

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RUSSELL P. CASHMAN

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Appeal No. 2001-0905  
Application No. 09/163,412

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ON BRIEF

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Before JERRY SMITH, FLEMING, and GROSS, Administrative Patent Judges.

GROSS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 16 through 25, which are all of the claims pending in this application.

Appellant's invention relates to a method for communicating between a wireless subscriber station and both an analog cellular voice communication system and a Cellular Digital Packet Data (CDPD) communication system. Claim 16 is illustrative of the claimed invention, and it reads as follows:

Appeal No. 2001-0905  
Application No. 09/163,412

16. A method for communicating between a wireless subscriber station and both an analog cellular voice communication system and a Cellular Digital Packet Data (CDPD) communication system, said subscriber station being arranged to monitor both incoming analog cellular voice communications and incoming CDPD communications, said method of communication comprising the steps of:

(A) registering said subscriber station with an analog cellular voice communication system;

(B) registering said subscriber station with said CDPD system, wherein said registration with said CDPD system, comprises:

(1) synchronizing the timing of a first time interval between said subscriber station and said CDPD system, said first time interval defining when said subscriber station is expected to be on a CDPD channel;

(2) switching said subscriber station from said CDPD channel to an analog cellular voice control channel to monitor incoming analog cellular voice communications directed to said subscriber station; and

(3) switching said subscriber station back to said CDPD channel before the end of said first time interval.

No prior art reference of record has been relied upon by the examiner in rejecting the appealed claims. The examiner relies only upon the following application:

Application No. 09/107,025 to Cashman filed June 29, 1998

Claims 16 through 25 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting

Appeal No. 2001-0905  
Application No. 09/163,412

as being unpatentable over claims 16 through 23 and 25 through 34 of copending Application No. 09/107,025.

The examiner states on page 2 of the Answer that the rejection of claims 16 through 25 under the judicially created doctrine of double patenting over claims 1 through 16 of U.S. Patent No. 5,819,184 and the provisional rejection of claims 16 through 25 under the judicially created doctrine of double patenting over claims of copending Application Nos. 08/487,043, 08/766,223, 09/151,580, 09/163,410, or 09/107,025 have been withdrawn. Accordingly, these rejections are not before us.

Reference is made to the Examiner's Answer (Paper No. 14, mailed September 7, 2000) for the examiner's complete reasoning in support of the rejection, and to appellant's Brief (Paper No. 12, filed August 14, 2000) for appellant's arguments thereagainst.

#### OPINION

As a preliminary matter, we note that appellant indicates on page 4 of the Brief that "each of the independent claims stands or falls independently of any other independent claim," and the dependent claims stand or fall with the independent claims from which they depend. However, appellant argues independent claims

Appeal No. 2001-0905  
Application No. 09/163,412

16 and 17 together, referring to the same limitations for both claims. 37 C.F.R. § 1.192(c)(7) states:

For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable.

As appellant has failed to argue any claims separately, we will treat all of the claims as a single group with claim 16 as representative.

We have carefully considered the claims, the applied application, and the respective positions articulated by appellant and the examiner. As a consequence of our review, we will affirm the obviousness-type double patenting rejection of claims 16 through 25.

Appellant states (Brief, page 9) that "[e]ven a cursory analysis of the claims of this application vis-à-vis the claims of the application utilized in this rejection will show that the claims are patentably distinct." Appellant

Appeal No. 2001-0905  
Application No. 09/163,412

supports this conclusion (Brief, page 10) by quoting step (B) of claim 16, stating that independent claims 16 and 17 require such step and that Application No. 09/107,025 does not contain these limitations. Appellant then quotes steps

(A) and (B) of independent claim 16 of Application No. 09/107,025 and asserts that these limitations are not found in the claims under rejection. Appellant concludes (Brief, pages 12 and 13) that there is two way distinctness between the two applications.

Our careful comparison of claim 16 of the present application and claim 16 of Application No. 09/107,025 reveals that the two claims are word-for-word identical except for a portion of part (1) of step (B). Specifically, the portion in question in the present application reads "synchronizing a duration of a first time interval related to a first parameter (T204)" whereas the corresponding portion of Application No. 09/107,025 reads "synchronizing the timing of a first time interval" (underlining added to emphasize the actual language that differs). The words "duration" and "timing" mean the same thing, and a mere difference in linguistics, rather than substance, does not

Appeal No. 2001-0905  
Application No. 09/163,412

give rise to a different invention for purposes of double patenting. **See *In re White***, 405 F.2d 904, 906, 160 USPQ 417, 418 (CCPA 1969). As to the additional language of

"related to a first parameter (T204)" in Application No. 09/107,025, the phrase merely describes in slightly greater detail the same time interval referenced in both claims. If anything the present claim is broader by eliminating such language and would read upon claim 16 of Application No. 09/107,025. However, the steps and the time intervals referenced in both claims are the same, with or without the extra descriptive language in claim 16 of Application No. 09/107,025. Accordingly, we find no patentable distinction between the two claims, and certainly no two way distinctness as asserted by appellant. Therefore, we will sustain the obviousness-type double patenting rejection of claim 16, and of claims 17 through 25 grouped therewith, over the claims of Application No. 09/107,025.

CONCLUSION

Appeal No. 2001-0905  
Application No. 09/163,412

The decision of the examiner rejecting claims 16 through 25 under obviousness-type double patenting 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

JERRY SMITH	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
MICHAEL R. FLEMING	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
ANITA PELLMAN GROSS	)	
Administrative Patent Judge	)	

apg/vsh

Appeal No. 2001-0905  
Application No. 09/163,412

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