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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN W. BRYSON,
ALAN T. KONDO and DON N. LEE

Appeal No.96-0230
Application 08/056,094[1]

ON BRIEF

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

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

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[1] Application for patent filed May 3, 1993.

Appellants have appealed to the Board from the examiner's final rejection of claims 1 to 20, which constitute all the claims in the application.

Representative claim 1 is reproduced below:

1. A circuit comprising:

pulse forming means responsive to a data input signal for providing a pulsed output to an output node, said pulsed output being timed in accordance with said data input signal and having high and low voltage levels responsive to respective high and low reference voltages, said pulse forming means comprising means for providing charging currents to and discharging currents from said node; and

means responsive to said high and low reference voltages for adjusting said charging and discharging currents of said pulse forming means in accordance with the difference between said high and low reference voltages.

The following references are relied on by the examiner:

Borrelli	4,070,565	Jan. 24, 1978
Chau et al. (Chau)	Re 31,056	Oct. 12, 1982
Murray et al. (Murray)	4,724,378	Feb. 09, 1988
Ugenti	4,837,502	June 06, 1989

After a remand to the examiner from an earlier panel of this Board, claims 1, 6, 11 and 16 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by either Chau, Borrelli, Murray or Ugenti.

Their respective dependent claims, claims 2 to 5, 7 to 10, 12 to 15 and 17 to 20, stand rejected under 35 U.S.C. § 103 as being obvious over each of these references individually.

Rather than repeat the positions of the appellants and the examiner, reference is made to the briefs and the answers for the respective details thereof.[2]

OPINION

Inasmuch as we find no anticipation of any of the independent claims 1, 6, 11 and 16 on appeal in light of any one of the references to Chau, Borrelli, Murray or Ugenti, we reverse the rejection of these claims under 35 U.S.C. § 102 as well as their respective dependent claims under 35 U.S.C. § 103.

In reviewing the examiner's positions, it appears that the examiner is relying upon inherency in part for the rejections under 35 U.S.C. § 102 and § 103. We do not agree with the examiner's basic position that the structure of each of the four references relied upon necessarily functions in a manner to

[2] The supplemental reply brief filed on April 10, 1996, in response to the remand by the earlier panel of this Board, was denied entry by the examiner in a communication to appellants from the examiner on May 2, 1996. As such, we have not considered it in our deliberations.

achieve the type of adjustability set forth in each independent claim on appeal. Inherency requires that the type of adjustability in each independent claim would necessarily or inevitably occur. In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986). Inherency may not be established by probabilities or possibilities as the examiner appears to be arguing.

More specifically, independent claims 1 and 6 require in part some means for adjusting the charging and discharging in response to a difference between previously recited high and low reference voltages.

As to each of these two independent claims, our study of the whole of each of the four references relied upon by the examiner leads us to find that there is no such difference determination taught in any one of them. We have also reviewed the individual portions of each of these references the examiner has made reference to at the bottom of page 2 of the supplemental examiner's answer, but conclude that these identified portions of

each of the respective references do not aid us in reaching the determination of anticipation of claims 1 and 6 on appeal.

Turning lastly to independent claims 11 and 16 on appeal, each of these claims in some manner recites a means for adjusting the charging and discharging currents flowing to and from a given node previously recited in such a manner to optimize slew rate and overshoot of output driver pulses having selected high and low voltage levels. These two claims do not recite the difference determination as a part of the adjusting operation. Again, even making reference to the portions of the four references relied upon as pointed out by the examiner at the bottom of page 2 of the answer, we can find no teaching in the whole of any of the references for adjusting the charging and discharging currents in any manner to optimize the slew rates and overshoots as specified by claims 11 and 16 on appeal. The skew adjusting circuit 22 in Fig. 1 of Chau does not perform such a slewing operation. On this point, we are in agreement with appellants' basic position. We reach a similar conclusion with the deskewing operation performed in Fig. 4 of Murray and discussed beginning at col. 3, line 66.

Since we have reversed the rejections of independent claims 1, 6, 11 and 16 under 35 U.S.C. § 102, we find no basis to affirm the rejection of dependent claims 2 to 5, 7 to 10, 12 to 15 and 17 to 20 under 35 U.S.C. § 103. Therefore, the decision of the examiner rejecting all claims on appeal is reversed.

REVERSED

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JAMES D. THOMAS	)
Administrative Patent Judge	)
	)
	)
	) BOARD OF PATENT

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