

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(2) is not binding precedent of the Board.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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOZEF M. K. TIMMERMANS

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Appeal No. 1996-2384  
Application 08/226,225<sup>1</sup>

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ON BRIEF

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Before KRASS, MARTIN, and JERRY SMITH, Administrative Patent Judges.

MARTIN, 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 29, 30, 36, 44,

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<sup>1</sup> Application for patent filed April 11, 1994. According to appellant, this application is a continuation of Serial No. 07/856,216, filed June 30, 1992, now abandoned.

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and 47 under 35 U.S.C. § 102(b) and of claims 30-35, 37-43, 45, 46, and 48-53 under § 103. We affirm.

**The invention**

The invention relates to the format for storing a main data file, such as image data, and a control data file, such as synchronizing information, on a record carrier, such as a compact disk. More particularly, the claims are directed to the format of the control data file. As shown in appellant's Figure 15, every 8-bit group 150 representing control data is recorded twice in succession to form a packet 151 (Spec. at 24, lines 10-16). This permits a slower computer to recover the control data (Spec. at 24, lines 15-18).

**The claims**

Claim 29, which is representative, reads as follows:

29. A record carrier for storing data for retrieval, said record carrier having a recorded data format, comprising:  
a) a main data file for storing main data, and  
b) a control data file for storing control data comprising a plurality of packets each consisting of n identical control data bit groups, where n is an integer equal to at least 2, for use to control the retrieval of said main data.

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**The references and rejections**

The references relied on by the examiner are:

Sugita et al. (Sugita)	4,796,223	Jan. 3, 1989
Souma	5,200,944	Apr. 6, 1993

Claims 29, 30, 36, 44, and 47 stand rejected under 35 U.S.C. § 102(b) as anticipated by Sugita.

Claims 30-35, 37-43, 45, 46, and 48-53 stand rejected under 35 U.S.C. § 103 as unpatentable over Sugita in view of Souma.

**Appellant's Grouping of the claims**

Appellant's brief (at 5-6) divides the claims into the following three groups for purposes of argument:

Group A: Claims 29, 30, 36, 44, and 47.

Group B: Claims 30-35, 37-43, 45, 46, and 48-53.

Group C: Claims 34, 35, 37, 38, 45, and 53.

We note that some claims appear in more than one group.

**The 35 U.S.C. § 102(b) rejection**

Sugita discloses a system that allows a personal computer to run a program stored on a video tape recorder (abstract). The tape (Fig. 1) includes computer programs  $P_1, P_2, P_3,$  etc., adjacent to video sources"  $S_1, S_2, S_3,$  etc., which are grouped

(e.g., as  $S_{1-0}$ ,  $S_{1-1}$ ,  $S_{1-2}$ ) according to the teaching level of the students (col. 2, lines 33-39). As shown in Figure 3, recording medium consists of video tape 1 having recording tracks 15 with respective track addresses 16 (col. 3, lines 3-8). Figure 5 shows the recording format for various fields (col. 3, lines 59-60), each of which is recorded in a respective track.

The track address, which is recorded in horizontal lines 12-14 of each track (col. 3, lines 59-65), consists of 21 bits and is sufficient to address tracks of a video tapes of about 10 hours in length (col. 4, lines 2-5). Each 128-byte segment of program code is recorded during horizontal lines 64-191 of in three adjacent fields (col. 4, lines 61-62). This is also depicted by Figure 6, wherein a "program block"  $P_n$  (apparently corresponding one of the programs  $P_1$  to  $P_3$  of Figure 1) includes a plurality of program segments  $P_1-P_m$ , each of which is recorded in three adjacent tracks identified as 00, 01, and 02 (col. 5, lines 7-18). Referring to Figure 5, these track identification codes 00, 01, and 02 are recorded during horizontal line 58 (col. 4, line 48-52). Turning now to Figure 7, identical copies  $P_n'$  and  $P_n''$  of program block  $P_n$  are

recorded in adjacent areas of the tape (col. 5, lines 34-36). The examiner contends that claim 29 is anticipated by this duplication of program blocks,<sup>2</sup> reading the claimed "packet[] . . . consisting of n identical control data bit groups" on the identical program data in each of the program blocks  $P_n$ ,  $P_n'$ , and  $P_n$ ".<sup>3</sup> In responding to the rejection, appellant addresses not only this program block duplication but also the program code duplication depicted by Figures 5 and 6, wherein the same 128-byte program code is recorded in three adjacent tracks or fields. We will address this matter first.

Appellant argues that the three tracks cannot be considered to be a "packet[] . . . consisting of n identical control data bit groups" (our emphasis), as recited in claim 27, because "these three tracks consist of three identical bit groups plus three non-identical identifier codes [00, 01, and 02]" (Brief at 6-7). This argument is unconvincing because it incorrectly

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<sup>2</sup> January 11, 1994, Office action (paper No. 9), at 5), incorporated by reference into final Office action at 2.

<sup>3</sup> Although not stated in the § 102(b) rejection in the final Office action or the Answer, the examiner also appears to be reading the claimed "main data" onto the video source data, a point which appellant does not dispute.

equates the term "control data bit groups" to all of the data recorded in a track or field. As the examiner correctly notes,<sup>4</sup> while the claim requires that each "packet" consist of n identical control data bit groups, the presence of the "comprising" term in paragraph b) permits the claimed "control data file" to include other data, such as address data, in addition to the claimed "plurality of packets." Thus, we are of the opinion that the claim is anticipated when the term "control data bit group" is read on the 128 bytes of program code which is stored in horizontal lines 64-191 of each of the three adjacent tracks or fields, even though those tracks or fields also include track address data in horizontal lines 12-14 and 00, 01, 02 address data in horizontal line 58. For the same reasons, the claim is also anticipated by the duplication of program blocks depicted by Figure 7 when the term "control data bit group" is read on only the identical program data contained in each block  $P_n$ ,  $P_n'$ , and  $P_n''$ . Consequently, the rejection of claim 29 under § 102(b) for anticipation by

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<sup>4</sup> Final Office action at 2-3; Answer at 7.

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Sugita is affirmed, as is the § 102(b) rejection of claims 30, 36, 44, and 47, the remaining claims in Group A.

We note that although claim 30 is also included in Group B, the argument made there is not responsive to the § 102(b) rejection of that claim. Claim 30, which was rejected under § 102(b) and 103, depends on claim 29 and further recites that "said main data and said control data are stored according to the same predetermined formatting and encoding rules." The Answer (at 7-8) explains that this limitation was addressed in the § 102(b) rejection of the independent claims, i.e., claims 29, 36, 44, and 47, which relied on Sugita as "teach[ing] . . . main data and control data formatted and encoded according to the same rules." This is an apparent reference to paper No. 11, the Office action that immediately preceded and is incorporated by reference into the final Office action and states (at 3) that in Sugita "[t]he video data and the computer programs are formatted in such a way that reproduction of sequential data strings is possible without loss of data." Appellant has not explained why Sugita's recording of the program data and the video data as lines and fields is insufficient to satisfy claim 30. Instead, in

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arguing the Group B claims, appellant contends that this feature is not taught by Souma (Brief at 9).

**The 35 U.S.C. § 103 rejection of claims 30-35, 37-43, 45, 46, and 48-53 over Sugita in view of Souma**

Because the § 102(b) rejection of claim 30 has been affirmed, the § 103 rejection of that claim is also affirmed, anticipation being the epitome of obviousness. In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982); In re Pearson, 494 F.2d 1399, 1402, 181 USPQ 641, 644 (CCPA 1974).

Appellant contends that the remaining Group B claims, i.e., claims 31-35, 37-43, 45, 46, and 48-53, are patentable over Sugita and Souma because in Souma "there is no suggestion of providing multiple control bit groups" (Brief at 9). This feature is disclosed by Sugita for the reasons given above in the discussion of the § 102(b) rejection.

Regarding the Group C claims, i.e., claims 34, 35, 37, 38, 45, and 53, appellant argues: "These claims include the use of a group synchronization bit, whose value is the same for the repeated groups of a packet, but is different for other packets. This feature is useful, because it enables

easy extraction of a clock frequency at a  $\pm n$  rate." (Brief at 9-10.) This synchronization bit feature is depicted in appellant's Figure 15, wherein the topmost bit of each bit group 150 represents the synchronizing bit of the bit group (Spec. at 24, lines 25-26). The synchronizing bits 152 of the two bit groups in each packet are identical (i.e., both 1 or 0) but alternate between 1's and 0's from packet to packet.

However, the synchronization bit feature as described in appellant's argument is not actually recited in claim 53, which calls for deriving a clock signal from the synchronization bits without explaining the format of the synchronization bits. The 35 U.S.C. § 103 rejection of claim 53 therefore is affirmed on the ground that its merits were not separately argued.

Nor is appellant's character description of the synchronization bit feature as calling for a "group synchronization bit, whose value is the same for the repeated groups of a packet, but is different for other packets" commensurate in scope with claim 38, which recites the feature in question in the broadest terms: "each of said control data

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bit groups of a packet comprises a synchronization bit having one of a plurality of logic values, the logic values of control data bit groups of two successive packets having different values." This claim does not state or imply that the "different values" limitation applies to the synchronizing bits of the two successive packets, as argued. As a result, the claim is broad enough to permit the "different values" limitation to be read onto any of the data bits in the two successive packets. Because appellant's argument is not commensurate in scope with claim 38, the 35 U.S.C. § 103 rejection of that claim is affirmed, as is the rejection of the remaining Group C claims, i.e., claims 34, 37, 38, and 45, which are not separately argued.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

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**AFFIRMED**

ERROL A KRASS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
JOHN C. MARTIN	)	)
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
JERRY SMITH	)	
Administrative Patent Judge	)	

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Corporate Patent Counsel  
U.S. Philips Corporation  
Patent Dept.  
580 White Plains Rd.  
Tarrytown, NY 10591