

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JIANGTAO WEN, JOHN D. VILLASENOR,  
and JEONG-HOON PARK

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Appeal No. 2003-2057  
Application No. 09/201,865

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HEARD: February 3, 2004

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Before HAIRSTON, RUGGIERO, and BLANKENSHIP, Administrative Patent Judges.  
BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-3, 5, 8, 10, 12, 14-18, 20, 23, 25, 27, 29, and 33.

We reverse.

BACKGROUND

The invention relates to video coding-decoding (CODEC) method and apparatus that, according to appellants, provide greater resilience against channel error in comparison with the prior art. Representative claim 1 is reproduced below.

1. A video coding-decoding (CODEC) method for coding video data to generate a video data packet and for decoding the packet, comprising the steps of:

(a) partitioning a header data part (HDP) bit region, a motion vector data part (MVDP) bit region and a discrete cosine transform data part (DDP) bit region from each macro block of the video data in an error resilient mode;

(b) variable-length-coding the partitioned bit regions;

(c) reversible-variable-length-coding the bit regions selected from the variable-length coded bit regions according to a predetermined priority for recovery; and

(d) inserting markers into the variable-length coded or reversible-variable-length-coded bit regions.

The examiner relies on the following reference:

Nagai et al. (Nagai)

5,852,469

Dec. 22, 1998  
(filed Mar. 15, 1996)

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Claims 1-3, 5, 8, 10, 12, 14-18, 20, 23, 25, 27, 29, and 33 stand rejected under 35 U.S.C. § 103 as being unpatentable over Nagai.

The examiner has indicated that claims 4, 6, 7, 9, 11, 13, 19, 21, 22, 24, 26, 28, 30-32, and 34-36 are drawn to allowable subject matter.

We refer to the Final Rejection (Paper No. 12) and the Examiner's Answer (Paper No. 19) for a statement of the examiner's position and to the Brief (Paper No. 18) and the Reply Brief (Paper No. 21) for appellants' position with respect to the claims which stand rejected.

#### OPINION

Instant claims 1, 15, and 16 are independent. The statement of the rejection against those claims over Nagai points to portions of the reference that are deemed to correspond to claimed features. Nagai is found to "not specifically disclose the reversible variable length coding process is dependent from the variable length coded results." However, based on the teachings related to Figure 31 of the reference, the examiner contends that "it is conceivable" that portions of the variable length coded results are subsequently reversible variable length encoded. The examiner concludes that it would have been obvious to place the reversible VLC process after the VLC process "so as to not discard relevant video information." (Answer at 3-4.)

Appellants acknowledge that Nagai discloses reversible variable length coding. However, appellants' position is that Nagai's teaching relates to reversible variable

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length coding for a discrete cosine transform (DCT) bit region. (Brief at 7-8.)

Appellants argue there is no disclosure or suggestion in the reference for reversible variable length coding the bit regions “selected from the variable-length coded bit regions according to a predetermined priority for recovery,” in the language that appears in all the independent claims.

The examiner responds by reiterating that the skilled artisan would recognize that Figure 31 of Nagai represents reversible variable length coding because such coding is used for error detection and correction. The examiner further relies on material in the “Background of the Invention” section of Nagai as evidence in support of the finding. (Answer at 6-7.)

We are persuaded by appellants, for the reasons advanced in the briefs, that the instant rejection fails to establish a case for prima facie obviousness. We find no disclosure or suggestion in Nagai for the above-noted feature argued by appellants. Figure 31 of Nagai, upon which the rejection appears to principally rely for the relevant suggestion, is described at column 24, lines 10 through 29 of the reference. Since Nagai expressly describes reversible variable length coding elsewhere in the reference (e.g., cols. 34-36), Nagai would, in our estimation, expressly describe the operation of Figure 31 in the same terms, if such coding were to be implied by the figure. Moreover, even if the figure were to be presumed to disclose or suggest reversible variable length coding, there would still be insufficient guidance to suggest applying the

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coding to bit regions selected from variable-length coded bit regions according to a predetermined priority for recovery.

Thus, while the rejection rests on assertions with respect to what the artisan would have recognized or would have considered obvious, the examiner has provided insufficient evidence in support of the findings. The allocation of burdens requires that the USPTO produce the factual basis for its rejection of an application under 35 U.S.C. §§ 102 and 103. In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984) (citing In re Warner, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967)). See also In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001) (in a determination of unpatentability “the Board must point to some concrete evidence in the record in support of...[the]...findings”).

We thus cannot sustain the rejection of claims 1-3, 5, 8, 10, 12, 14-18, 20, 23, 25, 27, 29, and 33 under 35 U.S.C. § 103 as being unpatentable over Nagai.

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CONCLUSION

The rejection of claims 1-3, 5, 8, 10, 12, 14-18, 20, 23, 25, 27, 29, and 33 under 35 U.S.C. § 103 is reversed.

REVERSED

KENNETH W. HAIRSTON  
Administrative Patent Judge

JOSEPH F. RUGGIERO  
Administrative Patent Judge

HOWARD B. BLANKENSHIP  
Administrative Patent Judge

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