALS
Administrative Patent Judge)	AND

³ The declaration submitted by John Higham was not considered because a declaration submitted "after the case has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented." See 37 CFR § 1.195. A mere statement by the appellant (Brief, page 11) that "the Declaration was not made earlier because all supporting materials were not available" can not take the place of such a showing.

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APJ HAIRSTON

APJ DIXON

APJ THOMAS

DECISION: REVERSED
Send Reference(s): Yes No
or Translation (s)
Panel Change: Yes No
Index Sheet-2901 Rejection(s): _____

Prepared: June 17, 2002

Draft Final

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OB/HD GAU

PALM / ACTS 2 / BOOK
DISK (FOIA) / REPORT