

**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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** PETER L. HIGGINSON and ANTHONY N. BERENT

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Appeal No. 96-3338  
Application No. 08/442,253<sup>1</sup>

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ON BRIEF

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Before JERRY SMITH, DIXON and FRAHM, **Administrative Patent Judges.**

DIXON, **Administrative Patent Judge.**

**DECISION ON APPEAL**

This is a decision on appeal from the Examiner's final rejection of claims 1-6, which are all of the claims pending in this application.

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<sup>1</sup> Application for patent filed May 15, 1995. According to appellants, this application is a continuation of Application No. 08/072,287, filed June 4, 1993, now abandoned.

## **BACKGROUND**

The present invention relates to a method and apparatus for error detection for messages transmitted through a network. The invention includes an additional check correction field placed in the header of the message. This check correction field is constructed in such a way that the data in the check correction field makes the cyclic redundancy check (CRC) of the data field valid for the entire message. The message will thereby automatically conform to the usual message network protocols. The check correction field forms a check for both the data field and for the entire packet, so a single CRC check verifies the accuracy of both the message as a whole and the data alone. This is done by use of a CRC which is linearly superposable or divisible into components which are linearly superposable. The sum of the check fields for the different fields is the check field of the concatenation of the fields.

Appellants have indicated that claims 1-6 do stand or fall together. (See brief at page 7.)

Independent claim 1 is representative of the invention and reproduced as follows:

1. In a message transmission system, check generating means for adding, to a packet which has a check field (CRC), a header information field (RIF) to form a message, characterized by means for calculating, from the header information field, a check correction field (CCF) which is incorporated in the header (HDR) and preserves said check field (CRC) as valid for the entire message (MESS).

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

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Furuya et al. (Furuya)                      4,541,093                      Sep. 10, 1985

Claims 1-6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Furuya.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the appellants, we make reference to the brief<sup>2</sup> and answer<sup>3</sup> for the details thereto.

### OPINION

After a careful review of the evidence before us, we disagree with the Examiner that claims 1-6 are properly rejected under 35 U.S.C. § 103 and we will not sustain the rejection of claims 1-6.

As a consequence of our review, we make the determinations which follow.

Turning to the rejection of independent claim 1, we find that the Examiner has met the burden of setting forth a *prima facie* case of obviousness in rejecting claim 1, but it has been rebutted by appellants. The Examiner acknowledges that the Furuya patent does not include a CCF and a CRC in a message. The Examiner states that it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate a correction code into the header since it would be advantageous if an error were to arise.

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<sup>2</sup> Appellants filed an appeal brief, January 29, 1996, (Paper No. 18). We will refer to this appeal brief as simply the brief.

<sup>3</sup> The Examiner responded to the brief with an examiner's answer mailed April 26, 1996, (Paper No. 19). We will refer to this examiner's answer as simply the answer.

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In general, we agree with the statement by the examiner, but as pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." *In re Hiniker Co.*, 150 F.3d 1362,1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). The claim recites a "means for calculating, from the header information field, a check correction field (CCF) which is incorporated in the header (HDR) and preserves said check field (CRC) as valid for the entire message (MESS)." Appellants argue the above language of the claim. We have reviewed the Furuya patent and find no disclosure concerning a check field which "preserves said check field (CRC) as valid for the entire message (MESS)." Furthermore, the Examiner has not provided a convincing line of reasoning why it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a correction field which "preserves said check field (CRC) as valid for the entire message (MESS)" as set forth in the language of claim 1.

With respect to the appellants' argument concerning an adjustment code rather than a separate error correction code, when the argument is viewed in light of the specification, it is clear that appellants intended to assert that the CCF added to the header preserves the validity of the CRC existing in the packet for the data portion of the message. (See brief at page 9, paragraph 3 and answer at page 5.) Furthermore, the CCF added provides for a check not only of the header, but also of the entire message (header plus data plus existing CRC) thereby making the existing error correction valid for additional

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portions of the data. We do not find any disclosure in Furuya which teaches the above claimed limitations. Nor do we agree with the Examiner that it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate such a second code into the message of Furuya as the Examiner has asserted.

Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. **See *In re Warner***, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), ***cert. denied***, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellants' disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. **See, e.g., *Grain Processing Corp. v. American Maize-Products Co.***, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988). Since all the limitations of independent claim 1 are neither taught nor suggested by the applied prior art, we cannot sustain the examiner's rejection of appealed claim 1 under 35 U.S.C. § 103.

Since all the limitations of independent claim 1 are neither taught nor suggested by the applied prior art, we cannot sustain the examiner's rejection of appealed claims 2-6 which depends therefrom, under 35 U.S.C. § 103.

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**CONCLUSION**

To summarize, the decision of the examiner rejecting claims 1-6 under 35 U.S.C. § 103 is reversed. The decision of the examiner is reversed.

**REVERSED**

JERRY SMITH	)	
Administrative Patent Judge	)	
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JOSEPH L. DIXON	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
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	)	
ERIC S. FRAHM	)	
Administrative Patent Judge	)	

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