

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THEODORE A. LITOVITZ

Appeal No. 1996-0938
Application No. 07/642,417

HEARD: Sep. 13, 2000

Before HAIRSTON, JERRY SMITH, and LEVY, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 26, 28 through 53 and 55 through 82.

The disclosed invention relates to a method and an apparatus for inhibiting the adverse effect on a living system

Appeal No. 1996-0938
Application No. 07/642,417

of an ambient time varying field having as characteristic parameters one or more of amplitude, period, phase, waveform and direction.

Claims 1 and 28 are illustrative of the claimed invention, and they read as follows:

1. A method of inhibiting the adverse effect on a living system of an ambient time varying field having as characteristic parameters one or more of amplitude, period, phase, waveform and direction, the field having an electric component and a magnetic component, which method comprises the step of changing at least one of the characteristic parameters of said field to which the living system is exposed, and the step of effecting the change within time intervals of less than 10 seconds.

28. Apparatus for inhibiting the adverse effect on a living system of an ambient time varying field having as characteristic parameters one or more of amplitude, period, phase, waveform and direction, the field having an electric component and a magnetic component, which apparatus comprises a means for changing at least one of the characteristic parameters of said field to which the living system is exposed, and a means for effecting the change within time intervals of approximately 10 seconds or less.

Claims 1 through 26, 28 through 53 and 55 through 82 stand rejected under the second paragraph of 35 U.S.C. § 112 as being indefinite because they are single means claims.

Reference is made to the briefs and the answer for the respective positions of the appellant and the examiner.

OPINION

Appeal No. 1996-0938
Application No. 07/642,417

Appellant argues inter alia that the claims on appeal recite either a combination of steps (Brief, page 13), or two means (Brief, page 18). We agree with the appellant's argument that the claims on appeal are not single means claims. Each of the apparatus claims includes a means for changing at least one of the characteristic parameters of the noted field, and a means for making the change within a specified time interval. Each of the method claims includes two steps that perform the functions of the two means.

In summary, the examiner has not presented a sound basis for rejecting the claims under the second paragraph of 35 U.S.C. § 112¹.

¹ In In re Hyatt, 708 F.2d 712, 714, 218 USPQ 195, 197 (Fed. Cir. 1983), the Court intimated that a single means claim should be rejected under the first paragraph of 35 U.S.C. § 112, and not the second paragraph of 35 U.S.C. § 112.

Appeal No. 1996-0938
Application No. 07/642,417

DECISION

The decision of the examiner rejecting claims 1 through 26, 28 through 53 and 55 through 82 under the second paragraph of 35 U.S.C. § 112 is reversed.

REVERSED

	Kenneth W. Hairston)	
	Administrative Patent Judge)	
)	
)	
)	
	Jerry Smith)	BOARD OF
PATENT)	
	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
	Stuart S. Levy)	
	Administrative Patent Judge)	

KWH:tdl

Appeal No. 1996-0938
Application No. 07/642,417

PILLSBURY MADISON & SUTRO LLP
Cushman, Darby & Cushman IP Group
Ninth Floor
1100 New York Avenue, N.W.
Washington, DC 20005-3918