

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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***Ex parte*** SEPPO HAMALAINEN, OSCAR SALONAHO, NIINA LAAKSONEN  
and ANTTI LAPPETELAINEN

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Appeal No. 2002-1114  
Application No. 09/154,100

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ON BRIEF

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Before FLEMING, BARRY, and SAADAT, ***Administrative Patent Judges.***

FLEMING, ***Administrative Patent Judge.***

#### ***DECISION ON APPEAL***

This is a decision appeal from the final rejection of claims 1-3, 6 and 7. Claims 4 and 5 have been objected to for being dependent upon rejected claims, and claims 8-11 have been allowed.

#### ***Invention***

The invention relates to the allocation of channels in a base station in a cellular radio system. See page 1 of Appellants' specification. Figures 1a-1d are schematical illustrations of the cells in a simple cellular radio system. In Figures 1a-1d, it is assumed that the operator responsible for

the operation of the cellular radio system has three available channels, which are channels 1, 2 and 3. For all cells in the cellular radio system, there are defined certain channels that are divided into so-called priority groups. In Figures 1a-1c, the cellular radio system has three priority groups. See page 4 of Appellants' specification. In Figure 1a, because the load is slight throughout the network, each cell only uses the first priority group. In Figure 1b, it is assumed that the load in the middle cell 101 increases, in which case this cell uses the first priority group and also the second priority group. As the load further increases, Figure 1c shows cell 101 using the third priority group as well as the first and second priority groups. See page 5 of Appellants' specification.

Independent claims 1 and 7 are representative of the claimed invention and are reproduced as follows:

1. A method for controlling the use of channels in first and second proximately disposed base stations of a cellular radio system, which base stations are in radio communication with the mobile stations of the cellular radio system by using mutually essentially orthogonal channels, said method comprising the steps of:

dividing said channels into groups, each group having a priority that is different from the priorities of the other groups,

said first base station having a selected channel group with a highest priority,

Appeal No. 2002-1114  
Application No. 09/154,100

said second base station having a selected channel group with a highest priority,

said selected channel groups not being the same in said first and second base stations,

under a first set of operational conditions, using in a certain base station the channels belonging to the group with the highest priority, and

under a second set of operational conditions, using in said certain base station the channels belonging to the groups with lower priority.

7. A cellular radio system that comprises:

a plurality of base stations;

at least in first and second proximately disposed base stations means for recording the information of the cellular radio system channels as divided into priority groups, each priority group having a priority that is different from the priorities of the other groups;

said first base station having a selected channel group with a highest priority;

said second base station having a selected channel group with a highest priority;

said selected channel groups not being the same in said first and second base stations; and

said first and second base stations including: means for selectively putting to use channels from one priority group under a first set of operational conditions and channels from another priority group under a second set of operational conditions.

### **References**

The references relied on by the Examiner are as follows:

Nagashima

5,349,632

Sep. 20, 1994

Appeal No. 2002-1114  
Application No. 09/154,100

Takebe et al. (Takebe)	5,768,345	Jun. 16, 1998
Fukasawa et al. (Fukasawa)	5,920,591	Jul. 6, 1999 (filed Jul. 15, 1996)

**Rejections at Issue**

Claim 7 stands rejected under 35 U.S.C. § 102 as being anticipated by Nagashima.

Claims 1 and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Nagashima in view of Fukasawa.

Claims 2 and 3 stand rejected under 35 U.S.C. § 103 as being unpatentable over Nagashima, Fukasawa and further in view of Takebe.

Throughout the opinion, we make reference to the briefs<sup>1</sup> and the answer for the respective details thereof.

**OPINION**

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of Appellants and the Examiner, for the reasons stated *infra*, we will sustain the Examiner's rejection of claim 7 under 35 U.S.C. § 102 and we

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<sup>1</sup> Appellants filed an appeal brief on September 13, 2001. Appellants filed a reply brief on February 19, 2002. The Examiner mailed out an Office communication on March 12, 2002 stating that the reply brief has been entered.

Appeal No. 2002-1114  
Application No. 09/154,100

will not sustain the Examiner's rejection of claims 1-3 and 6 under 35 U.S.C. § 103.

***Rejection under 35 U.S.C. § 102***

Anticipation is established only when a single prior art reference discloses, expressly or under principle of inherency, each and every element of a claimed invention." ***RCA Corp. v. Applied Digital Data Sys., Inc.***, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984), ***citing Kalman v. Kimberly-Clark Corp.***, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983).

Appellants argue that Nagashima does not show a cellular radio system or the operation of the channel groups as recited in claim 7. See page 10 of Appellants' brief.

As pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." ***In re Hiniker Co.***, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Claims will be given their broadest reasonable interpretation consistent with the specification, and limitations appearing in the specification are not be read into the claims. ***In re Etter***, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985).

Appeal No. 2002-1114  
Application No. 09/154,100

We note that Appellants claim 1 recites a "cellular radio system that comprises: a plurality of base stations."

Furthermore, we note that Appellants have not provided a special definition within the specification for cellular radio systems.

We appreciate that Nagashima teaches a cellular radio system for covering areas which are divided into relatively small zones or microcells. See Nagashima, column 1, lines 1-10. We further appreciate that this system is not a cellular radio system based upon CDMA, Code Division Multiple Access. However, we fail to find that Appellants' claim 7 limits the claim to such a system. Therefore, we fail to find that the Examiner erred in reading Appellants' claim 7 on the Nagashima cellular radio system for covering areas which are divided into relatively small zones or microcells. Thus, we find that Appellants' claim 7 language is broad enough to not only include cellular radio systems that are base upon CDMA but also the Nagashima radio system.

Appellants further argue that Nagashima does not show the operation of the channel groups as recited in claim 7. However, the Examiner has pointed out that Nagashima does teach all the limitations recited in claim 7. See the final rejection and the Examiner's answer. We fail to find that the Appellants have made an argument as to why these teaching do not read on Appellants'

Appeal No. 2002-1114  
Application No. 09/154,100

claim 7 limitations. Furthermore, unlike claim 1, we fail to find a limitation recited in claim 7 that requires a base station to use channels for more than one group.

Appellants have chosen not to argue any of the specific limitations of the claims as a basis for patentability. We are not required to raise and/or consider such issues. 37 CFR § 1.192(a) as amended at 58 CFR 54510 Oct. 22, 1993, which was controlling at the time of Appellants' filing the brief, states as follows:

The brief . . . must set forth the authorities and arguments on which the appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief may be refused consideration by the Board of Patent Appeals and Interferences.

Thus, 37 CFR § 1.192 provides that only the arguments made by Appellants in the brief will be considered and that failure to make an argument constitutes a waiver on that particular point. Support for this rule has been demonstrated by our reviewing court in *In re Berger*, 279 F.3d 975, 984, 61 USPQ2d 1523, 1258-29 (Fed. Cir. 2002), wherein the Federal Circuit Court stated that because the Appellant did not contest the merits of the rejections in his brief to the Federal Circuit Court, the issue is waived. Also, see *In re Watts*, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

Appeal No. 2002-1114  
Application No. 09/154,100

**Rejections under 35 U.S.C. § 103**

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing **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. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. **See also Piasecki**, 745 F.2d at 1472, 223 USPQ at 788.

For claims 1-3 and 6, Appellants argue that none of the references teaches a method that would allow a base station to use channels for more than one channel group. See page 8 of the brief and page 2-3 of the reply brief.

We note that Appellants' claim 1 does require the use of channels from more than one channel group. In particular, Appellants' claim 1 recites "under a second set of operational

Appeal No. 2002-1114  
Application No. 09/154,100

conditions, using in said certain base station the channels belonging to the **groups** with lower priority" emphasis added.

We note that the Examiner has not come to grips with this limitation. See pages 3 and 4 of the Examiner's answer in which the Examiner has not specifically addressed this limitation. The Examiner does address the argument on page 10 of the Examiner's answer stating that Nagashima teaches that the channel assignments are dynamic and thus theoretically channels may be assigned and used from one channel group thus requiring dynamic allocation channels of other groups.

However, in our review of Nagashima, we fail to find support for the Examiner's above finding. We agree that Nagashima teaches a group priority file 32 which indicates group numbers and their priority values which are updated dynamically in a statistical process. See Nagashima, column 3, lines 59-64. Nagashima teaches the priority update routine and polling routine with references to Figure 6 and 7 in column 4, line 10-column 5, line 60. However, we find that Nagashima does not teach a method which allows a base station to use channels from more than one channel group. Therefore, we fail to find that Nagashima teaches "under a second set of operational conditions, using in said certain base station the channels belonging to the **groups** with

Appeal No. 2002-1114  
Application No. 09/154,100

lower priority." Furthermore, we fail to find that Fukasawa or Takebe teaches this limitation as well.

In view of the foregoing, we have sustained the Examiner's rejection of claim 7 under 35 U.S.C. § 102 and we have not sustained Examiner's rejection of claims 1-3 and 6 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

***AFFIRMED-IN-PART***

MICHAEL R. FLEMING	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
LANCE LEONARD BARRY	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
MAHSHID D. SAADAT	)	
Administrative Patent Judge	)	

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Appeal No. 2002-1114  
Application No. 09/154,100

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