

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDRE J. VAN SCHYNDEL

Appeal No. 1998-2719
Application No. 08/535,404

ON BRIEF

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

BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-15, which are all the claims in the application.

We reverse.

BACKGROUND

The invention is directed to a mounting arrangement for a higher order microphone within a small terminal, such as a telephone handset. Representative claim 1 is reproduced below.

1. A mounting arrangement for a speech terminal, operating in close-talk and hands-free modes said terminal having a transmit end for housing a capsule with an electroacoustic transducer and two ports, said arrangement comprising:

walls defining a regular-shaped cavity at said transmit end a first side wall and a second side wall opposed to said first side wall being outwardly inclined; and

means for fixing said capsule into said cavity with the geometrical center of said capsule substantially corresponding with the geometrical center of said cavity, for leaving substantially equal free space around each of said ports, and with a first port of said electroacoustic transducer facing said first side wall of said cavity and a second port facing said second side wall of said cavity.

The examiner relies on the following references:

Baumhauer, Jr. et al. (Baumhauer)	5,226,076	Jul. 6, 1993
Fatovic et al. (Fatovic) (Canadian Patent)	1,199,138	Jan. 7, 1986

Claims 1-6 and 8-15 stand rejected under 35 U.S.C. § 102 as being anticipated by Fatovic.

Claim 7 stands rejected under 35 U.S.C. § 103 as being unpatentable over Fatovic and Baumhauer.

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We refer to the Final Rejection (mailed Feb. 3, 1997) and the Examiner's Answer (mailed Dec. 23, 1997) for a statement of the examiner's position and to the Brief (filed Oct. 16, 1997) for appellant's position with respect to the claims which stand rejected.

OPINION

Fatovic discloses, as shown in Figs. 1 and 2, and described at pages 3 and 4 of the specification, a telephone handset having openings 13 and 14 at the transmit end 11. Opening 13 is in front surface 15, and opening 14 is in rear surface 16. Transparent grills 25 and 26 cover the front 13 and back 14 openings, and retain an acoustically transparent foam covering 22. An electroacoustic transducer 20 housed in a capsule 21 is surrounded and supported by the foam covering 22.

The Answer, at pages 4 through 6, applies the language of instant claim 1 to the apparatus disclosed by Fatovic. In view of the statement of the rejection, and the annotation of Figs. 1 and 2 of Fatovic in the attachment to the Answer, three walls are purported to be present. However, it is unclear to appellant, and to us, the extent and location of the purported walls.

In view of the examiner's commentary in the paragraph bridging pages 12 and 13 of the Answer, wall "Z" is a circular wall. Wall "Z" therefore must be the cylindrical wall defining the opening in which foam 22 is placed within housing 10. "Wall X is a convex wall sloping upward and outward from the capsule's geometric center to the top of wall Z."

(Answer at 12.) The examiner has added markings to Fig. 2 of Fatovic, in the Answer's attachment, which are apparently representative of the wall "X" as described.

However, there is no structure corresponding to a "wall" in the Fatovic device which slopes "upward and outward from the capsule's geometric center to the top of wall Z." On the contrary, capsule 21 is surrounded and supported by foam covering 22. Similarly, we see no structure corresponding to wall "Y," which is purported to be "a concave wall sloping upward and outward from the geometric center of the capsule to the bottom of wall Z." (Id. at 12-13.)

The rejection asserts (id. at 6) that first port 23 of the electroacoustic transducer (i.e., capsule 21) faces first side wall "X," and that second port 24 faces second side wall "Y." Although not well shown in Figure 1, Fatovic describes a front port 23 in capsule 21. Better shown in Figure 2 are "a plurality of sideward facing ports 24" in the capsule 21. We note that Fatovic's Figure 2 is a side, cross-sectional view taken along line II-II in Figure 1.

We fail to see, in the language of claim 1, "walls defining a regular-shaped cavity at said transmit end a first side wall and a second side wall opposed to said first side wall being outwardly inclined." In particular, we fail to see walls, as set forth, whereby a first port of the electroacoustic transducer faces the first side wall, and a second port of the transducer facing the second side wall.

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The cavity in which capsule 21 is placed is defined by (single) cylindrical wall "Z." Front surface 15 might, arguably, be a portion of a wall which in part "defines" the cavity, since it meets the top of cylindrical wall "Z." Further, front port 23 might, arguably, "face" a wall comprised of front surface 15. However, even if so, sideward facing ports 24 would not face a "second wall" opposed to the first wall. Sideward facing ports 24 face cylindrical wall "Z" and, perhaps, an outer side wall of housing 10. The outer side wall of housing 10 is not, however, opposed to a wall comprised of front surface 15.

We therefore cannot sustain the rejection of claim 1 under 35 U.S.C. § 102 as being anticipated by Fatovic, nor the rejection of dependent claims 2-6. Apparatus claim 8 sets forth an arrangement of walls and transducer ports corresponding to the limitations of claim 1. We do not sustain the rejection of claim 8, nor claims 9-11, depending therefrom.

Instant claim 12, although drawn to a process, requires provision of wall and port structures that have not been shown in Fatovic.¹ We do not sustain the rejection of claim 12, nor the rejection of dependent claims 13-15.

Finally, we cannot sustain the section 103 rejection of claim 7 over Fatovic and Baumhauer. Baumhauer is relied upon solely to show obviousness of using a "silicon type

¹ We note, however, that the word "cavity" should be added to the end of claim 12.

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glue" as a fixing means.² Baumhauer fails to remedy the deficiencies of the Fatovic reference.

CONCLUSION

The rejection of claims 1-15 is reversed.

REVERSED

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

² The instant specification, at page 5, refers to a "suitable" type of glue. Original claim 7 set forth a "silicon" type glue. Although we are familiar with the art only to the extent of our study of the instant disclosure and the applied references, we speculate that appellant's intent is to claim a "silicone" type glue.

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