

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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRUCE E. BRILEY

Appeal No. 2000-0406
Application No. 08/553,202

ON BRIEF

Before HAIRSTON, DIXON, and LEVY, **Administrative Patent Judges**.
DIXON, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 and 3-11, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to a TDM/TDMA wireless telecommunication system with an electronic scanning antenna. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A base station that is capable of communicating with a plurality of wireless terminals, said base station comprising;

an electronic scanning antenna for continuously rotating a beam that carries communication messages between said base station and said wireless terminals;

a transmitter operatively coupled to said electronic scanning antenna that is capable of transmitting said communication messages, via said electronic scanning antenna, to said wireless terminals in a time-division multiplexed data stream that is synchronized with the rotation of said beam; and

a receiver operatively coupled to said electronic scanning antenna that is capable of receiving said communication messages, via said electronic scanning antenna, from said wireless terminals in a time-division multiple access data stream that is substantially synchronized with the rotation of said beam.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Ahl et al. (Ahl)

5,448,753

Sep. 5, 1995

Claims 1 and 3-11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ahl.

Appeal No. 2000-0406
Application No. 08/553,202

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejection, we make reference to the examiner's answer (Paper No. 12, mailed Oct. 14, 1998) for the examiner's reasoning in support of the rejection, and to appellant's brief (Paper No. 11, filed Jul. 31, 1998) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art reference, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Appellant argues that Ahl does not teach or suggest the use of continuous rotation of the antenna as recited in the language of claim 1. (See brief at page 3.) Appellant further argues that skilled artisans would not have been motivated to modify the discrete sampling of Ahl to a continuously rotating beam. (See brief at page 3.) Appellant argues that Ahl teaches away from the present invention. (See brief at page 3.) We agree with appellant's that Ahl does teach away from the claimed invention since continually rotating the beam would have required higher power, produced more interference and variation in

signal strength, and Ahl expressly states that continual contact with stations was a drawback in the prior art.

We further note that Ahl mentions at col. 1, lines 30-32 that a drawback of the prior art methods for sharing resources is that the central station disposed in the center of the area must "be able continuously to reach the peripheral stations spread out in each cell area or sector (e.g. within 360E or 90E.; see FIGS. 1 and 2." Ahl further discloses that an object of the system is to minimize total power consumption and to minimize interference. In view of these teachings, we find that a skilled artisan would not have been as readily motivated to modify the teachings of Ahl to have a continuously rotating beam as the examiner contends at pages 3-4 of the answer. The examiner maintains that if interference and power consumption is not critical, then the skilled artisan would have been motivated to adapt Ahl to use a continuous beam. (See answer at pages 4 and 6.) The examiner provides no motivation for the conditional finding (id., page 6) that "if minimizing interference and power consumption is not critical" it would have been obvious to use a continuously rotating beam. We find that the examiner is relying upon speculation which is not supported by the teachings or suggestions within Ahl. Furthermore, the examiner has not provided any evidence or common knowledge in the relevant art to support the conclusion of obviousness. Therefore, we find that the examiner has not established a

Appeal No. 2000-0406
Application No. 08/553,202

prima facie case of obviousness of independent claims 1 and 11 and their dependent claims 3-10.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 and 3-11 under 35 U.S.C. § 103 is reversed.

Appeal No. 2000-0406
Application No. 08/553,202

REVERSED

KENNETH W. HAIRSTON
Administrative Patent Judge

JOSEPH L. DIXON
Administrative Patent Judge

STUART S. LEVY
Administrative Patent Judge

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Appeal No. 2000-0406
Application No. 08/553,202

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