

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT G. ZICKER and JOHN K. DION

Appeal No. 2000-2237
Application 08/723,712

ON BRIEF

Before KRASS, BARRETT, and GROSS, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 and 56-74, all of the pending claims.

The invention is directed to a multiple mode personal wireless communication system. In particular, the communication system includes a base station for communicating with a plurality of portable handsets. The portable handsets are dual-mode

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portable phones which can communicate in either a cellular mode of operation or a cordless mode of operation.

The invention uses only one transceiver per portable handset wherein that transceiver operates in accordance with two protocols, one protocol being a standard cellular protocol and the other being a cellular compatible protocol that permits dynamic channel allocation and occupancy. In contrast to conventional cellular protocols, a local base station does not continually broadcast an overhead data stream on a control channel, but rather, each handset engages in a cordless mode registration session by transmitting a reverse channel message initiated by the handset without receiving a corresponding forward channel message.

Independent claim 1 is reproduced as follows:

1. A multiple mode telecommunications system which uses communication facilities, said system comprising:

a portable handset with a single transceiver capable of operating in accordance with first and second wireless control protocols, said first protocol having a post-activation registration session initiated by said handset transmitting a reverse channel message without receiving a corresponding forward channel message, and said second protocol having a post-activation registration session initiated by said handset

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transmitting a reverse channel message after receiving a corresponding forward channel message stream;

a local base station including a transceiver capable of exchanging communications with said handset in accordance with said first control protocol when said handset is within a local range of said local base station; and

switching means coupled to said handset transceiver, for automatically setting said handset transceiver to engage in communications with a land station under said second control protocol when said handset is moved beyond range of said local base station.

The examiner relies on the following references:

Nagashima et al. (Nagashima)	4,879,740	Nov. 7, 1989
Schellinger et al. (Schellinger)	5,442,680	Aug. 15, 1995
Zicker et al. (Zicker)	5,046,082	Sep. 3, 1991
Lynn et al. (Lynn)	5,388,149	Feb. 7, 1995
Norman et al. (Norman)	5,485,505	Jan. 16, 1996
Ellis et al. (Ellis)	5,491,740	Feb. 13, 1996
Yamada et al. (Yamada)	5,504,803	Apr. 2, 1996
Blust et al. (Blust)	5,544,227	Aug. 6, 1996

Claims 1 and 56-74 stand rejected under 35 U.S.C. 103. As evidence of obviousness, the examiner offers Schellinger and Nagashima with regard to claims 1, 56, 59, 61-63, 67 and 68, adding Lynn with regard to claim 57, but adding Yamada with regard to claims 58 and 60, but adding Blust with regard to claims 64-66, but adding Zicker with regard to claims 69 and 70. The examiner cites Schellinger, Nagashima, Zicker and Norman with regard to claims 71-73 and Schellinger, Nagashima, Zicker and Ellis with regard to claim 74.

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

OPINION

Regarding independent claim 1, it is the examiner's position that Schellinger discloses the instant claimed subject matter but for the use of a first wireless protocol which transmits a reverse channel message without receiving a forward channel message, where the first wireless protocol is used in the local base station.

The examiner turns to Nagashima, citing column 5, lines 35-60, for a teaching of the deficiency of Shellinger and concludes that it would have been obvious "to include a first protocol for registration within a local base station, as taught by Nagashima, to the system of Schellinger, in order to prevent a duplicate registration within the wireless network" [answer-page 4].

For their part, appellants counter with the argument that Schellinger teaches a dual mode (cordless mode and cellular mode) handset that has a single transceiver and uses a single protocol

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for both modes of operation. Appellants also argue that Nagashima teaches a single mode (only a cordless mode) handset which has a single transceiver and uses a single control channel protocol. Accordingly, appellants contend that each of the applied references teaches the use of one transceiver for each protocol used and this cannot meet or suggest the claimed requirement of a "single transceiver...operating in accordance with first and second wireless control protocols."

While appellants also mention a U.S. Patent No. 4,989,230 to Gillig, and the examiner responds to this in the answer, where a reference is relied on to support a rejection, whether or not in a minor capacity, there would appear to be no excuse for not positively including the reference in the statement of the rejection. In re Hoch, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970). Gillig forms no part of the examiner's statement of the rejections and, accordingly, we have not considered this reference.

We agree with appellants. The instant claims clearly require "a single transceiver...operating in accordance with first and second wireless control protocols." However, neither

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of the applied references teaches or suggests a single transceiver operable in two control protocols. Schellinger discloses two modes of operation (cellular and cordless) but uses a single protocol for these modes. The examiner contends otherwise, referring to column 7, lines 60-65, of Schellinger to show that the two protocols are "similar" but that Schellinger does not require the "same" protocol. The examiner's reliance on this portion of Schellinger is misplaced. What is referred to as "similar" here is a signalling "message" from the cordless base station and "that transmitted in the conventional system" but there is no indication that protocols employed for the two different modes of operation in Schellinger are different and that such different protocols operate from the same single transceiver, as claimed.

The instant rejection is reversible for this reason alone. However, even the examiner's rationale for the combination is found wanting. The examiner contends that it would have been obvious to combine the references "in order to prevent a duplicate registration within the wireless network." However, we again agree with appellants that there would have been no reason to employ anything in Nagashima for the purpose of avoiding

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duplicate registration in Schellinger since Schellinger, employing a single protocol for both the cordless and cellular modes of operation, should have no problem with duplicate registration. Moreover, as indicated by appellants [reply brief-page 8], while the examiner argues that the Nagashima feature of transmitting a reverse channel message without receiving a forward channel message should be incorporated into Schellinger to avoid a double registration problem, this does not appear to be the feature that solves the problem of double registration in Nagashima. Rather, Nagashima solves the double registration problem by first receiving a forward channel message conveying an area identification code at the handset and then transmitting an acknowledgment which conveys the same area identification code.

Thus, again, there would appear to be no convincing rationale for making the combination of Schellinger and Nagashima and, even if made, the combination would not provide for the claimed subject matter wherein a single transceiver operates in accordance with first and second wireless control protocols.

Moreover, the last paragraph of claim 1 requires a switching means for "automatically" setting the handset transceiver to

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communicate with a land station under the second control protocol when the handset is moved beyond range of the local base station. Nagashima teaches a "manual" command [e.g., see the abstract portion of Nagashima]. Therefore, as argued by appellants [reply brief, page 11], to replace the automatic system selection of Schellinger with manual selection would appear to be contrary to the Schellinger teachings.

None of the additional references cited by the examiner against the dependent claims provides for the deficiencies of Nagashima and Schellinger noted supra.

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The examiner's decision is reversed as we find no prima facie case of obviousness established by the examiner.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
LEE E. BARRETT)	
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
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ANITA PELLMAN GROSS)	
Administrative Patent Judge)	

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