

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN M. CULLEN

Appeal No. 1999-2348
Application No. 08/586,716

HEARD: August 14, 2001

Before RUGGIERO, LALL, and BLANKENSHIP, Administrative Patent Judges

LALL, 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 to 24, which constitute all of the claims in the application.

The disclosed invention is directed to a method and apparatus for operating, monitoring and controlling a communication system. In particular, the claimed invention provides a method and apparatus for measuring the traffic

Appeal No. 1999-2348
Application No. 08/586,716

properties of a communication system by controlling selected remote measuring devices which measure selective properties and instructing the selected measuring devices to selectively transmit the thus controllably selected data to a data processing element in a manner that reduces the signaling load on the communication system. The processor 5 is located in the base site controller 6 and is in communication with each of the measurement units 4a-4d (figure 1). The necessary signaling is carried over the bearer links 3a-3d, which also carry the telecommunication traffic for which the links have been set up. The process control unit 5 instructs the measurement units 4a-4d to make measurements of link performance, e.g. BER, C/I, received power level or bit rate. These units may collect data continuously, or may only do so in response to a signal from the process controller 5. The measurement units 4a-4d can be configured to make different measurements according to instructions received from the processing unit 5. Such changes may be made dynamically, e.g., depending upon prevailing conditions, for example, the type of signal, e.g., voice or data being carried by the bearer, or in response to prevailing conditions elsewhere in

Appeal No. 1999-2348
Application No. 08/586,716

the network, e.g., time or day of the week, etc. The parameter to be measured can also be selected

depending upon the type of signal carried by the bearer. A further understanding of the invention can be achieved by reading the following claim.

1. A communications system comprising:

a plurality of measuring means for measuring properties of the traffic carried by the communications system, and

a data processing element for controlling the measuring means and receiving data from the measuring means,

wherein the data processing element is arranged to selectively instruct the measuring means to transmit selected data to the data processing element.

The examiner relies upon the following references:

Tayloe et al. (Tayloe)	5,023,900	Jun. 11, 1991
Ono ¹	JP 57-61350	Apr. 13, 1982

¹ Our understanding of this reference is derived from an English translation of the Japanese patent prepared for the PTO. A copy of the translation accompanies this decision.

Appeal No. 1999-2348
Application No. 08/586,716

Zoffinger, et al. (Zoffinger), Telephone Engineer & Management, vol. 78, no. 1 (January 1, 1974).

Claims 1 to 24 stand rejected under 35 U.S.C § 103. For evidence of obviousness the examiner presents Tayloe and Ono with respect to claims 1, 2, 8, 10 to 13 and 19 to 24, and adds Zoffinger to Tayloe and Ono with respect to claims 3 to 7, 9 and 14 to 18.

Rather than repeat the arguments of appellant and the examiner, we make reference to the briefs² and the answer for the respective details thereof.

OPINION

We have considered the rejections advanced by the examiner and the supporting arguments. We have, likewise, reviewed the appellants' arguments set forth in the briefs.

We reverse.

In our analysis, we are guided by the general proposition that in an appeal involving a rejection under 35 U.S.C. § 103, an examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going

² A reply brief was filed as paper no. 15 and the examiner noted its entry without any further response, see paper no. 16.

Appeal No. 1999-2348
Application No. 08/586,716

forward then shifts to the applicant to overcome the prima facie case

with argument and/or evidence. Obviousness is then determined on

the basis of the evidence as a whole and the relative

persuasiveness of the arguments. See In re Oetiker, 977 F.2d

1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re

Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir.

1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788

(Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189

USPQ 143, 147 (CCPA 1976). We are further guided by the

precedent of our

reviewing court that the limitations from the disclosure are

not to be imported into the claims. In re Lundberg, 244 F.2d

543, 113 USPQ 530 (CCPA 1957); In re Queener, 796 F.2d 461,

230 USPQ 438 (Fed. Cir. 1986). We also note that the

arguments not made separately for any individual claim or

claims are considered waived. See 37 CFR § 1.192(a) and (c).

In re Baxter Travenol Labs., 952 F.2d 388, 391, 21 USPQ2d

1281, 1285 (Fed. Cir. 1991) ("It is not the function of this

court to examine the claims in greater detail than argued by

Appeal No. 1999-2348
Application No. 08/586,716

an appellant, looking for nonobviousness distinctions over the prior art."); In re Wiechert, 370 F.2d 927, 936, 152 USPQ 247, 254 (CCPA 1967)("This court has uniformly followed the sound rule that an issue raised below which is not argued in that court, even if it has been properly brought here by reason of appeal is regarded as abandoned and will not be considered. It is our function as a court to decide disputed issues, not to create them.").

ANALYSIS

We consider the two combinations of the prior art references suggested by the examiner, separately, below.

Taylor and Ono

The examiner rejects claims 1, 2, 8, 10 to 13 and 19 to 24

as being unpatentable over Taylor in view of Ono at pages 4 to 5 of the examiner's answer.

The examiner admits that Taylor fails to teach that the data processing means element selectively instructs the

Appeal No. 1999-2348
Application No. 08/586,716

measuring means to transmit selective data to the data processing means as claimed. However, the examiner asserts, id. at page 4, that: "Ono discloses that the data processing means element 1 selectively instructs . . . the measuring means 2(1)-2(2) to transmit selected data . . . to the data processing means." Appellant argues, reply brief at page 4, that: "Ono does not monitor the traffic of the system to assess signal quality. Instead, Ono is directed to monitoring the condition of the circuits and routes of the system, e.g., circuit faults, routes affected by the faults and the type of fault. There is no suggestion whatsoever in Ono of measuring signal quality of actual traffic being carried by these circuits."

We agree with the appellant's position.

Like the examiner, we note that Tayloe continuously monitors the subscriber calls and updates the graphical representations, thereby the system operator can actually observe the effect of system modifications in a pseudo real-time fashion. Column 2, lines 65-68. Tayloe does not selectively control the measurements made by the measurement elements. Ono on the other hand is directed to monitoring

Appeal No. 1999-2348
Application No. 08/586,716

continuously an electronic system, even if a failure occurs within the master monitor device, by using a set of slave monitor devices, and by installing a control section on each slave monitor device, which provides almost the same function as the control section of the master monitor device. Ono simply transfers and selectively activates some of the functions of the master control monitor device to the slave monitor devices 2₁ and 2₂, see figures 1 and 2 and the paragraph bridging pages 2 and 3 of the English translation. Thus, we agree with appellant that Ono does not cure the deficiency noted by the examiner in Tayloe in meeting the recited limitations of claim 1 and its corresponding method claim 13. Therefore, we do not sustain the obviousness rejection of claims 1, 2, 8, 10 to 13 and 19 to 24 over Tayloe and Ono.

Tayloe, Ono and Zoffinger

The examiner rejects claims 3 to 7, 9 and 14 to 18 at pages 6 to 7 of the examiner's answer over Tayloe, Ono and Zoffinger. However, since these claims each depend on claim 1 or 13, and contain their respective limitations, and Zoffinger does not

Appeal No. 1999-2348
Application No. 08/586,716

cure the deficiency noted above in regard to claims 1 and 13,
we cannot sustain the obviousness rejection of these claims
over Tayloe, Ono and Zoffinger.

In summary, we have not sustained the rejections of claims
1, 2, 8, 10 to 13 and 19 to 24 over Tayloe and Ono, and claims
3 to 7, 9 and 14 to 18 over Tayloe, Ono, and Zoffinger.

The decision of the examiner rejecting claims 1 to 24
under 35 U.S.C. § 103 is reversed.

REVERSED

JOSEPH F. RUGGIERO)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
PARSHOTAM S. LALL)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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HOWARD B. BLANKENSHIP)	
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Appeal No. 1999-2348
Application No. 08/586,716

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