

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

Appeal No. 1997-4351
Application No. 08/435,375¹

ON BRIEF

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

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 7, all the claims pending in the application.

¹ Application for patent filed May 5, 1995.

The invention pertains to windows in a graphical user interface and, more particularly, to replacing open windows of a cascaded window system in an original position within the cascade.

Representative independent claim 1 is reproduced as follows:

1. A method for returning a window to an original position among a plurality of cascaded windows which are rendered on a display space, comprising the steps of:

generating a list which provides a front-to-back order of said plurality of cascaded windows and an indicator of whether each of said plurality of cascaded windows is currently in its respective original, cascaded position;

removing said window from said original position;

rendering said window at another location on said display space;

receiving, at a graphical interface, an indication that said window is to be removed from said another location on said display space; and

returning said window to said original position based upon said list generated by said step of generating.

The examiner relies on the following reference:

Bates et al. [Bates]
1994

5,377,317

Dec. 27,

Claims 1 through 7 stand rejected under 35 U.S.C. 103 as unpatentable over Bates.

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

OPINION

We reverse.

The subject matter of instant claim 1 requires the return of a window to its original position among a plurality of cascaded windows based upon a generated list which provides the order of the plurality of cascaded windows and an indicator of whether each of the windows is currently in its respective, original, cascaded position. While a little broader, independent claim 4 still requires placing a first window behind a second window after the first window has been opened and is being returned to a first portion of the display wherein the placement of the first window behind the second window in the first portion of the display is based upon a generated list

indicating that the first window's place is behind the second window when both windows are in the first portion of the display. Independent claim 6, the apparatus claim, indicates that the windows are in a time-invariant order and that the returned window object is returned to its original position, relative to other window objects, based on information in a data structure, said information being received by a processor.

The window display system of Bates cascades a plurality of windows based on the amount of time a particular window has been active, with the most active window being on top (i.e., "in focus") and the other windows being positioned behind the top window, in descending order of time of activity. Thus, rather than being time-invariant, the positions of the windows in Bates are very much dependent on time.

It is the examiner's position [answer-page 4] that a window will be returned to its original position "if the amount of active time of all windows remain the same, or the different [sic, difference] between the amount of active time is not enough to change the display order of the windows." Although

we agree that fortuitous circumstances may occur, in Bates, which *might* cause some windows to return to their original positions in some cases, a finding of obviousness cannot be predicated on the mere fact that a situation meeting the claim language may occur "when the moon and the stars should be alignment." Bates is concerned with sorting the cascaded windows based on the amount of active time of a window, with the most active being on top of the cascade. The skilled artisan, viewing the Bates reference, would have had no reason to arrange the cascaded windows in any other order, viz., an original order, and should the windows in Bates revert back to an original order by chance because of a coincidence of equal active times, the artisan would not even have been aware that this would be, in any manner, a desirable result. Thus, it would be difficult to contend that the occurrence of a situation, the significance of which the artisan is not even cognizant, would have been obvious, within the meaning of 35 U.S.C. 103, to the artisan.

The examiner also contends [answer-page 5] that "[w]hen the timer is not activated, record 40 and the list 27 remain

the same, and windows are returned to their original positions based upon the record 40, or indirectly based upon the list 27." The examiner's position appears to indicate that the timer in Bates can be turned off, in which case the windows will always return to an original position in a cascade when deactivated. However, while the timer in Bates can be reset, we find no evidence within the Bates disclosure that the timer can be permanently deactivated in order to provide for a return to original position of windows in a cascade. A review of the flowchart in Figure 5C indicates that once the window timing is turned off, at box 165, certain events take place, indicated by boxes 166, 168 and 169, but that, eventually, the process must return to box 170 which indicates a turning on of the window timing. Thus, while the timer in Bates may be reset, it does not appear capable of being permanently turned off. Even assuming, arguendo, that the timer in Bates can be permanently disabled, we find no evidence in Bates that such an occurrence would result in closed windows reverting to an original position within the window cascade, as required by the instant claims.

The examiner's conclusion [answer-page 3] that it would have been obvious to return the windows in Bates to an original position in a window cascade because the skilled artisan "would know how to keep things organized for later use by returning them to the already familiar places, where they belong," appears to us to be the result of impermissible hindsight gleaned from appellant's own disclosure rather than being based on any suggestion by Bates or within the common sense of the artisan at the time of the instant invention.

The examiner's decision rejecting claims 1 through 7 under 35 U.S.C. 103 is reversed.

REVERSED

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

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MICHAEL R. FLEMING)
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