

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(2) is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAZUSHIGE KAWANA, SEIJI KATO,
TOSHIYUKI FUKAMI and TAKEHIRO TAKADA

Appeal No. 1998-2493
Application No. 08/658,120

ON BRIEF

Before KRASS, GROSS and LALL, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claim 1. Claim 2 has been withdrawn as being directed to a nonelected invention.

The invention is directed to an auto-loading disk player. In particular, a signal from a load detecting device (which detects when a disk has been loaded on the turntable and provides a signal indicative of the open/close state of a manually moveable console panel) causes the immediate loading of a disk when it is detected that the console panel is not open and one of the following two states is occurring: 1. The disk is being ejected or 2. The disk is positioned in the inserting port.

Claim 1 is reproduced as follows:

1. An auto-loading disk player comprising:

a manually movable console panel rotatably mounted on a front surface of a housing for the player;

a disk recording medium inserting port provided on said housing at the back of said console panel; and

a transferring means for loading a disk recording medium inserted from said disk recording medium inserting port into a playback mechanism and ejecting the medium from the playback mechanism to said disk recording medium inserting port, and

a detecting means for detecting and providing a signal representative of an opening/closing state of said console panel; wherein

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The examiner relies on the following reference:

Hamachi et al. [Hamachi] 4,974,102 Nov. 27, 1990

Additionally, the examiner relies on appellants' admitted prior art [APA] as presented at page 1, line 6 through page 6, line 2 of the specification and in Figures 1A, 1B, 1C and 2.

Claim 1 stands rejected under 35 U.S.C. § 103 as unpatentable over APA in view of Hamachi.

Reference is made to the briefs and answer for the respective positions of

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appellants and the examiner.

OPINION

We affirm.

There is no dispute that APA teaches the subject matter of instant claim 1 but for the “detecting means...” The examiner employs Hamachi for the teaching of such a detecting means and, although Hamachi is directed to loading digital cassettes and not disks, appellants do not argue this difference as being nonobvious or that the cassette nature of Hamachi would make it inapplicable for combining with APA.

Further, Hamachi does, indeed, disclose detecting means for detecting and providing a signal representative of an opening/closing state of a console panel, or

door. The detectors are seen as elements 36 and 37. The issue is whether Hamachi discloses a means for “immediately loading said disk recording medium” into the disk player “when it [is] detected that said console panel is not open in at least one of states that said disk recording medium is being ejected and that said recording medium is positioned in said recording medium inserting port.”

The examiner points to column 3, lines 17-23, column 9, lines 15-17, and column 9,

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line 65 through column 10, line 2 of Hamachi for a showing of this limitation. Appellants contend that Hamachi merely senses whether the door is not closed and, if it is not closed, a cassette loading instruction is invalidated. It is further argued, in distinction, that the instant invention recites that if it is detected that the door is not open during the transportation of the disk or when the disk is at the inserting slot, the disk is immediately loaded into the apparatus. In the reply brief, appellants stress that the instant invention is directed to operations performed after the start of the ejection operation whereas Hamachi is silent about control operations subsequent to the start of the ejection operation.

We recognize that the instant *disclosed* invention differs from that of Hamachi. However, it is our view that appellants are reading the limitations of instant claim 1

much too narrowly. The argued limitation of the instant invention, *as claimed*, is clearly met by Hamachi during the situation when the door is closed (this state of the door being detected) and the cassette is loaded into the player. Claim 1 recites that the recording medium is loaded into the player when it is detected that the door is not open,

i.e., “closed,”¹ and this is met by the normal operation of Hamachi loading and playing a cassette after the door is closed. But the claim recites further that this occurs during one of two alternative states of the recording medium². The recording medium is either being ejected or it is positioned in the inserting port. While appellants apparently argue in the reply brief that either of these operations take place during an ejection process, the claim is not so limited. If this is what was intended, the claim could have recited that “during the process of ejecting the disk recording medium, the transferring means is responsive to said signal from the detecting means for immediately loading said disk recording medium thereinto when it is detected that said console panel is not open and the disk recording medium is either being ejected or the recording medium is

positioned in said recording medium inserting port, having been ejected.” However, as written, the claim does not require the second alternative, i.e., the medium positioned in the inserting port, to be the result of an ejection operation.

Therefore, even though we agree with appellants that Hamachi does not provide for

¹We realize that appellants would like to cover situations wherein the door is between open and closed positions but clearly a door being closed meets the limitation of a door being “not open,” as claimed.

²The claim is not in the most grammatically correct condition at this point in the claim but our interpretation of one of two alternative states appears consistent with appellants’ explanation of the instant invention.

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the situation where a recording medium is loaded as the result of detecting a door not open condition during an ejection operation, conventional operation of Hamachi's device does provide for the door being closed (not open) when the recording medium is "positioned in said recording medium inserting port" and, in a play mode, this results in loading the recording medium, as permitted by the broad language of instant claim 1.

Appellants do not argue the combinability of Hamachi with APA or that Hamachi is directed to digital cassettes rather than disks. Arguments not made are waived. In re Kroekel, 803 F.2d 705, 708, 231 USPQ 640, 642 (Fed. Cir. 1986)

Since all of appellants' arguments have been answered and we find that the examiner's interpretation of the instant claim language is reasonable, resulting in a prima facie of obviousness of the instant claimed subject matter, we will sustain the rejection of claim 1 under 35 U.S.C. § 103.

The examiner's decision is affirmed.

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

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
ANITA PELLMAN GROSS)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
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PARSHOTAM S. LALL)	
Administrative Patent Judge)	

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