

IN RE: VAN OS, Appeal No. 2015-1975 (Fed. Cir. January 3, 2017). Before Newman, Moore and Wallach. Appealed from Patent Trial and Appeal Board.

Background:

The applicants claimed a portable electronic device having a touchscreen interface that allows a user to rearrange icons. The claims at issue recite an "interface reconfiguration mode," which is initiated by user touch of an established duration. Upon initiation of the interface reconfiguration mode, movement of an icon is permitted "in the absence of further user input."

The Examiner rejected the claims as being obvious over references that disclose devices having touchscreen interfaces. In particular, the primary reference taught a button editing mode, in which a user could rearrange a button by dragging it from one location to another. The button editing mode could be initiated by menu selection or keyboard command. Thus, the Examiner found that the primary reference did not explicitly disclose the claimed interface reconfiguration mode, which is initiated by user touch of an established duration.

The Examiner relied on the secondary reference for teaching an interface on a computer touch pad having an unactivated and activated state. In the activated state, icons could be rearranged. An individual icon could be activated by holding the finger on the icon for a sustained duration. The Examiner reasoned that it would have been obvious to add the sustained touch, as taught by the secondary reference, to the teachings of the primary reference because it would be an "intuitive way" for users of the primary reference device to enter into the editing mode.

Using the Examiner's analysis, the PTAB affirmed the Examiner's rejection of the claims at issue. The applicants appealed to the Federal Circuit.

Issue/Holding:

Did the PTAB err in affirming the Examiner's obviousness rejection? Yes, vacated and remanded.

Discussion:

The Federal Circuit held that neither the Examiner nor the PTAB provided any reasoning or analysis to support a finding of obviousness. The mere assertion that the combination of the prior art would have been "intuitive" was a conclusory assertion, which lacked explanation and was inadequate to support a finding that one skilled in the art would have been motivated to combine the applied references. Thus, the Federal Circuit held that the PTAB erred in affirming the Examiner's obviousness rejection.