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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JUHA SUORAJAERVI, ARTO KOSKI-LAULAJA, and JYRKI NIEMINEN

Appeal 2018-000313[1]
Application 13/651,117
Technology Center 2100

Before THU A. DANG, DENISE M. POTHIER, and JOHN D. HAMANN, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–5, 7, and 20–22, which are all of the pending claims. Claims 6 and 8–19 were previously canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies Merivaara Oy as the exemplary real party in interest. Appeal Br. 2.

A. INVENTION

According to Appellant, the invention relates to "a method for controlling an operating table with a portable device." Spec. 1:9–10.

B. REPRESENTATIVE CLAIM

Claim 1 is representative of the subject matter on appeal:

> 1. A method for controlling an operating table with a portable device having a touch screen, a physical action button, and a data transfer unit, the method comprising:
>
> presenting on the touch screen graphically the effect of an adjustment command on an operating table;
>
> receiving an operating table activation command from the touch screen at the portable data transfer unit;
>
> receiving an adjustment command, which is consistent with the activation command, from the physical action button, at the data transfer unit; and
>
> transmitting, by the data transfer unit, wirelessly to the operating table the received adjustment command to control the operating table in accordance with the adjustment command, thereby moving at least a segment of the operating table in a direction based on the adjustment command.

Appeal Br. 10 (Claims Appendix).

C. REJECTION

Claims 1–5, 7, and 20–22 stand rejected under 35 U.S.C. § 103(a) over Borders et al. (US 2003/0195644 A1; published Oct. 16, 2003) ("Borders"), Fruh et al. (US 2007/0101500 A1; published May 10, 2007) ("Fruh"), and Rawls-Meehan (US 2010/0231421 A1; published Sept. 16, 2010) ("Rawls").

II. ISSUES

The principal issues before us are whether the Examiner erred in finding the combination of Borders, Fruh, and Rawls teaches or suggests "receiving an operating table activation command from the touch screen at the portable data transfer unit" and "receiving an adjustment command, which is consistent with the activation command, from the physical action button, at the data transfer unit." Claim 1.

III. ANALYSIS

We have reviewed the Examiner's rejection in light of Appellant's arguments presented in this appeal. Arguments which Appellant could have made, but did not make in the Brief are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2016). On the record before us, we are unpersuaded the Examiner erred.

Appellant contends that, in claim 1, "an adjustment command is received at a physical action button, and activation command is received from a touchscreen, and only if the two signals are consistent with one another does an operating table move." Appeal Br. 15. In particular, "the claimed invention is not just any combination of touch-screens and buttons," but rather, "as explicitly recited in the claims, the physical action button produce and adjustment command, which is ***consistent with the activation command***." *Id.* at 18. According to Appellant, "[n]one of Borders, Fruh, or Rawls, alone or in combination, describe two such consistent commands," as claimed. *Id.* at 16.

Appellant contends that "Borders does not teach any adjustment command whatsoever (as there is no physical action button in Borders from

which the adjustment command could be received)." *Id.* at 20. Appellant then contends that "Fruh does not disclose a touchscreen whatsoever." *Id.*

Further, Appellant contends that "Borders teaches use of a single medical device controller (40)." *Id.* at 16. According to Appellant, Borders "teaches the benefits of a single, integrated interface," wherein "to modify Borders such that it would have two interfaces, the fundamental principle of operation of Borders would therefore have to be modified." *Id.*

We have considered all of Appellant's arguments and evidence presented. However, we agree with the Examiner's findings, and find no error with the Examiner's conclusion that claim 1 would have been obvious over the *combination* of the teachings *and suggestions* of Borders, Fruh and Rawls.

As an initial matter of claim interpretation, although Appellant contends that, in claim 1, "***only if*** the two signals are consistent with one another does an operating table move" (Appeal Br. 15 (emphasis added)), such contention is not commensurate with the recited language of claim 1. In particular, the recited language of claim 1 does not require moving an operating table "only if" the signals are consistent. *See* claim 1. As the Examiner points out, such argument "is not a claim language of claim 1." Ans. 22 (emphasis omitted).

Further, although Appellant contends that "there is no physical action button in Borders from which the adjustment command could be received" (Appeal Br 20) and that "Fruh does not disclose a touchscreen whatsoever" (*id.*), the Examiner rejects the claim as obvious over the combination of Borders, Fruh and Rawls. The test for obviousness is what the combination of Borders, Fruh and Rawls teaches or would have suggested to one of ordinary skill in the art. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed.

Cir. 1986). One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *see* also *Merck*, 800 F.2d at 1097.

Here, the Examiner relies on Borders for teaching and suggesting the claimed limitation "receiving an operating table activation command from the touch screen at the portable data transfer unit." Final Act. 4–5. In particular, the Examiner finds that Borders discloses "a touch-screen display presenting an introductory menu with selection indicators for accessing controller functions to adjust a surgical table," wherein "touch-screen buttons are provides in a portable, hand-held unit." *Id.* (citing Borders ¶¶ 17, 21, 37, 58, 59, 64, 66, 68, 89, Figs. 1, 3–8, 13–15, 24).

Borders' Figure 9 is reproduced below:

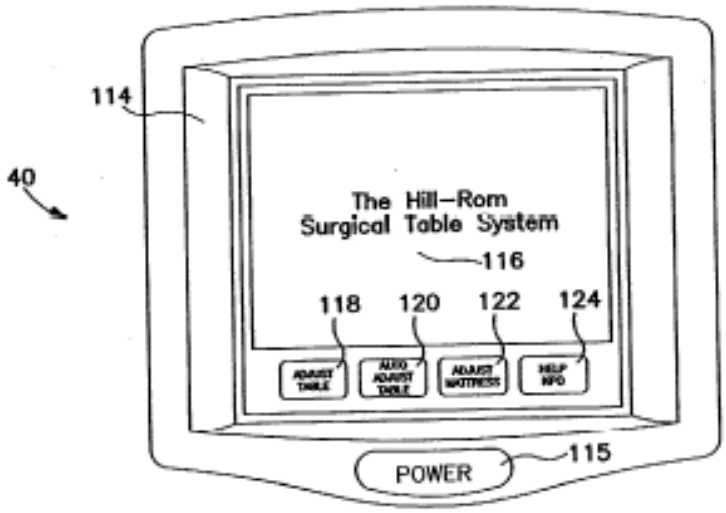


FIG. 9

Figure 9 shows a medical device controller comprising a touch-screen display presenting an introductory menu with selection indicators for accessing controller functions to adjust a surgical table. Borders ¶ 21. As

shown in Figure 9 of Borders, controller 40 is a hand-held unit that includes touch-screen selection indicators 118, 120, 122, 124 for an operator to designate access to further display interfaces for surgical table adjustments. Borders ¶ 69. That is, Borders discloses a user activating the selection indicators in the handheld unit to access further display interfaces for surgical (operating) table adjustments. *See id.* Thus, we find no error with the Examiner's reliance on Borders to teach and suggest "receiving an operating table activation command from the touch screen [via selection indicators 118, 120, 122, 124] at the portable data transfer unit," as recited in claim 1. Final Act. 4–5.

The Examiner then relies on Borders to teach and suggest "[receiving] adjustment command . . . to control the operating table in accordance with the adjustment command." *Id.* at 5 (emphasis omitted). In particular, the Examiner finds that Borders discloses "controller 40 provides for automatically placing table 42 in a desired, predefined configuration for incrementally adjusting table frame 58." *Id.* (citing Borders ¶¶ 17, 37, 59, 64, Figs. 3–6, 13–15, 24).

In Borders, selection of a selection indicator results in an adjust table position screen with up and down adjustment input indicators for adjusting the position of the surgical table. Borders ¶ 76. Borders' Figure 13A is reproduced below:

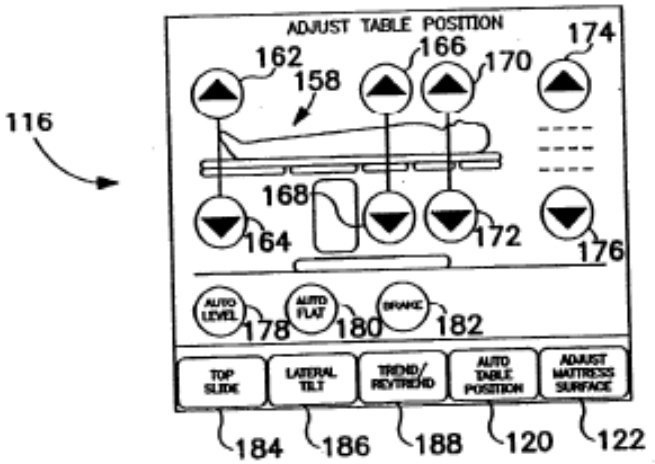


FIG. 13A

Figure 13A shows an adjust table position screen for adjusting a surgical table, with input indicators for adjusting articulated table frame sections. Borders ¶ 25. In Borders, selection of selection indicator 118 as shown in Figure 9 results in the display in Figure 13A. *Id*. ¶ 76. As shown in Figure 13A, up and down adjustment input indicators 162–176 provide for "press and hold" adjustment of designated section of articulated frame 158 as indicated by the graphical display. *Id.* That is, in Borders, upon receipt of a selection of "adjust table" selection indicator 118 (Fig. 9), a screen 116 (Fig. 13A) showing up and down adjust input indicators (consistent with the selection indicator) is produced for adjusting the position of the surgical table. *Id*. In other words, Borders discloses adjust input indicators for providing up and down adjustment commands that are produced in response to (and are consistent with) the activated selection indicator ("adjust table").

Thus, although Appellant contends that "as explicitly recited in the claims, the physical action button produce and adjustment command, which is ***consistent with the activation command***" (Appeal Br. 18), we agree with the Examiner that Borders teaches and suggests receiving an "adjustment

command" which is produced by and is "***consistent with*** the activation command," as recited in claim 1. Final Act. 5 (emphasis added).

The Examiner then relies on Fruh for teaching an adjustment command, which is consistent with the activation command, received from a "physical action button." Final Act. 6. In particular, according to the Examiner, Fruh discloses "buttons or keys for the input of body-part-related adjustment commands [that] are arranged in the vicinity of the corresponding body part." *Id.* (citing Fruh ¶¶ 14, 21, Figs. 1–2).

Fruh relates to an apparatus for adjusting the bed of an operating table (Fruh ¶ 2), wherein Figure 2 is reproduced below:

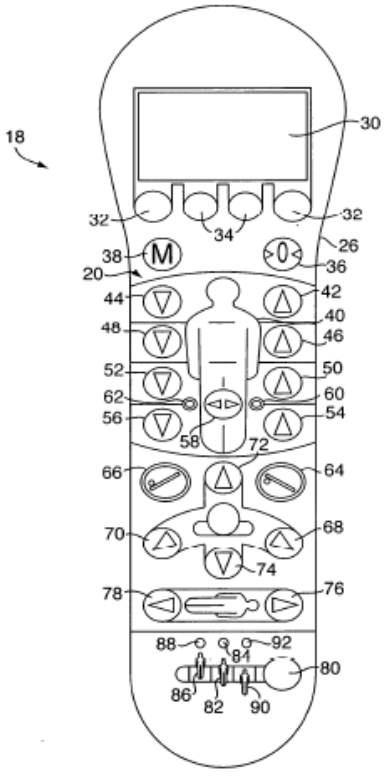


Fig. 2

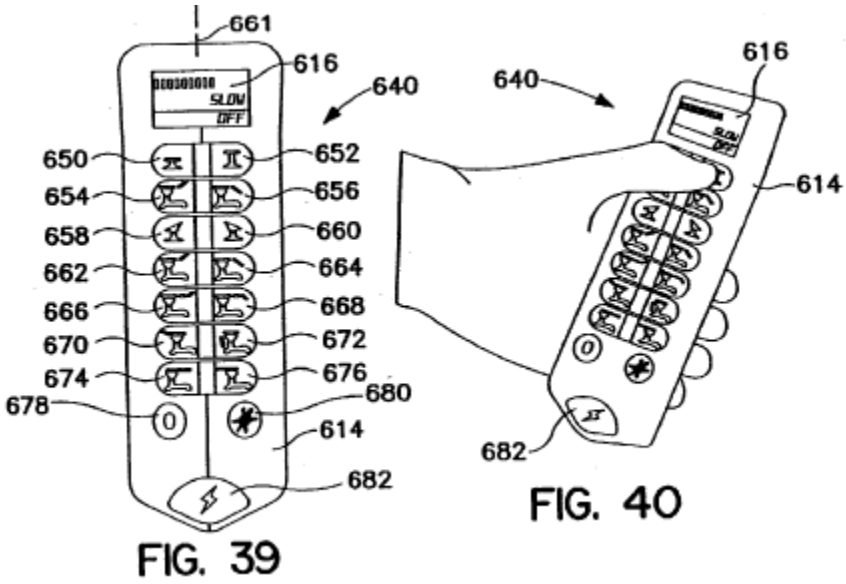
Figure 2 shows an operating instrument 18 comprising operating face 20. Fruh ¶ 22. As shown in Figure 2 of Fruh, buttons 42–56 are provided for raising and lowering individual body parts of an operating table. Fruh ¶ 26.

We find no error with the Examiner's reliance on Fruh to teach and suggest receiving an adjustment command from a "physical action button" at a "data transfer unit," as recited in claim 1. Final Act. 6. Accordingly, we agree with the Examiner's finding that the combination of Borders and Fruh teaches or suggests and "receiving an adjustment command, which is consistent with the activation command, from the physical action button, at the data transfer unit" as recited in claim 1. In particular, we agree with the Examiner's reliance on Borders to teach and suggest "activation command," the Examiner's reliance on Borders and Fruh to teach and suggest "adjustment command," and thus, we find no error with the Examiner's finding that Borders, Fruh, and Rawls, in combination, describe "two such consistent commands," as claimed. *Id.* at 4–6.

We also are unpersuaded by Appellant's contention that Borders "teaches the benefits of a single, integrated interface," wherein "to modify Borders such that it would have two interfaces, the fundamental principle of operation of Borders would therefore have to be modified." Appeal Br. 16. Here, Appellant mischaracterizes Borders' intended purpose and principle of operation. Specifically, Borders' intended purpose is not to provide a "single" integrated surface. *Id.* Instead, as the Examiner points out, in Borders, "controller 40 is a hand-held device and can be configured to control medical devices through ***a variety of communication interfaces***." Final Act. 5 (citing Borders ¶ 58) (emphasis added). For example, Borders discloses that hand-held controller 40 "is either wired directly to the controllable devices or, preferably, is configured to send signals to the controllable devices using a wireless link." Borders ¶ 59.

As shown in Figures 9 and 13A reproduced above, Borders discloses that controller 40 could comprise a touch-screen interface. *See id.* at Figs. 9,

13A. Further, as the Examiner points out, although the controller could comprise a touch-screen interface (Fig. 13B), the controller could also comprise a physical button interface (Figs. 39–40). *See* Ans. 26 (*comparing* Spec., Figs. 3a, 3b, 4, *with* Borders, Figs. 1, 2, 13B, 39, 40). Figures 39–40 of Borders are reproduced below:



Figures 39–40 show controller 640 comprising handheld housing 614, display 616, buttons 650–680, and power button 682. Borders ¶ 96; *see also* Ans. 26. Contrary to Appellant's contention that "there is no physical action button in Borders from which the adjustment command could be received" (Appeal Br. 20), like Fruh, Borders clearly discloses that physical action buttons 650–680 may be used to provide adjustment commands. Borders ¶ 96, Figs. 39–40.[2]

We are unpersuaded with Appellant's contention that by providing both a touch-screen interface and an interface comprising physical action

[2] Appellant's attention is also directed to Figures 28–29 of Borders, which disclose controller 440 comprising up and down physical action buttons 402, 404, and image screen 416 comprising selection buttons 406, 408 thereon. *See* Borders ¶ 92, Figs. 28–29.

buttons in Borders, "the fundamental principle of operation of Borders would therefore have to be modified." Appeal Br. 16. In particular, as the Examiner finds, Borders teaches and suggests providing a touch-screen interface (Borders, Figs. 9, 13A) as well as an interface comprising physical buttons (Figs. 39, 40). Accordingly, we find no error with the Examiner's combination of 1) Border's receipt of activation of a selection indicator ("activation command") from a touch screen (Borders, Fig. 9), 2) Border's receipt of input indicator to adjust the operating table ("adjustment command") resulting from (and consistent with) the activation of the selection indicator (Borders, Fig. 13A), and 3) Fruh's receipt of operating table adjustment control from physical action buttons (Fruh, Fig. 2).

Based on the record before us, we agree with the Examiner's finding that the combination of Borders, Fruh and Rawls teaches or at least suggests "receiving an operating table activation command from the touch screen at the portable data transfer unit" and "receiving an adjustment command, which is consistent with the activation command, from the physical action button, at the data transfer unit," as claimed. Accordingly, we are unpersuaded that the Examiner erred in rejecting claim 1, and claims 2–5, and 7 depending therefrom, which are not separately argued (*see* Appeal Br. 22) and thus falling therewith, over Borders, Fruh, and Rawls.

As for independent claims 20 and 21, Appellant does not provide arguments separate from those of claim 1, but merely contends that "[i]ndependent claims 20 and 21 similarly recite a device and system for receiving two separate signals that are consistent with another" (Appeal Br. 18), and that claim 1 recite "the similar elements of independent claims 20 and 21" (*id.* at 20). As discussed above with respect to claim 1, we find no error with the Examiner's finding that Borders in view of Fruh and Rawls

teaches and suggests "receiving two signals that are consistent with one another." *See* Borders Figs. 9, 13A. Accordingly, in view of the above, we are also unpersuaded that the Examiner erred in rejecting claims 20 and 21, and claim 22 which is not separately argued, over Borders, Fruh, and Rawls.

CONCLUSION

In summary:

Claims Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**
1–5, 7, 20–22	103	Borders, Fruh, Rawls	1–5, 7, 20–22	

V. DECISION

We affirm the Examiner's rejections of claims 1–5, 7, and 20–22 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED