

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte MAKOTO YAMAGISHI

---

Appeal No. 1998-0412  
Application No. 08/320,935

---

ON BRIEF

---

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

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 5 through 9, 11 through 16 and 18 through 27.

The disclosed invention relates to an electro-acoustical apparatus.

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

Appeal No. 1998-0412  
Application No. 08/320,935

1. An electric-acoustic apparatus, comprising:  
an electro-acoustic transducer accommodated in a cabinet;  
and  
a sound guide tube for conducting the sound from the  
electro-acoustic transducer unit out of said cabinet;  
said sound guide tube having a smaller diameter than an  
external acoustic meatus to allow at least a sound radiating  
end of the sound guide tube to be inserted into the external  
acoustic meatus;  
said electro-acoustic apparatus further comprising  
supporting means for supporting one of said transducer or said  
sound guide tube so that the sound radiating end of said sound  
guide tube is at a predetermined position within the external  
acoustic meatus;  
wherein said cabinet is formed for enclosing the rear  
side of said electro-acoustic transducer unit and not a sound  
radiating side of said electro-acoustic transducer, said sound  
guide tube being L-shaped and having an end opposite to said  
sound radiating end connected to a sound conducting opening  
provided on a lateral side of said cabinet.

The references relied on by the examiner are:

Gefvert et al. (Gefvert) 11, 1974	3,816,672	June
Bellafiore 1981	4,291,203	Sept. 22,
Miura et al. (Miura) 1991	5,022,486	June 11,
		(filed Sept. 20,
1989)		
Ward et al. (Ward) 1991	5,031,219	July 9,
		(filed Sept. 15,
1988)		

Claims 1, 5, 6, 8 and 9 stand rejected under 35 U.S.C.  
§ 102(e) as being anticipated by Miura.

Appeal No. 1998-0412  
Application No. 08/320,935

Claim 7 stands rejected under 35 U.S.C. § 103 as being unpatentable over Miura in view of Bellafiore.

Claim 11 stands rejected under 35 U.S.C. § 103 as being unpatentable over Miura in view of common equalizing practices in the art.

Claims 12 through 15 and 25 stand rejected under 35 U.S.C.

§ 103 as being unpatentable over Bellafiore in view of Ward.

Claims 26 and 27 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bellafiore in view of Ward and Gefvert.

Claims 16, 18 through 22 and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Miura in view of Gefvert.

Claim 23 stands rejected under 35 U.S.C. § 103 as being unpatentable over Miura in view of Gefvert and Ward.

Reference is made to the briefs and the answers for the respective positions of the appellant and the examiner.

OPINION

All of the rejections are reversed.

Appeal No. 1998-0412  
Application No. 08/320,935

Turning first to the 35 U.S.C. § 102(e) rejection of claims 1, 5, 6, 8 and 9, appellant argues (brief, pages 16 and 17) that the claims are not anticipated by the teachings of Miura because the tube 1 in Miura extends to the entrance of the external acoustic meatus A, but not into the external acoustic meatus as claimed. Appellant also argues (brief, page 16) that it is apparent from the figures of Miura that "the outer diameter of the tube is not less than the diameter of the external acoustic meatus, whereby the tube 1 could not be inserted into the external acoustic meatus." The examiner's contentions (answer, page 12) to the contrary notwithstanding, Miura only states that the tube can be inserted to the entrance of the external acoustic meatus (column 18, lines 65 through 68). Inasmuch as the diameter of the tube prevents it from being inserted into the external acoustic meatus in Miura, we agree with appellant's arguments. Accordingly, the 35 U.S.C. § 102(e) rejection of claims 1, 5, 6, 8 and 9 is reversed.

The 35 U.S.C. § 103 rejections of claims 7, 11, 16 and 18 through 24 are reversed because the additionally cited references to Bellafiore, Gefvert and Ward neither teach nor

Appeal No. 1998-0412  
Application No. 08/320,935

would they have suggested to the skilled artisan the specifically claimed diameter of the tube that is inserted into the external acoustic meatus.

Turning next to the 35 U.S.C. § 103 rejection of claims 12 through 15 and 25, the examiner acknowledges (answer, page 6) that the sound guide tube attached to the hearing aid in Bellafiore "does not disclose a space between the sound guide tube and the external auditory meatus." According to the examiner (answer, page 6), Ward discloses "a space between the guide and the external auditory meatus, for allowing surrounding noises to enter the external auditory meatus." The examiner concludes (answer, page 6) that it would have been obvious to the skilled artisan to use such a space between the sound guide tube and the external acoustic meatus in Bellafiore for the noted benefit. Appellant argues (brief, page 21) that Ward is completely silent as to the sizing and the spacing of the tube 60 so that surrounding noises may be heard. We agree. For this reason, the 35 U.S.C. § 103 rejection of claims 12 through 15 and 25 is reversed.

Appeal No. 1998-0412  
Application No. 08/320,935

The 35 U.S.C. § 103 rejection of claims 26 and 27 is reversed because the teachings of Gefvert do not cure the noted shortcomings in the teachings of Bellafiore and Ward.

DECISION

The decision of the examiner rejecting claims 1, 5, 6, 8 and 9 under 35 U.S.C. § 102(e) is reversed, and the decision of the examiner rejecting claims 7, 11 through 16 and 18 through 27 under 35 U.S.C. § 103 is reversed.

REVERSED

Appeal No. 1998-0412  
Application No. 08/320,935

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
JERRY SMITH	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
HOWARD B. BLANKENSHIP	)	
Administrative Patent Judge	)	

lp

Appeal No. 1998-0412  
Application No. 08/320,935

RONALD P. KANANEN, ESQ.  
RADAR, FISHMAN & GRAVER P.L.L.C.  
1233 20th STREET, N.W., SUITE 501  
WASHINGTON DC 20036

***Leticia***

Appeal No. 1998-0412  
Application No. 08/320,935

APJ HAIRSTON

APJ JERRY SMITH

APJ BLANKENSHIP

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

Prepared: January 11, 2002

Draft            Final

3 MEM. CONF.    Y            N

OB/HD           GAU

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