

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILHELMUS J. VAN GESTEL

Appeal No. 1998-0156
Application 08/385,511

ON BRIEF

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

LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the final rejection of claims 1-3, 5-10, 13 and 14. Claims 4, 11, and 12¹ have been cancelled.

The invention relates to an apparatus for recording and playing back digital audio and video signals recorded on a longitudinal magnetic record carrier and slant tracks having an audio signal recording sector and a video signal recording sector for containing the digital audio signal and the digital video signal respectively. For the ease of editing, the invention

¹ Claims 11 and 12 have been cancelled by Appellant by amendment filed July 7, 1997 (Paper No. 22½).

comprises additionally recording the original digital audio signal in auxiliary signal recording parts located within the video signal recording sectors. The invention is further illustrated below by claim 1.

1. Arrangement for recording a digital video signal and a corresponding digital audio signal in slant tracks on a longitudinal magnetic record carrier, said tracks comprising an audio signal recording sector and a video signal recording sector for storing the digital audio signal and the digital video signal, respectively, the arrangement comprising:

first and second input terminals for receiving the digital audio signal and the digital video signal, respectively;

conversion means for converting the digital audio signal and the digital video signal to form a composite signal for recording on the record carrier;

recording means for recording the converted digital audio signal and digital video signal in said composite signal in the audio signal recording sector and the video signal recording sector, respectively, of a track, the video signal recording sector in a track further comprising an auxiliary signal recording part for storing an auxiliary signal;

means for additionally storing the digital audio signal in the auxiliary signal recording parts of the video signal recording sectors in the tracks;

means for generating an indicator signal indicating that the auxiliary signal recorded in the auxiliary signal recording parts of the video signal recording sectors in the tracks is an audio signal corresponding to the digital video signal recorded in the video signal recording sectors; and

signal combining means for combining the indicator signal into the composite signal for recording in the tracks.

The Examiner relies on the following references:

Heinz et al. (Heinz)	4,353,098	Oct. 5, 1982
Yanagida et al. (Yanagida)	4,530,015	July 16, 1985
Yoshimura et al. (Yoshimura)	5,012,352	Apr. 30, 1991

Claims 1, 2, 5, 7, 8, 10 and 14 stand rejected under 35 U.S.C. § 102 as being anticipated by Yoshimura. Claims 3, 6 and 13 stand rejected under 35 U.S.C. § 103 over Yoshimura and Heinz, while claim 9 stands rejected over Yoshimura and Yanagida.

Rather than repeat the positions and the arguments of Appellant and the Examiner, we make reference to the briefs and the answer for their respective positions.

A reply brief was filed on July 7, 1997 as Paper No. 22 which was entered into the record (Paper No. 23). Note also that a corrected brief was filed as Paper No. 26. However, the corrected brief seems to be a reproduction of the principal brief (Paper No. 20) but takes into account the cancellation of claims 11 and 12. The Examiner's answer (Paper No. 21) is a response to the principal brief (Paper No. 20). Therefore, we consider for our decision the principal brief (Paper No. 20) and the Examiner's answer which is a response to that brief.

OPINION

We have considered the rejections advanced by the Examiner. We have likewise, reviewed Appellant's arguments against the rejections as set forth in the briefs.

It is our view, after consideration of the record before us, that the rejections under 35 U.S.C. § 102 and under 35 U.S.C. § 103 are not proper. Accordingly, we reverse.

At the outset, we note that Appellant has elected certain groupings on page 4 of the brief, however, we will discuss the claims individually as they are argued in the body of the brief.

ANALYSIS

We have reviewed the positions of the Examiner and Appellant and reach a conclusion that the Examiner is overreaching in his effort to reject the claims on appeal. Whereas we commend the Examiner in answering each and every point which Appellant raised in his briefs, we are of the view that the Examiner is stretching his reasoning to meet the claimed limitations. We add below some elaboration and clarification for the two grounds of rejection.

REJECTION UNDER 35 U.S.C. § 102

A prior art reference anticipates the subject of a claim when the reference discloses every feature of the claimed invention, either explicitly or inherently (see Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed. Cir. 1997) and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984)).

We consider claim 10, the broadest independent claim. After our review of Appellant's position, brief, pages 5-9 and the position of the Examiner, answer, pages 5-8, and 10-12, we are of the view that the Examiner has not properly dealt with the limitation claimed in claim 10, "each of said video signal recording sectors further having an auxiliary signal recording part for storing an auxiliary signal, characterized in that said digital audio signal is additionally stored in

said auxiliary signal recording parts.” In meeting said limitation, the Examiner asserts, Answer, pages 11-12, that he “considers [in Yoshimura]

A-1, A-2 as the audio signal, V as the video signal, A-1 as marking the audio sector in which a portion of the audio signal is recorded, V, A-2 as the video block, and A-2 as the auxiliary part, in which a portion of the audio signal, A-2, is recorded. Video blocks or sectors can be considered as containing the corresponding audio signal.” We note that in Figure 14 of Yoshimura, the audio signals A-1 and A-2 are not the same signals. Rather, these are the audio synchronizing blocks dispersed among the video synchronized blocks. Therefore, the audio signal A-2 cannot be considered as meeting the claimed limitation of “said digital audio signal is additionally stored in said auxiliary signal recording parts [of the video signal].”

The other two independent claims, 1 and 5 contain corresponding limitations. Therefore, for the same reasons as above, the rejection of claims 1 and 5 also does not meet the claimed limitations. Consequently, we do not sustain the anticipation rejection of claims 1, 2, 5, 7, 8, 10 and 14 by Yoshimura.

REJECTION UNDER 35 U.S.C. § 103

As a general proposition, in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to the applicant to overcome the prima facie case

with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

There are two combinations of different references to reject various claims. We will consider each combination separately.

YOSHIMURA AND HEINZ

Claims 3, 6 and 13 are rejected over this combination. They depend from independent claims 1 and 5, therefore, they contain the limitations discussed above. The additional reference, Heinz, is used for the concept of compression and expansion of all digital data, and not to buttress the Examiner's position in regard to the limitations discussed above. Therefore, the combination of Yoshimura and Heinz also does not meet the limitations discussed above. Consequently, we do not sustain the obviousness rejection of claims 3, 6 and 13 over Yoshimura and Heinz.

YOSHIMURA AND YANAGIDA

Claim 9 is rejected over this combination. Claim 9 depends on claim 1 and therefore, contains the same limitation as discussed above. The additional reference, Yanagida, is used for the teaching of a camcorder arrangement to record audio and video signals, and not to

cure the above-noted deficiencies of Yoshimura. Therefore, the combination of Yoshimura and Yanagida still fails to meet the claimed limitation. Therefore, we do not sustain the obviousness rejection of claim 9 over Yoshimura and Yanagida.

In conclusion, we do not sustain the Examiner's rejection of claims 1, 2, 5, 7, 8, 10 and 14 as being anticipated by Yoshimura, and of claims 3, 6 and 13 as being obvious over Yoshimura and Heinz, and of claim 9 over Yoshimura and Yanagida.

The decision of the Examiner rejecting claims 1-3, 5-10, 13 and 14 is reversed.

REVERSED

Kenneth W. Hairston)	
Administrative Patent Judge)	
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Jerry Smith)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
Parshotam S. Lall)	
Administrative Patent Judge)	

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PSL/cam

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Application 08/385,511

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