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12/239,441	09/26/2008	Jay Dittmer	3156.03US05	3426
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PATTERSON THUENTE CHRISTENSEN PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

EXAMINER

WUJCIAK, ALFRED J

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAY DITTMER

Appeal 2011-000861
Application 12/239,441
Technology Center 3600

Before JENNIFER D. BAHR, BENJAMIN D. M. WOOD, and
PATRICK R. SCANLON, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Jay Dittmer (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 1-7 and 21-30. Claims 8-20 have been cancelled. A previously maintained rejection of claims 1-7 and 21-30 under 35 U.S.C. § 112, second paragraph, has been withdrawn by the Examiner.¹ Ans. 3.

We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was conducted on January 8, 2013.

We REVERSE.

THE INVENTION

The claimed subject matter relates to “selectively adjustable flat panel display mounting systems.” Spec. 1, ll. 12-13. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A mount for coupling a flat panel electronic display device with a wall of a structure, the mount comprising:

a display interface presenting a display receiving surface; and

a wall interface adapted to attach to the wall, the wall interface and the display interface operably coupled together with a pair of spaced-apart connections such that the display interface is selectively shiftable about a generally horizontal tilt axis spaced apart forwardly from the display receiving surface, and such that the tilt axis does not pass through either of the wall interface or the display interface.

¹ This withdrawn ground of rejection was the only rejection of claim 28. Given that there is no longer any ground of rejection as to claim 28, we confine our decision to claims 1-7, 21-27, 29 and 30.

REFERENCES

The Examiner relies upon the following prior art references:

Sweere	US 5,842,672	Dec. 1, 1998
Costa	US 6,045,103	Apr. 4, 2000

THE REJECTIONS

The Examiner maintains the following rejections:

The rejection of claims 1-4, 6, 7 and 21-26 under 35 U.S.C. § 102(b) as being anticipated by Costa.

The rejection of claims 21, 26, 27, 29 and 30 under 35 U.S.C. § 102(b) as being anticipated by Sweere.

The rejection of claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Costa.

ANALYSIS

Anticipation based on Costa

Appellant's claimed invention comprises a mount for a flat panel display having a display interface coupled to a wall interface or support structure. Each of independent claims 1 and 21 recites that the display interface is rotatable about a generally horizontal tilt or pivot axis spaced apart forwardly from the mounting surface of the display interface.

The Examiner finds that Costa discloses a mount comprising a display interface (support member 42) and a wall interface (base member 12 and intermediate member 24) coupled by a pair of spaced-apart connections (arcuate slots 88 and locking fasteners 92). Ans. 4. Appellant argues that Costa fails to disclose or suggest a generally horizontal tilt axis spaced apart forwardly of the display mounting surface. App. Br. 14-15. The Examiner states in response that because the claims do not specifically state which

direction is forward, the claim terminology “forwardly” can be broadly interpreted to mean toward the wall interface. Ans. 5. Appellant argues that this is an unreasonable interpretation of the claim language because under that interpretation “**none** of the claims would read on **any** of the embodiments in the specification.” Reply Br. 4 (emphasis in original).

We agree with Appellant. During examination, patent claims are given their broadest reasonable interpretation in light of the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (*en banc*). Furthermore, “the drawings may be used like the written specification to provide evidence relevant to claim interpretation.” *In re Miskinyar*, 6 F.3d 787, 1 (Fed. Cir. 1993) (unpublished) (citing *Autogiro Co. of Am. v. United States*, 384 F.2d 391, 398 (Ct. Cl. 1967)). Appellant’s drawings indicate that in all of the disclosed embodiments the horizontal tilt axis is spaced apart toward the display rather than toward the wall. For example, fig. 4 shows the generally horizontal tilt axis 114 to be located on the side of the display interface 14 opposite from the wall interface 12. When the claim language is read in light of this disclosure, we determine that being forward of the display interface 14 should be interpreted as meaning being on the side of the display interface 14 opposite from, and not toward, the wall interface 12. Accordingly, we find the Examiner’s interpretation of “spaced apart forwardly” of the display interface 14 as meaning toward the wall interface 12 is unreasonably broad. This interpretation by the Examiner is also inconsistent with the Examiner’s statement that Costa discloses a second flange 44 located “*rearwardly* from the display interface.” Ans. 4 (emphasis added).

Costa discloses a horizontal tilt axis defined by pivot fastener 90. Costa, col. 3, ll. 47-56 and figs. 1, 2 and 5. As shown in figs. 1 and 2 of Costa, this horizontal tilt axis is located on the side of the mounting surface of the display interface or support member 42 toward the wall interface 12 and 24. As such, the horizontal tilt axis is not spaced apart *forwardly* of the display interface mounting surface. Because Costa fails to disclose this limitation, we cannot sustain the rejection of independent claims 1 and 21, and of claims 2-4, 6, 7 and 22-26 depending therefrom, under 35 U.S.C. § 102(b) as being anticipated by Costa.

Anticipation based on Sweere

The Examiner finds that Sweere teaches a horizontal tilt axis spaced apart forwardly of the display interface, relying on the same improper interpretation of “spaced apart forwardly” discussed *supra*. Ans. 7. However, the horizontal axis 42 of Sweere referenced by the Examiner extends through a pivot assembly 34 that is located on the side of a bracket 38 (i.e., the display interface) toward the wall interface structure 12 and 14. Sweere, col. 4, ll. 53-57 and figs. 2 and 4. The horizontal axis 42 is thus not spaced apart *forwardly* (as properly interpreted) of the display interface 38. For this reason, we cannot sustain the rejection of independent claim 21, and of claims 26, 27, 29 and 30 depending therefrom, under 35 U.S.C. § 102(b) as being anticipated by Sweere.

Obviousness based on Costa

The Examiner concludes that it would have been obvious to one of ordinary skill in the art to modify Costa to make the pin (presumably fastener 92) rollable in the slot (presumably slot 88) as recited in claim 5. Ans. 5. The Examiner does not contend that it would have been obvious to a

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person having ordinary skill in the art to modify Costa by locating the horizontal tilt axis forward of the display interface. As such, this ground of rejection does not cure the above-noted deficiency of Costa with regard to independent claim 1, from which claim 5 depends. Accordingly, we do not sustain the Examiner's rejection of claim 5 under 35 U.S.C. § 103(a).

DECISION

We reverse the decision of the Examiner rejecting claims 1-7, 21-27, 29 and 30.

REVERSED

JRG