

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 HIDETOSHI SHIRAKAWA

Appeal No. 2002-0852
Application 09/466,322

ON BRIEF

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

FLEMING, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claim 1. Claim 2 has been canceled.

Invention

The invention relates to an elongated oval track-shaped loudspeaker. See page 2 of Appellant's specification. Referring to figures 1 and 2, a magnet 11 is disposed around a pole piece 10. The pole piece 10 forming the magnetic circuit together with

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Rejection at Issue

Claim 1 stands rejected under 35 U.S.C. § 103 as being unpatentable over Yoshida. Throughout the opinion, we will make reference to the briefs¹ and the answer.

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejection and the arguments of Appellant and the Examiner, for the reasons stated *infra*, we reverse the Examiner's rejection of claim 1 under 35 U.S.C. § 103.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir.

¹Appellant filed an appeal brief on August 28, 2001. Appellant filed a reply brief on February 19, 2002. The Examiner mailed a letter on March 26, 2002 stating that the reply brief has been entered.

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1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellant. **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. **See also Piasecki**, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." **In re Lee**, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

Appellant argues that Yoshida fails to teach or suggest a cross sectional area of the track-shaped pole piece is made to be equal to that of a circle of a diameter more than 1/3 of a minor axis side length of the loudspeaker so that no magnetic saturation will occur even with the magnet made larger and a magnetic efficiency can be elevated as recited in Appellant's claim 1. See pages 3 and 4 of the brief and pages 2 and 3 of the reply brief.

In the answer, the Examiner states:

The cross sectional area of the pole piece of the Reference is believed to be equal to that of a circle of a diameter

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more than 1/3 of the minor axis side length of the loudspeaker. The Reference Fig. 2 clearly shows that the cross sectional area of the pole piece is equal to that of a circle diameter more than 1/3 of the minor axis side length of the loudspeaker (the minor axis side length of the loudspeaker being the minor side length of the frame 2).

See page 5 of the Examiner's answer.

Upon our review of Yoshida, we find no basis for the Examiner's finding that Yoshida teaches a cross sectional area of the track-shaped pole piece is made equal to that of a circle of a diameter more than 1/3 of the minor axis side length of a loudspeaker. We appreciate the Examiner's speculation as to the dimensions shown in the drawings. However, the Federal Circuit has stated that "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." ***Hockerson-Halberstadt Inc., v. Avia Group Int'l Inc.***, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491

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(Fed. Cir. 2000). Therefore, we will not sustain the Examiner's rejection of Appellant's claim 1 under 35 U.S.C. § 103.

REVERSED

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