

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. 38

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KOHEI NISHIYAMA

Appeal No. 1999-1091
Application No. 08/273,790

HEARD: March 22, 2001

Before HAIRSTON, DIXON and GROSS, **Administrative Patent Judges.**

HAIRSTON, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 to 14, all of the claims pending in the application. In an Amendment After Final (paper number 23), claim 1 was amended.

BACKGROUND

The disclosed invention is directed to a radio telephone system having a radio telephone with an answering machine that provides tailored responses to incoming calls without any additional action from the caller. The selection of a response is determined by the phone number associated with the incoming call.

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

1. A radio telephone system, comprising:

a radio telephone apparatus which comprises:

a radio telephone set circuit for transmitting a first signal to a fixed radio apparatus and receiving a second signal therefrom;

a response message memory for storing one or more response messages;

a telephone number memory for storing one or more telephone numbers and one or more telephone groups, each of said one or more telephone groups including at least one of said one or more telephone numbers; and

a control unit for controlling said radio telephone set circuit to operate in signal transmitting and receiving modes;

wherein said control unit comprises:

a comparator comparing a telephone number of a caller included in information of said second signal received from said fixed radio apparatus with said one or more telephone numbers stored in said telephone number memory, in an automatic response mode, to determine a coincident telephone number which coincides with said telephone number of a caller from among said one or more telephone numbers stored in said telephone number memory,

a reader reading one of said one or more response messages from said response message memory corresponding to one of said one or more telephone groups which includes said coincident telephone number, and

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a first controller controlling said radio telephone set circuit to transmit the corresponding response message via said fixed radio apparatus to said caller.

The examiner relies on the following references:

Mizikovsky	5,559,860	Sept. 24, 1996 (filed Jun. 11, 1992)
Helferich	5,003,576	Mar. 26, 1991
Davis	4,942,598	July 17, 1990

Claims 1 to 14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Davis in view of Helferich and Mizikovsky.

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

OPINION

For all of the reasons expressed by the examiner (answer, pages 4 through 8), and for the additional reasons presented infra, we will sustain the obviousness rejection of claims 1 to 14.

We agree with the examiner that Davis discloses a telephone apparatus that functions in the manner set forth in the claims on appeal (answer, page 4). We likewise agree with the examiner that Helferich discloses the use of voice messaging in connection with a radio telephone system (Abstract), and that it would have been manifestly obvious to the skilled artisan to apply the teachings of Helferich to those of Davis to add "portability" to the Davis telephone system (answer, pages 4 and 5).

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Appellant argues (brief, page 4) that:

A central operating principle of the Davis '598 disclosure is that certain telephone calls are handled only at the answering machine 410, whereas certain other telephone calls are allowed to ring directly to the paging terminal 415. See Davis '598 at col.11, lines 5-12, 59-64. This provides an inherent screening effect wherein the pager 420 receives only a select subset of messages corresponding to only a portion of the calls received at the answering machine 410. (Emphasis in original.)

It is apparent that appellant's arguments are directed to the Figure 5 embodiment of Davis.

In response to appellant's argument, the examiner states (answer, page 8) that:

[T]he examiner is not relying upon the pager embodiment disclosed in Fig. 5 of Davis. The examiner's rejection relies upon the main embodiment of Figure 1, which is a wireline device, and as such, has no power restrictions.

We agree with the examiner. By presenting arguments directed to the embodiment of Davis that was not relied on by the examiner, the appellant simply has not addressed the merits of the outstanding 35 U.S.C. § 103 rejection. It is clear from the rejection of record that the examiner is relying upon Figure 1 of Davis (answer, page 4) to establish a prima facie case of obviousness, yet the appellant chose not to address the references as they were applied by the examiner. 37 C.F.R. § 1.192 (a) states in pertinent part that "[a]ny arguments or authorities not included in the brief will be refused consideration by the Board of

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Patent Appeals and Interferences, unless good cause is shown.” Inasmuch as appellant has not argued the inadequacies of the rejection as framed by the examiner, any arguments that appellant could have presented are deemed to be waived. Thus, the obviousness rejection of claims 1 to 14 is sustained.

DECISION

The decision of the examiner rejecting claims 1 to 14 under 35 U.S.C. § 103(a) is affirmed.

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

AFFIRMED

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH L. DIXON)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	
ANITA PELLMAN GROSS)	
Administrative Patent Judge)	

kwh/vsh

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SUGHRUE, MION, ZINN, MACPEAK & SEAS
2100 PENNSYLVANIA AVE., NW
WASHINGTON, DC 20037