

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 38

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPHUS A. A. DEN OUDEN

Appeal No. 1996-3619
Application No. 08/397,021

ON BRIEF

Before JERRY SMITH, RUGGIERO, and LALL, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1, 2, 4, 5, 9, 11, 19, 21, and 22. Claims 7, 18, and 20 have been canceled. Claims 3, 6, 8, 10, and 12-17 have been indicated to be allowable by the Examiner subject to being rewritten independently of a rejected base claim. An

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amendment filed November 20, 1995 after final rejection was entered by the Examiner.¹

The claimed invention relates to a phase-coupled clock signal generator which includes a start-stop oscillator that oscillates in response to a first value of a reference signal and is refrained from oscillating in response to a second value of the reference signal. The generated clock signal frequency is adjustable in response to an adjusting signal supplied by a controller. This controller includes a counter which counts the number of pulses of the received clock signal and a control circuit which compares the counting value with a desired frequency reference value.

Claim 1 is illustrative of the invention and reads as follows:

1. A phase-coupled signal generator for generating a clocksignal, comprising:

an input for receiving a reference signal;

¹ A review of the application file reveals that, despite comments to the contrary at page 2 of the Answer, the entry of the amendment after final was approved as indicated by the written notation on the face of the amendment and initialed by the Examiner. The Examiner further indicates (Answer, page 2) that the arguments in the Answer are directed to the claims as amended in the after final amendment filed November 20, 1995.

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oscillating means for receiving said reference signal, and generating said clock signal at an oscillation frequency in response to a first value of said reference signal, and refraining from oscillating in response to a second value of said reference signal; and

control means for receiving said reference signal and said clock signal, and generating therefrom an adjusting signal for adjusting said oscillation frequency so that the difference between the adjusted oscillation frequency and a predetermined desired frequency does not exceed a predetermined value.

The Examiner relies on the following prior art:

Kraus et al. (Kraus)	4,672,449	Jun. 09, 1987
Hirao et al. (Hirao)	4,996,596	Feb. 26, 1991

(filed Sep. 01, 1989)

Claims 1, 2, 5, 9, 19, and 21 stand finally rejected under 35 U.S.C. § 102(b) as being anticipated by Kraus.

Claims 4, 11, and 22 stand finally rejected under 35 U.S.C. § 103 as being unpatentable over Kraus in view of Hirao.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Brief (Paper No. 35) and Answer (Paper No. 36) for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the Examiner and the

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evidence of anticipation and obviousness relied upon by the Examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the Brief along with the Examiner's rationale in support of the rejections and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the disclosure of Kraus fully meets the invention as recited in claims 1, 2, 5, 9, 19, and 21. We are also of the view that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention set forth in claims 4, 11, and 22. Accordingly, we affirm.

We first consider the Examiner's 35 U.S.C. § 102(b) rejection of claims 1, 2, 5, 9, 19, and 21 as anticipated by Kraus. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385,

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388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Assoc, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

With respect to claims 1, 2, 5, 9, 19, and 21, the Examiner has indicated (Answer, pages 3 and 4) how the various limitations are read on the disclosure of Kraus. In our view, the Examiner's analysis is sufficiently reasonable that we find that the Examiner has as least satisfied the burden of presenting a prima facie case of anticipation. The burden is, therefore, upon Appellant to come forward with evidence and/or arguments which persuasively rebut the Examiner's prima facie case. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Brief have not been considered [see 37 CFR § 1.192(a)].

In response, Appellant initially argues (Brief, pages 3 and 4), that the Examiner has misinterpreted the disclosure of Kraus which, in Appellant's view, is directed to phase control and not frequency control of an oscillator, and particularly,

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not to frequency adjustment to a predetermined value, as in the claims on appeal. After careful review of the Kraus reference in light of the arguments of record, however, we are in agreement with the Examiner's position as stated in the Answer. As pointed out by the Examiner (Answer, pages 3 and 4), Kraus (at column 3, lines 9-18 and in claim 4) provides a clear disclosure of the adjustment of oscillator frequency.

We further find Appellant's contention that Kraus provides no oscillator frequency adjustment to a desired predetermined value to be unfounded. In taking this position, Appellant refers to column 10, lines 10-21 of Kraus which is part of a description of the embodiment illustrated in Figure 3. In Appellant's interpretation, Kraus is suggesting frequency adjustment of the oscillator to achieve a desired phase relationship and not to reach a predetermined desired frequency value. We do not agree. In our view, in the very excerpt from Krause cited by Appellant, i.e. column 10, lines 10-21), we find a clear suggestion to adjust the frequency of oscillator 10 to achieve a desired value. Since the description of the circuitry of Figure 3 of Krause is directed to the embodiment in which the oscillator 10 is locked on to

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the line frequency (column 8, line 63), we are not persuaded as to why this line frequency would not be considered a predetermined desired value as set forth in Appellant's claims. We are similarly unpersuaded by Appellant's argument (Brief, page 6) that Kraus lacks a teaching of supplying the start-stop oscillator 10 with an on/off reference signal as claimed. We note, however, that in making this argument, Appellant has directed our attention to the Figure 3 embodiment of Kraus. We agree with Appellant that, in this embodiment in which the oscillator is locked on to the line frequency, there is no explicit disclosure of a reference signal being supplied directly to the start-stop oscillator. Our review of the Examiner's analysis in the Answer, however, reveals that the Examiner specifically identified start-stop oscillator 10 in the Figure 1 embodiment which directly receives the reference synchronizing signal f_H as corresponding to the appealed claim limitations. In making the rejection based on anticipation, the Examiner has made a finding (Answer, page 7) that the skilled artisan would appreciate that a start-stop oscillator, as its name implies, is responsive either to a plurality of input signals or to

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differing input values of a single input signal. This finding remains unchallenged by Appellant who, rather than submit a Reply Brief, has chosen to let his position on the record be reflected solely by arguments in the main Brief.²

In view of the above discussion, since all of the claimed

limitations are present in the disclosure of Kraus, the Examiner's 35 U.S.C. § 102(b) rejection of claims 1, 2, 5, 9, 19, and 21 is sustained.

Turning to a consideration of the Examiner's 35 U.S.C. § 103 rejection of claims 4, 11, and 22, we sustain this rejection as well. As the basis for the obviousness rejection, the Examiner proposes (Answer, page 4) to modify the clock signal generator disclosure of Kraus by relying on Hirao to supply the missing teaching of changing the frequency

² The Examiner (Answer, page 7, footnote) has made reference to U.S. Patent No. 4,220,964 to Yamagiwa as supporting the finding related to reference inputs to start-stop oscillators. Also, in the footnote at page 6 of the Answer, the Examiner cites U.S. Patent No. 4,613,827 to Takamori as an example of a teaching of a phase-locking oscillator providing a control of the frequency of a start-stop oscillator. As neither of these references are part of the Examiner's rejections of the appealed claims, we decline to rule on the merits of their applicability to the issues to be decided in this appeal. We would point out however that, to whatever extent the disclosures in these references support the Examiner's position, such disclosures remain unchallenged by any response from Appellant.

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adjusting signal when a difference between a counting value and a reference value exceeds a predetermined value.

After reviewing the Examiner's stated position, it is our opinion that the Examiner's analysis is sufficiently reasonable that we find that the Examiner has at least satisfied the burden of presenting a prima facie case of obviousness. The burden is, therefore, upon Appellant to come forward with evidence or arguments which persuasively rebut the Examiner's prima facie case of obviousness.

Appellant's arguments in response (Brief, page 7) do not argue the Examiner's interpretation of Hirao, nor the combinability of Hirao with Kraus. Instead, Appellant's arguments center on the alleged deficiency of Kraus in disclosing the frequency adjustment of a start-stop oscillator as claimed, arguments which we found to be unpersuasive in our discussion supra.

In summary, we have sustained both of the Examiner's rejections of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1, 2, 4, 5, 9, 11, 19, 21, and 22 is affirmed.

No time period for taking any subsequent action in

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connection with this appeal may be extended under
37 CFR § 1.136(a).

AFFIRMED

JERRY SMITH)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH F. RUGGIERO)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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APJ RUGGIERO

APJ SMITH JERRY

APJ LALL

DECISION: AFFIRMED
Send Reference(s): Yes No
or Translation (s)
Panel Change: Yes No
Index Sheet-2901 Rejection(s):

Prepared: October 24, 2002

Draft Final

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PALM / ACTS 2 / BOOK
DISK (FOIA) / REPORT