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12/718,737	03/05/2010	Todd C. Westberg	507686	5510

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EXAMINER
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IWARERE, OLUSEYE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* TODD C. WESTBERG and JOERG NIEDERHUEFNER

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Appeal 2014-006865  
Application 12/718,737  
Technology Center 3600

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Before BIBHU R. MOHANTY, CYNTHIA L. MURPHY, and  
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 of the final rejection of claims 1–10 and 12 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We REVERSE.

## THE INVENTION

The Appellants' claimed invention is directed to a retail display system (Spec., para. 10). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method for monitoring inventory levels of retail merchandise contained in a self facing retail display system, the self facing retail display system defining a retail merchandise confinement space for receipt of one or more items of retail merchandise and a pusher for biasing said one or more items of retail merchandise towards a front end of the self facing retail display system, comprising the steps of:

sensing a parameter associated with a movement of the pusher of the self facing retail display system using a sensor, wherein the sensor includes first and second parallel electrical contact strips, and wherein the step of sensing the parameter includes detecting an intermittent completion of an electrical circuit between the first and the second electrical contact strips based upon movement of the pusher; and

determining a repeating value of a number of intermittent completions of the electrical circuit based upon said sensing during placement or removal of a single unit of the one or more items of retail merchandise from the self facing retail display system.

## THE REJECTIONS

The following rejections are before us for review:

1. Claims 1–4, 6–10, and 12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hill (U.S. 2004/0034581 A1, Feb. 19, 2004) and Cheng (US 2006/0219517 A1, Oct. 5, 2006).

2. Claim 5 is rejected under 35 U.S.C. § 103(a) as unpatentable over Hill, Cheng, and White (US 2007/0273513 A1, Nov. 29, 2007).

## FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence<sup>1</sup>.

## ANALYSIS

The Appellants argue that the rejection of claim 1 is improper because the cited prior art fails to disclose the claim limitation for

*sensing a parameter associated with a movement of the pusher of the self facing retail display system using a sensor, wherein the sensor includes first and second parallel electrical contact strips, and wherein the step of sensing the parameter includes detecting an intermittent completion of an electrical circuit between the first and the second electrical contact strips based upon movement of the pusher*

(App. Br. 6-9, Reply Br. 6-10 (emphasis added)).

In contrast, the Examiner has determined that the cited claim limitations are shown by Cheng at paragraph 19, and Hill in the Abstract, and paragraph 42 (Final Rej. 2, 3, Ans. 5).

We agree with the Appellants. Here, the above cited claim limitation requires *sensing a parameter associated with a movement of the pusher ... wherein the sensor includes first and second parallel electrical contact strips, and wherein the step of sensing the parameter includes detecting an intermittent completion of an electrical circuit between the first and the second electrical contact strips*. The above citations to the prior art fail to disclose this. For example, Cheng at para. 19 does disclose using sensors

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<sup>1</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

116 for monitoring the supply of products, but this could be done by measuring weight for example and there is no specific disclosure of sensing movement of a pusher with first and second parallel contact strips in the specific manner claimed. Hill in the Abstract discloses keeping track of items by the sensor transducers measuring weight, not movement in the manner claimed. Hill at paragraph 42 does disclose using sensors but again there is no specific disclosure of sensing movement of a pusher with first and second parallel contact strips in the specific manner claimed.

The Examiner in the Answer states that

Cheng [0019] discusses electrical sensors which must have some electric contact strips in order to be powered. . . . [and this is] construed to have AC which requires a first contact strip for power and second for ground. Therefore, the Cheng . . . teaches two contact strips by virtue of providing AC power to the sensors.

(Ans. 5, 6). We disagree with this contention. The sensors in Cheng at para. 19 have not specifically been shown to be electrical at this paragraph, and could be mechanically based. Regardless, being powered by electrical power could for instance be done through positive and negative point like or post terminals and not by the required *first and second parallel electrical contact strips*. Here, both Cheng and Hill at the above cited portions fail to specifically disclose *sensing a parameter associated with a movement of the pusher . . . wherein the sensor includes first and second parallel electrical contact strips, and wherein the step of sensing the parameter includes detecting an intermittent completion of an electrical circuit between the first and the second electrical contact strips*. For these reasons the rejection of claim 1 and the rejections of dependent claims 2–10 and 12 are not sustained.

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### CONCLUSIONS OF LAW

We conclude that Appellants have shown that the Examiner erred in rejecting the claims as listed in the Rejections section above.

### DECISION

The Examiner's rejection of claims 1–10 and 12 is reversed.

REVERSED