

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 46

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN R. LEVINE, ALEX J. HARUI,
STEPHEN P. BOYLAN, MICHAEL W. SCHIRPKE,
KAREN DONOGHUE, BRUCE E. BROWN,
KENNETH C. KNOWLTON, MARY J. BOYD,
DONNA AJGAONKAR, CHARLES PARESS,
DAVID J. ANGEL, AND CHIA-CHUANCCH HSIAO

Appeal No. 1995-4366
Application No. 08/150,744¹

ON BRIEF

¹ The application was filed on November 12, 1993. It is a continuation of Application Serial No. 07/920,813, which was filed on July 24, 1992 and is now abandoned. The latter application was a continuation of Application Serial No. 07/427,692, which was filed on October 27, 1989, and is now abandoned. The latter application was a continuation of Application Serial No. 07/396,739, which was filed on August 18, 1989 and is now abandoned. The latter application was a continuation of Application Serial No. 07/200,091, which was filed on May 27, 1988 and is now abandoned. The latter application was a continuation of Application Serial No. 07/245,419, which was filed on September 16, 1988 and is now abandoned. The latter application was a continuation-in-part of Application Serial No. 07/200,091, which was filed on May 27, 1988 and is now abandoned.

Before JERRY SMITH, BARRETT, and BARRY, Administrative Patent Judges.

BARRY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the final rejection of claims 169-175 and 177-185. We affirm-in-part.

BACKGROUND

The invention at issue in this appeal relates to remote control of a computer. A user who is remote from the computer first formats commands into facsimile image data. He then employs a facsimile machine to transmit the data across a telephone line to another facsimile machine, which is collocated with the computer. The collocated facsimile machine receives the data and extracts the commands. In response thereto, the computer executes the commands.

Claim 177, which is representative for our purposes, follows:

177. A method of processing data comprising the steps of:

providing a data processor coupled through a local facsimile device to a telephone communications line;

at a location remote from said data processor, transmitting a facsimile image containing graphical or textual images to said data processor through a remote facsimile device;

said data processor recognizing certain of said graphical or textual images and retrieving and manipulating specific data in response to said graphical or textual images.

The references relied on in rejecting the claims follow:

Adachi 1986	4,589,111	May 13,
Lin 1991	4,991,200	Feb. 5,
		(filed Sep. 29,
1987)		
Sakakibara et al. 1991	5,022,072	Jun. 4,
(Sakakibara) 1986)		(filed Jul. 3,
Lesnick et al. 1988	0 251 237 A3	Jan. 7,
(Lesnick) (European Patent Application).		

Claim 177 stands rejected under 35 U.S.C. § 102(e) as anticipated by Lin. Claims 169-175, 184, and 185 stand rejected under 35 U.S.C. § 103 as obvious over Lin in view of Adachi "and/or," (Examiner's Answer at 4), Lesnick. Claims

178-183 stand rejected under § 103 as obvious over Lin in view of Sakakibara. Rather than repeat the arguments of the appellants or examiner in toto, we refer the reader to the briefs and the answer for the respective details thereof.

OPINION

In reaching our decision in this appeal, we considered the subject matter on appeal and the rejections and evidence advanced by the examiner. We also considered the arguments of the appellants and examiner. After considering the entire record before us, we are not persuaded that the examiner erred in rejecting claim 177. We are persuaded, however, that the examiner erred in rejecting claims 169-175 and 178-185. Accordingly, we affirm-in-part. Our opinion addresses the anticipation of claim 177, the obviousness of claims 178-183, and the obviousness of claims 169-175, 184, and 185.

Anticipation of Claim 177

Regarding claim 177, the appellants "agree with the Examiner that manipulation of the received image is necessary in order for it to be displayed." (Appeal Br. at 6.) They

argue, however, "*recognition* of the content of the image to retrieve data stored in the data processor is neither taught nor suggested ... in Lin." (Id.) The examiner replies, "While Lin does not specifically utilize the terminology 'recognizing', it is inherent in the Lin disclose [sic] that the local processor recognize [sic] or detect [sic] the transmitted image in order to be capable of displaying the image" (Examiner's Answer at 8.) We agree with the examiner.

The appellants err by reading limitations of how data are recognized into claim 177. "In the patentability context, claims are to be given their broadest reasonable interpretations. Moreover, limitations are not to be read into the claims from the specification." In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993) (internal citations omitted). Here, claim 177 specifies in pertinent part "transmitting a facsimile image containing graphical or textual images to said data processor through a remote facsimile device; said data processor recognizing certain of said graphical or textual images" The word

"recognize" means "to perceive as existing" The Random House College Dictionary 1103 (1973). Giving claim 177 its broadest reasonable interpretation, the claim merely recites perceiving the existence of facsimile image data.

Lin discloses an interface device for the intercommunication of a computer and a facsimile machine. Col. 1, ll. 8-9. When image data are transmitted from a remote facsimile machine, the data can be sent to a local computer (3) and stored in its memory or displayed on its monitor. Col. 11, ll. 52-54. To store or display the image data, the local computer must first perceive the existence thereof. In other words, the computer must recognize the image data.

For the foregoing reasons, we affirm the rejection of claim 177. The affirmance is based only on the arguments made in the briefs. Arguments not raised in the briefs are not before us, are not at issue, and are thus considered waived. Next, we address the obviousness of claims 178-183.

Obviousness of Claims 178-183

Regarding claims 178-183, the appellants argue, "Sakakibara fails to teach a data processor which receives an image from a facsimile device, interprets portions of the image as data processor commands, and executes the specified data processor commands to retrieve stored information." (Appeal Br. at 12.) The examiner replies, "Appellant is relying on limitations not found in the claims" (Examiner's Answer at 10.) We agree with the appellants.

The examiner errs in interpreting the scope of the claims. Claim 178 specifies in pertinent part "said data processor transmitting data, responsive to said recognized graphical or textual images, to a remote location." To *responsively* transmit data to a remote location, the data processor must first recognize portions of the received image data as transmission commands. Giving claim 178 its broadest reasonable interpretation, therefore, the claim requires recognizing portions of the received image data as transmission commands.

The examiner fails to show a teaching or suggestion of this limitation in the prior art. He admits, "Lin did not specifically disclose ... causing the local data processor to transmit to a remote location." (Examiner's Answer at 6.) As aforementioned regarding the anticipation of claim 177, the reference's local computer merely stores or displays image data that it receives. Consequently, Lin neither teaches nor would have suggested recognizing portions of the received image data as transmission commands. The portion of Sakakibara cited by the examiner, (Examiner's Answer at 6), concerns the receipt of text data and the transmission of an acknowledgment signal, a tonal signal, voice signals, or voice data. Col. 4, ll. 42-66. Because the portion of the secondary reference does not even teach image data, it neither teaches nor would have suggested recognizing portions of received image data as transmission commands. Therefore, we reverse the rejection of claim 178 and its dependent claims 179-183. Next, and last, we address the obviousness of claims 169-175, 184, and 185.

Obviousness of Claims 169-175, 184, and 185

Regarding claims 169-175, 184, and 185, the appellants argue, "Lin does not teach a data processor which recognizes commands contained in an image and executes the recognized command. Adachi fails to cure this deficiency." (Appeal Br. at 7.) They add, "Lesnick, for different reasons, also fails to cure the deficiency of Lin." (Id. at 8.) The examiner replies, "Adachi disclosed ... the part of the facsimile transmission used for cyclic redundancy check" (Examiner's Answer at 4.) She adds, "Lesnick et al. also disclosed ... the header page which specifies which operations are to be performed" (Id.) We agree with the appellants.

Independent claim 169 specifies in pertinent part "said local data processor receiving said facsimile image and ... recognizing specified data processor commands contained within the received image, and executing the recognized specified data processor commands." Similarly, independent claim 184 specifies in pertinent part "the data processor recognizing information contained within the received image data as commands and ... retrieving stored information specified by

the commands, and transmitting said retrieved information to said remote facsimile device." Giving claims 109 and 184 their broadest reasonable interpretation, both claims recite recognizing portions of received image data as commands for the data processor.

The examiner fails to establish a prima facie case of obviousness. We note three principles from In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). (1) In rejecting claims under § 103, the patent examiner bears the initial burden of establishing a prima facie case of obviousness. (2) A prima facie case is established when teachings from the prior art would appear to have suggested the claimed subject matter to a person of ordinary skill in the art. (3) If the examiner fails to establish a prima facie case, an obviousness rejection will be reversed.

The examiner fails to show a teaching or suggestion of recognizing portions of received image data as commands for the data processor in the prior art. He admits, "Lin did not specifically disclose the facsimile image specifying data

processor commands to be executed or executing the specified commands." (Examiner's Answer at 4.) As aforementioned regarding the anticipation of claim 177, the reference's local computer merely stores or displays image data it receives. Consequently, Lin neither teaches nor would have suggested recognizing portions of received image data as commands for the data processor.

Furthermore, Adachi distinguishes the cyclic redundancy check (CRC) bits relied on by the examiner from image data. Col. 1, ll. 46-49. Because the CRC bits are not contained within the image data, the bits neither teach nor would not have suggested data processor commands contained within received image data as claimed. Lesnick, for its part, discloses that the header page relied on by the examiner is the cover sheet (600) in a stack of papers to be digitized by a document processor (126). Col. 4, ll. 50-57. Consequently, the header page neither teaches nor would have suggested recognizing portions of received image data as commands for the data processor.

For the foregoing reasons, the examiner fails to establish a prima facie case of obviousness. Therefore, we reverse the rejection of independent claim 169 and its dependent claims 170-175 and of independent claim 184 and its dependent claim 185.

CONCLUSION

To summarize, the examiner's rejection of claim 177 under 35 U.S.C. § 102 is affirmed. Her rejection of claims 169-175 and 178-185 under 35 U.S.C. § 103 is reversed.

No period for taking subsequent action concerning this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

JERRY SMITH)	
Administrative Patent Judge)	
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LEE E. BARRETT)	APPEALS
Administrative Patent Judge)	AND
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