

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(2) is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RITA M. O'BRIEN

Appeal No. 97-2657
Application 08/359,286¹

HEARD: August 5, 1999

Before KRASS, FLEMING and FRAHM, **Administrative Patent Judges.**

FLEMING, **Administrative Patent Judge.**

DECISION ON APPEAL

¹ Application for patent filed December 19, 1994.

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This is a decision on appeal from the final rejection of claims 1 through 16, all of the claims pending in the present application.

The invention relates to employing timers to properly allocate bus access.

Independent claim 1 is reproduced as follows:

1. A bus access arbitration system, comprising:

a bus;

a plurality of devices, at least one of the plurality of devices being associated with a corresponding timer, the timer being reset to zero each time the at least one device accesses the bus, such that the timer has a value indicating an elapsed time since the at least one device last accessed the bus; and

an arbiter connecting the devices to the bus, the arbiter granting the devices access to the bus based on the value of the timer.

The Examiner relies on the following reference:

Watanabe	5,499,345	Mar. 12, 1996
	(effective filing date Oct. 2, 1992)	

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Claims 1 through 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Watanabe.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the briefs² and answer for the respective details thereof.

OPINION

We will not sustain the rejection of claims 1 through 16 under 35 U.S.C. § 103.

The Examiner has failed to set forth a *prima facie* case. It is the burden of the Examiner to establish why one having ordinary skill in the art would have been led to the claimed invention by the express teachings or suggestions found in the prior art, or by implications contained in such teachings or suggestions. *In re Sernaker*, 702 F.2d 989, 995, 217 USPQ 1, 6 (Fed. Cir. 1983). "Additionally, when determin-

² Appellant filed an appeal brief on December 9, 1996. Appellant filed a reply brief on April 21, 1997. On July 14, 1997, the Examiner sent a letter stating that the reply brief filed has been entered and considered but no further response by the Examiner is deemed necessary.

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ing obviousness, the claimed invention should be considered as a whole; there is no legally recognizable 'heart' of the invention." *Para-Ordnance Mfg. v. SGS Importers Int'l, Inc.*, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995), *cert. denied*, 117 S.Ct. 80 (1996) *citing W. L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

On page 5 of the brief, Appellant argues that Watanabe fails to teach or suggest "the timer being reset to zero each time the at least one device accesses the bus, such that the timer has a value indicating an elapsed time since the at least one device last accessed the bus" as recited in Appellant's claim 1. Appellant further argues that Watanabe fails to teach "the timer being reset to a previously determined minimum access interval associated with the at least one device each time the at least one device accesses the bus, the timer counting down toward zero" as recited in Appellant's claim 7. Appellant further argues on page 6 of the brief that Watanabe fails to teach "resetting the corresponding timer

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each time its corresponding device accesses the bus" as recited in claim 12. On pages 9 through 12 of the brief and in the reply brief, Appellant argues that Watanabe does not suggest modifying the Watanabe arbitration method or apparatus to become Appellant's invention.

Upon a close review of Watanabe, we fail to find that Watanabe teaches or suggests a timer that has a value indicating an elapsed time since the at least one device last accessed the bus and an arbiter granting the device accessed the bus based upon the value of the timer. We note that the Watanabe abstract states that the counter section counts the duration of the bus occupation of the bus master. Watanabe further teaches that priority is given to the bus master with the shortest occupation time. We further note in column 2, lines 20-30, that Watanabe

teaches a counter section 5 for counting each duration of bus

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occupation and an arbiter 6 for giving an allowance signal to a particular bus master selected on the basis of bus occupation time from the counter 5 and bus request signals from the bus master.

The Federal Circuit states that "[t]he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." ***In re Fritch***, 972 F.2d 1260, 1266 n.14, 23 USPQ2d 1780, 1783-84 n.14 (Fed. Cir. 1992), ***citing In re Gordon***, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

We fail to find that Watanabe suggests modifying the arbitration system which is based upon bus duration times to an arbitration system based upon minimum access intervals associated with the device and timers which keep track of the elapsed time since each device last has had access to the bus. Therefore, we will not sustain the Examiner's rejection of claims 1 through 16 as being unpatentable over Watanabe under 35 U.S.C. § 103.

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We have not sustained the rejection of claims 1 through 16 under 35 U.S.C. § 103. Accordingly, the Examiner's decision is reversed.

REVERSED

	ERROL A. KRASS)	
	Administrative Patent Judge)	
)	
)	
)	BOARD OF
PATENT)	
	MICHAEL R. FLEMING)	APPEALS AND
	Administrative Patent Judge)	
INTERFERENCES)	
)	
)	
	ERIC FRAHM)	
	Administrative Patent Judge)	

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