

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PETER AHIMOVIC and NARAYAN MANEPALLY

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Appeal No. 1998-0498  
Application No. 08/541,471

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ON BRIEF

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Before THOMAS, MARTIN, and LALL, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appeal to the Board from the examiner's final rejection of claims 3, 6-8, 10, 11, 14, 16, 17, 19, 21, 23, 25, 26, 28-31, 33 and 35.

Representative claim 3 is reproduced below:

3. A node for a conferencing system, coupled to at least one other node, providing computer conferencing between the nodes, the node comprising:

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means for generating and sending data, video and audio signals to said at least one other node and for receiving and processing data, video and audio signals from said at least one other node; and

means for grouping the video and audio signals into video and audio frames, respectively, and for interleaving the video and audio frames on a sequential one-to-one basis before transmission to said at least one other node.

The following references are relied on by the examiner;

Tompkins et al.	4,710,917	Dec. 01, 1987
Hayden et al.	4,953,159	Aug. 28, 1990
Laycock	5,202,759	Apr. 13, 1993
	(filing date, Jan. 24, 1992)	
Nakayama et al.	5,280,583	Jan. 18, 1994
	(filing date, Sep. 3, 1992)	
Hosono et al.	5,392,165	Feb. 21, 1995
	(filing date, Feb. 13, 1992)	

All the claims on appeal earlier noted stand rejected under 35 USC § 103. As to claims 3, 6, 10, 17, 21 and 25 the examiner relies upon the combination of Tompkins, Laycock and Hosono, further in view of Nakayama as to claims 7, 8, 19, 23, 26, 28-31 and 35. As to claims 11 and 16, the examiner relies upon the combination of Tompkins and Laycock, with the addition of Nakayama as to claim 14. Finally, the examiner rejects claim 33 under 35 USC § 103 as being obvious over the

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collective teachings and suggestions of Tompkins, Laycock and Hosono, further in view of Nakayama and Hayden.<sup>1</sup>

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief and the answer for the respective details thereof.

#### OPINION

Turning initially to the rejection of claims 11 and 16 as being obvious over the collective teachings of Thompkins and Laycock, and the separately stated rejection of claim 14 in view of the further teachings provided by Nakayama, we sustain both of these rejections as to these three claims. We do this simply because the brief submitted by appellants does not traverse the rejections of these claims, thus apparently confirming the merits of them.

On the other hand, we reverse the rejections of all other claims on appeal under 35 USC § 103. At the beginning of page

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<sup>1</sup>To the extent the examiner rejects all claims on appeal under 35 § USC 103, in light of the collective teachings of Tompkins in view of Laycock and Hosono at pages 2 and 6 of the answer, this will constitute a new ground of rejection as to claims 11, 14 and 16. These views of the examiner at these pages appear to be an inaccurate summary of the rejections set forth in the final rejection which are set forth individually and correctly in the remaining parts of the answer.

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5 of the brief, appellants do not appear to contend that it would not have been proper within 35 USC § 103 to have combined the teachings and showings of Tompkins and Laycock. The focus of appellants' arguments thereafter in the brief is upon the teachings and showings of Hosono such as to modify the Tompkins-Laycock combination. We agree with appellants' basic urging that it would not have been obvious to the artisan to have utilized the teachings of Hosono in the Tompkins-Laycock combination to reject the subject matter of independent claims 3, 17 and 26.

It appears uncontested that Laycock teaches in the prior art grouping video and audio signals before transmission on a single wire or medium. The examiner attempts to rely upon the further teachings of Hosono as to the obviousness of utilizing an interleaver to further modify the grouping of audio and video signals as thought by Laycock into respective audio and video frames of information to meet the feature recited in representative independent claim 3 on appeal of "interleaving the video and auto frames on a sequential one-to-one basis before transmission." Similar features are attempted to be recited in independent claims 17 and 26 on appeal.

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Hosono's environment relates to audio-video tape recording systems. In accordance with the showings in figure 4(2) and figure 5(2) depicting the apparent normal mode of operation of Hosono's device which appears most favorable to the examiner's position, there is shown respective channels 1 and 2 for recording only video data and channels 3 and 4 for recording only audio data. The audio and video data appear to be grouped separately into frames in a corresponding manner according to the designation V1, A1, etc. Even though the respective video and audio data frames are recorded in a time sequential manner, there is no showing to do so on a single or common channel but only on respectively different and a separate channels.

Since the claims on appeal basically require a common transmission channel, it is not apparent to us why it would have been obvious for the artisan to have utilized the teachings and showings in Hosono to provide the claimed interleaving of the video and audio frames "on a sequential one-to-one basis before transmission" of claims 3, 17 and 26 on appeal. Thus, it would have been apparent to the artisan that these teachings and showings of Hosono would not have

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been an aid in light of Laycock's teachings, as generally expressed and relied upon by the examiner at the top of column 5 of this reference, since the ultimate product of the combined video and an audio codec units in Laycock is for transmission down a single telephone line. Therefore, we agree with the appellants basic view that it would not have been obvious to the artisan to have utilized the Hosono-type of interleaving audio and video data on plural, separate channels of tape for recording purposes in the Tompkins-Laycock combination for transmission between claimed nodes or the claimed first and second computer devices. Therefore, we reverse the rejection of independent claims 3, 17 and 26 and their respective dependent claims based upon the combination relied upon by the examiner, Tompkins, Laycock and Hosono. The additional reliance upon by Nakayama as to claim 26 does not fill the deficiencies noted with respect to the combination of Tompkins, Laycock and Hosono.

We have considered the subject matter of independent claims 17 and 26 consistent with the subject matter set forth in independent claim 3 for purposes of rendering a decision regarding the rejections of the noted claims under 35 USC 103.

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However, we institute a rejection of claims 17, 19, 21, 23, 25, 26, 28-31, 33 and 35 under the second paragraph of 35 USC § 112 because these claims are plainly indefinite. As to claim 17, the interleaver clause is not clear as to what is actually interleaved, the claimed video and audio signals or the resulting video and audio frames on a sequential one-to-one basis. A similar rejection is made with respect independent claim 26 since is not clear whether the frames or the signals are interleaved according to the recitation in the last two lines of this claim. More specifically, the use of the connective "which" appears to most likely modify the word "signals" which is the last preceding word before the word "which" but, in the context of the disclosed invention, the interleaving is fairly indicated to be with respect to the frames of video and audio information and not the signals themselves.

In summary, we have affirmed the rejection of claims 11, 14 and 16, but we have reversed the rejection of claims 3, 6-8, 10, 17, 19, 21, 23, 25, 26, 28-31, 33 and 35 under 35 USC § 103. We have also instituted a rejection of independent

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claims 17 and 26 and their respective dependent claims under the second paragraph of 35 USC § 112.

In addition to affirming the examiner's rejection of one or more claims, this decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b) (amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53131, 53197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides that [a] new ground of rejection shall not be considered final for purposes of judicial review."

Regarding any affirmed rejection, 37 CFR § 1.197(b) provides:

(b) Appellants may file a single request for rehearing within two months from the date of the original decision . . . .

37 CFR § 1.196(b) also provides that the appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of proceedings (37 CFR § 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter

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reconsidered by the examiner, in which event the application will be remanded to the examiner. . . .

(2) Request that the application be reheard under § 1.197(b) by the Board of Patent Appeals and Interferences upon the same record. . . .

Should the appellants elect to prosecute further before the primary examiner pursuant to 37 CFR § 1.196(b)(1), in order to preserve the right to seek review under 35 U.S.C. § 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If the appellants elect prosecution before the examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Board of Patent Appeals and Interferences for final action on the affirmed rejection, including any timely request for rehearing thereof.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

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AFFIRMED-IN-PART; 37 CFR 1.196(b)

JAMES D. THOMAS	)	
Administrative Patent Judge	)	
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	)	
	)	
	)	BOARD OF PATENT
JOHN C. MARTIN	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
PARSHOTAM S. LALL	)	
Administrative Patent Judge	)	

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APJ THOMAS

APJ MARTIN

APJ LALL

DECISION:

Send Reference(s): Yes No  
or Translation (s)

Panel Change: Yes No

Index Sheet-2901 Rejection(s):

Prepared: April 25, 2001

Draft                  Final

3 MEM. CONF.    Y                  N

OB/HD                  GAU

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