

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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT HENRY LEONOWICH,
AYAL SHOVAL, and MATTHEW TOTA

Appeal No. 2002-1217
Application No. 09/006,808

ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-13,
which are all of the claims pending in this application.

We AFFIRM-IN-PART.

BACKGROUND

Appellants' invention relates to low power signal detection for an autonegotiation system. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. An integrated circuit comprising a multiple data-rate receiver comprising a first receiver section adapted to receive at a relatively low data rate and a second receiver section adapted to receive at a relatively high data rate,

characterized by a first comparator for detecting a relatively low data rate signal and a second comparator for detecting a relatively high data rate signal, and logic circuitry for activating said first receiver section when said first comparator detects said relatively low data rate signal and for activating said second receiver section when said second comparator detects said relatively high data rate signal.

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

Appellants' Admitted Prior Art (AAPA) at page 1-3 of the specification and Figures 1-3.

Claims 1-13 stand rejected under 35 U.S.C. § 102 as being anticipated by AAPA.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 15, mailed Jun. 4, 2001) for the examiner's reasoning in support of the rejections, and to appellants' brief (Paper No. 14, filed Apr. 2, 2001) for appellants' arguments there against.

OPINION

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

Appellants have indicated various groupings at page 3 of the brief. Therefore, we will address appellants' arguments with respect to these groupings. Appellants argue that the examiner's interpretation of the AAPA shows a disable signal coming from a detection circuit is incorrect. (See brief at pages 3-4.) The examiner maintains that if the AAPA sends a disable signal, then it is an "inherent function of the detector to generate an enable signal when one of the receivers [sic] is disabled." We disagree with the examiner's conclusion.

Appellants maintain that the AAPA does not disclose logic circuitry that activates a first receiver when a first comparator detects a relatively low data rate and similar activation of a second receiver when a high data rate is detected. (See brief at page 3.) Appellants maintain that the prior art as depicted in figures 1-3 and corresponding discussion in the specification disclose that both receivers are already activated in the AAPA and the prior art teaches to then "disable" one of the two active receivers with a disable signal rather than to detect the data rate and then "enable" one of the two receivers which are not active. We agree with appellants. 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). Therefore, we look to the limitations set forth in independent claim 1.

Independent claim 1 clearly recites "logic circuitry for activating said first receiver section when said first comparator detects said relatively low data rate signal and for activating said second receiver section when said second comparator detects said relatively high data rate signal." [Emphasis added.] From our understanding of the verb "activate," some device must not be active or functioning at the time just prior to the time that it is "activated." Therefore, appellants have an implied basis for the argument that the prior art receivers are both active and one is disabled in the prior art rather than starting with two receivers that are not active and enable one of them in response to the detection of a high or low data rate. (See brief at page 4.)

The examiner merely maintains that there is no support for the argument that the receivers are initially disabled. (See answer at page 5.) Additionally, the examiner relies upon the language "asserting or de-asserting the FLP signal" and the asserted signal causes the generation of a disable signal. The examiner maintains that the other signal from the other OR gate (108 or 109) would be an enable signal. (See answer at page 5-6.) We cannot accept this rationale since the receiver is already active and would already be enabled/activated to process the input signal. Therefore, we find that the examiner has not shown that the AAPA teaches every element as recited in independent claim 1, and we will not sustain the rejection of claim 1 and its dependent claims 2-6.

With respect to independent claim 7, the examiner and appellants set forth the same rationales. Since claim 7 contains similar limitations as independent claim 1 which are not taught by the AAPA, we will not sustain the rejection of claim 7 and its dependent claims 8-10.

With respect to independent claim 11, the examiner and appellants set forth similar rationales, but the claim language does not recite activation of the receiver. Appellants argue that independent claim 11 includes an additional limitation of “detection circuitry . . .” (See brief at pages 6-7.) Appellants argue that “it is possible for the detection circuitry to activate one of the receiver sections. In this way, the appropriate receiver section is activated to process the data signal.” (See brief at page 7.) We find no support in the language of independent claim 11 for this argument since no activation is recited. Therefore, this argument is not persuasive. Since claim 11 does not contain the same limitation we found lacking above, and appellants have not shown error in the examiner’s rejection, we will sustain the rejection of independent claim 11.

With respect to dependent claim 12, the examiner and appellants set forth the same rationales. Since claim 12 contains similar limitations as independent claim 1 with respect to the activation of the receiver which are not taught by the AAPA, we will not sustain the rejection of claim 12.

With respect to independent claim 13, the examiner and appellants set forth the same rationales. Since claim 13 contains similar limitations as independent claim 1 which are not taught by the AAPA, we will not sustain the rejection of claim 13.

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CONCLUSION

To summarize, the decision of the examiner to reject claims 1-10, 12 and 13 under 35 U.S.C. § 102 is reversed, and the decision of the examiner to reject claim 11 under 35 U.S.C. § 102 is affirmed.

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

JAMES D. THOMAS)	
Administrative Patent Judge)	
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JOSEPH L. DIXON)	
Administrative Patent Judge)	

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