

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS M. SIEP and RONALD E. STAFFORD

Appeal No. 2000-1699
Application No. 08/706,123

ON BRIEF

Before JERRY SMITH, RUGGIERO and LALL, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 3, 4, 6-9, 11, 12, 14-16 and 20-27, which constitute all the claims remaining in the application. An amendment after final rejection was filed on April 2, 1999 and was entered by the examiner.

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The disclosed invention pertains to a wireless network for communicating between processing devices.

Representative claim 25 is reproduced as follows:

25. A wireless network comprising:

a master processing device for generating information and broadcasting said information through wireless transmission of signals;

a plurality of individually identifiable and addressable client processing devices having circuitry for receiving said information from said master processing device and transmitting other information to said master processing device, said master processing device broadcasting data to all of said client processing devices and selecting one and only one of said client processing devices to acknowledge receipt of each bit of data said master processing device broadcasts to all of said client processing devices.

The examiner relies on the following references:

Tejima et al. (Tejima) 4,809,268 Feb. 28, 1989

The admitted prior art.

Claims 25, 27, 3, 4, 6-9 and 20-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the disclosure of Tejima. Claims 26, 11, 12 and 14-16 stand rejected under 35 U.S.C. § 103. As evidence of obviousness the examiner offers Tejima in view of the admitted prior art.

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Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon does not support either of the rejections set forth by the examiner. Accordingly, we reverse.

We consider first the rejection of claims 25, 27, 3, 4, 6-9 and 20-24 under 35 U.S.C. § 102(b) as being anticipated by the disclosure of Tejima. Anticipation is established only when a single prior art reference discloses, expressly or under the

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principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner indicates how he finds anticipation of these claims on pages 3-6 of the examiner's answer. Appellants argue that Tejima does not disclose the recitation in each of independent claims 25 and 27 that "said master processing device broadcasting data to all of said client processing devices and selecting one and only one of said client processing devices to acknowledge receipt of each bit of data said master processing device broadcasts to all of said client processing devices." Specifically, appellants argue that since Tejima teaches that each of the remote stations is periodically interrogated by the central station to return a supervisory acknowledgment packet for monitoring purposes, Tejima does not teach that "one and only one" of the client devices acknowledge receipt of each bit

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of data as recited in claims 25 and 27 [brief, pages 6-8]. The examiner responds that the fact that Tejima suggests "sequentially" and "polls" client devices, by definition one and only one device is selected at any given time [answer, pages 9-10]. Appellants respond that the sequential selection disclosed by Tejima does not meet the recitation of one and only one as set forth in claims 25 and 27 [reply brief].

We agree with the position argued by appellants. The recitation of "one and only one" in appellants' claims requires that only one client device in total acknowledge receipt of each bit broadcast by the master device. This precludes a plurality of client devices acknowledging receipt, even if the client devices acknowledge receipt in sequence. In other words, one and only one means one total, not one at a time. Since the sequential polling arrangement of Tejima does not meet the "one and only one" recitation of independent claims 25 and 27, we do not sustain the examiner's anticipation rejection of independent claims 25 and 27 or of any of the claims which depend therefrom.

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We now consider the rejection of claims 26, 11, 12 and 14-16 under 35 U.S.C. § 103 based on the teachings of Tejima and the admitted prior art. In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an

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essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered [see 37 CFR § 1.192(a)].

The examiner applies Tejima in the same manner as discussed above. The examiner notes that wired network calculators are known from the admitted prior art. The examiner finds that it would have been obvious to the artisan to create a calculator network as set forth in independent claim 26 [answer, pages 7-8]. Appellants make the same arguments discussed above

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as well as arguing that the admitted wired connections of the prior art do not suggest the recitation of independent claim 26 [brief, pages 11-14].

As noted above, Tejima does not disclose the receipt acknowledgment as set forth in the independent claims on appeal. We also agree with appellants that the admitted prior art of wired calculator networks does not teach or suggest selecting one and only one client calculator for acknowledgment as recited in independent claim 26. The admitted prior art does not say anything about how a wired client calculator would acknowledge receipt to the master calculator or even if such acknowledgment would have been necessary. Since the record in this case does not support the examiner's finding of obviousness, we do not sustain the examiner's rejection of independent claim 26 or of any of the claims which depend therefrom.

In summary, we have not sustained either of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 3, 4, 6-9, 11, 12, 14-16 and 20-27 is reversed.

REVERSED

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