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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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte HENRY C. YUEN

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Appeal No. 1997-4140  
Application No. 08/279,628

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ON BRIEF

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Before JERRY SMITH, BARRETT, and BARRY, Administrative Patent Judges.

BARRY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the final rejection of claims 27 and 28. The appellant filed an amendment after final rejection on July 22, 1996, it was entered. We reverse.

BACKGROUND

Bar code programming (BCP) of a videocassette recorder (VCR) typically requires the use of a television (TV) program guide and a bar code sheet. The guide lists channel, date, time, and length (CDTL) data for TV programs. The sheet contains separate groups of codes for TV channels, dates, times, and program lengths. A user first consults the guide to identify the CDTL data for a TV program to be recorded. He then enters the data by using a bar code reader (BCR) to scan appropriate codes on the sheet. Using both the guide and sheet, however, is cumbersome. Furthermore, the hand-to-eye translation and coordination required in such use is tedious and error-prone.

The invention at issue in this appeal allows a user to program a VCR quickly, easily, and accurately. He simply scans bar codes without reading time and channel data. More specifically, the user employs a TV calendar that includes bar codes concerning TV programs. The calendar is formatted as a rectangular grid of cells arranged in rows and columns. Bar codes for channels are arranged along one side of the grid,

bar codes for times, along another side. Each cell lies at the intersection of a channel bar code and a time bar code and contains a TV program descriptor.

To program a VCR using the TV calendar, a user first finds the descriptor of a TV program to be recorded. He then moves a BCR vertically to the column heading to scan the time bar code for the program. The user last moves the BCR horizontally to the row heading to scan the bar code for the program. The scanned bar codes are converted to data, which are applied to the VCR to instruct it to record the desired program.

Claim 27, which is representative for our purposes, follows:

27. A method of controlling a VCR with a television calendar having a rectangular grid of cells arranged in horizontal rows and vertical columns, a television program descriptor located in each cell, a first set of bar codes arranged along one side of the grid, a second set of bar codes arranged along another side of the grid perpendicular to the first set so each cell lies at the intersection of a bar code in the one set that represents time and a bar code in the other set that

represents channel, the method comprising the steps of:

selecting a descriptor of a television program to be recorded on the VCR;

reading the bar code in one of the sets that corresponds to the cell in which the selected descriptor is located to identify the time of the selected descriptor;

reading the bar code in the other set that corresponds to the cell in which the selected descriptor is located to identify the channel of the selected descriptor;

converting the read bar codes to time and channel signals; and

applying the time and channel signals to the VCR to record the program represented by the selected descriptor.

The references relied on in rejecting the claims follow:

Kajitani et al. (Kajitani)	4,841,132	Jun. 20, 1989
Shibuya et al. (Shibuya)	5,056,070	Oct. 8, 1991
Yuen et al. (Yuen)	5,335,079	Aug. 2, 1994

(filed Mar. 27, 1991).

Claims 27 and 28 stand rejected under 35 U.S.C. § 103 as obvious over Kajitani in view of Yuen and Shibuya. Rather than repeat the arguments of the appellant or examiner in

toto, we refer the reader to the briefs and answers for the respective details thereof.

OPINION

In reaching our decision in this appeal, we considered the subject matter on appeal and the rejection advanced by the examiner. Furthermore, we duly considered the arguments and evidence of the appellant and examiner. After considering the totality of the record, we are persuaded that the examiner erred in rejecting claims 27 and 28. Accordingly, we reverse.

We begin by noting the following principles from In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993).

In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. Id. "A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." In re Bell, 991 F.2d 781, 782, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 147

(CCPA 1976)). If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

With these in mind, we analyze the examiner's rejection.

The examiner summarizes his rejection as follows.

Since both Kajitani and Yuen et al disclose and teach the use of recording calendars to perform a method of control [sic] a VCR to record a selected television program of a channel at predetermined time , it would have been obvious to one of ordinary skill in the art to combine Kajitani's calendar with Yuen et al's [sic] calendar by rearranging and printing the first set of bar codes and second set of bar codes and descriptors so that the descriptors at locations associated with the bar codes to produce a calendar of grid of the claimed invention. (Examiner's Answer at 7-8 (extra spaces in original).)

The appellant argues, "A Yuen/Kajitani combination would not produce a comprehensive, integrated grid of program descriptors directly referencing associated bar codes ...."

(Appeal Br. at 5.)

Claims 27 and 28 each specify in pertinent part the following limitations:

a television calendar having a rectangular grid of cells arranged in horizontal rows and vertical

columns, a television program descriptor located in each cell, a first set of bar codes arranged along one side of the grid, a second set of bar codes arranged along another side of the grid perpendicular to the first set so each cell lies at the intersection of a bar code in the one set that represents time and a bar code in the other set that represents channel ....

In summary, the claimed limitations recite a TV calendar formatted as a rectangular grid of cells arranged in rows and columns, with channel bar codes along one side of the grid, time bar codes along another side, and a TV program descriptor in each cell.

The examiner fails to show a teaching or suggestion of the claimed limitations. "Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor." Para-Ordnance Mfg. v. SGS Importers Int'l, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995)(citing W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 1553, 220 USPQ 303, 311, 312-13 (Fed. Cir. 1983)). "The 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, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) (citing In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)). "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." Fritch, 972 F.2 at 1266, 23 USPQ2d at 1784, (citing In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991)).

Here, the examiner admits that Kajitani fails to "teach the second set of bar codes is arranged in a horizontal row which is perpendicular to the first set of bar codes and ... the incorporating of program descriptors at locations of the intersections of the first set of bar codes and second set of bar codes." (Examiner's Answer at 4-5.) This is an understatement. The reference merely "shows a ... practical program sheet 1 made by printing channels, dates, start times and end times on a synthetic resin plate or sheet material." Col. 4, ll. 3-6. The sheet contains no TV program descriptors. It is merely a bar code sheet. Fig. 4. In

addition, the sheet is not formatted as a rectangular grid that lists channels along one side and times along another side. Instead, it is formatted as a collection of columns that list channels and times in separate columns. Id. Furthermore, the sheet does not arrange bar codes along either of its sides. Instead, it includes bar codes inside its columns. Id.

The examiner fails to show that Yuen remedies the defects of Kajitani. Yuen merely teaches a "television calendar 200 ...." Col. 14, l. 65. The calendar has "multiple time of day sections 206, channel identifiers 208, and descriptive program identifiers 210, including the name of the program ...." Col. 14, l. 66 - col. 15, l. 2. Figure 8 of the reference shows that the calendar is not formatted as a rectangular grid of cells arranged in rows and columns. Instead, it is "arranged in a manner that is common in television guide publications." Col. 15, ll. 2-3. Although the calendar lists times along one side, it does not list channels along another side. Instead, it lists the channel identifiers in the same

section as the times and in a section immediately to the right thereof. Fig. 8.

The examiner merely relies on Shibuya to "teach[] the use of recording code [sic] representing of [sic] time for the day of month for programming a VCR." (Examiner's Answer at 6.) He does not allege, let alone show, that the Shibuya remedies the defects of Kajitani and Yuen.

For the foregoing reasons, we are not persuaded that teachings from the prior art would appear to have suggested the claimed limitation of a TV calendar formatted as a rectangular grid of cells arranged in rows and columns, with channel bar codes along one side of the grid, time bar codes along another side, and a TV program descriptor in each cell. The examiner impermissibly relies on the appellant's teachings or suggestions; he has not established a prima facie case of obviousness. Therefore, we reverse the rejection of claims 27 and 28 under 35 U.S.C. § 103.

We end by noting that our reversal is based only on the references applied in the rejection. The appellant submitted European Patent Application 0 254 518 ('518 Application) and Japanese Patent Abstract JP1241923 (Tadao) in an Information Disclosure Statement. (Paper No. 6 at 1.) The '518 Application teaches a program sheet 30 formatted as a rectangular grid of cells arranged in rows and columns, with broadcasting stations 31 and channel numbers 32 along one side of the grid, hours along another side, and titles of programs 33 and bar codes 34 in each cell. Col. 4, ll. 29-35 (referencing Fig. 6). Tadao teaches bar codes 2 and 3-3 in a "program column of a newspaper or a magazine ...." Constitution, l. 2. Scanning the bar codes "sets the broadcast station ... and broadcast start time of the reserved broadcast program ...." Id. at ll. 8-9. Nevertheless, neither the '518 Application nor Tadao is applied or is at issue in the rejection before us.

CONCLUSION

To summarize, the rejection of claims 27 and 28 under  
35 U.S.C. § 103 is reversed.

REVERSED

JERRY SMITH	)	
Administrative Patent Judge	)	
	)	
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	)	BOARD OF PATENT
LEE E. BARRETT	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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LANCE LEONARD BARRY	)	
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