

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LARRY DEWAYNE LEWIS and JERRY LOUIS MEZELL

Appeal No. 2002-1326
Application 09/152,759

ON BRIEF

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

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-18, which constitute all the claims in the application. An amendment after final rejection was filed on March 12, 2001 and was entered by the examiner.

The disclosed invention pertains to a method and apparatus for the simultaneous transmission of voice and non-voice data over a single dedicated radio frequency channel to a mobile unit in a wireless communications network. A particular feature of the invention is that the primary transmission bandwidth of the mobile unit is automatically broadened so that voice and non-voice data can be processed as a single transmitted unit over the dedicated frequency channel.

Representative claim 1 is reproduced as follows:

1. A method in a wireless communications network for the simultaneous transmission of voice and non-voice data over a single dedicated radio frequency channel to a mobile unit having a primary transmission bandwidth, said method comprising the steps of:

transmitting voice data to a mobile unit via a primary time interval within a single dedicated radio frequency channel;

identifying an unoccupied adjacent secondary time interval available to said mobile unit;

transmitting non-voice data to said mobile unit via said adjacent secondary time interval, in response to identifying said adjacent secondary time interval;

automatically broadening said primary transmission bandwidth of said mobile unit to encompass both said primary time interval and said adjacent secondary time interval in response to said transmission of non-voice data to said mobile unit via said adjacent secondary time interval; and

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linking said primary time interval and said adjacent secondary time interval within said single dedicated radio frequency channel to permit the sequent processing of said voice and non-voice data as a single transmitted unit over said single dedicated radio frequency channel.

The examiner relies on the following references:

Merakos et al. (Merakos)	5,521,925	May 28, 1996
Dent et al. (Dent)	5,896,375	Apr. 20, 1999
		(filed July 23, 1996)

Claims 1-18 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness the examiner offers Merakos in view of Dent.

Rather than repeat the arguments of appellants or the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

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It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-18. Accordingly, we reverse.

Appellants have indicated that for purposes of this appeal the claims will all stand or fall together as a single group [brief, page 4]. Consistent with this indication appellants have made no separate arguments with respect to any of the claims on appeal. Accordingly, all the claims before us will stand or fall together. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Therefore, we will consider the rejection against independent claim 1 as representative of all the claims on appeal.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one

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having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments

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actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered and are deemed to be waived by appellants [see 37 CFR § 1.192(a)].

With respect to representative, independent claim 1, the examiner essentially finds that Merakos teaches the claimed invention except that Merakos does not specifically teach simultaneous voice and non-voice transmission on the same channel to the same mobile unit. The examiner cites Dent as teaching the simultaneous transmission of voice data and digital data to a mobile unit. The examiner finds that it would have been obvious to the artisan to apply the simultaneous voice/data communication in Dent to the system of Merakos [answer, pages 3-5].

Appellants make several arguments which all relate to their fundamental position that the applied prior art fails to teach the automatic broadening of a primary transmission band for a mobile unit to encompass both a primary time interval and an adjacent secondary time interval so that voice and non-voice data may be processed as a single transmitted unit over a single dedicated radio frequency channel [brief, pages 5-8].

The examiner responds that the combination of Dent and Merakos clearly teaches the simultaneous transmission of voice and non-voice data over a single dedicated radio frequency channel in a manner that permits the voice and data to be processed as a single transmitted unit as claimed and cites to portions of Dent and Merakos for support [answer, pages 8-9].

Although we agree with the examiner that the combination of Dent and Merakos teaches the transmission of both voice and data to a mobile unit in a wireless communications network, we do not agree with the examiner's position that the applied prior art teaches the broadening and linking steps of claim 1. Specifically, we are unable to find support in the applied prior art for the concept of broadening the primary bandwidth to include a primary time interval and an adjacent secondary time interval so that the data can be processed as a single transmitted unit. We have carefully reviewed the teachings of Merakos and Dent, but we are unable to find support for the findings and conclusions reached by the examiner. While the applied prior art can support the concept of sending voice and data signals to a mobile unit, the prior art does not teach or suggest using adjacent time intervals in a manner that permits the voice and non-voice data to be processed as a single

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transmitted unit. The examiner simply asserts that the applied prior art teaches the claimed invention, but the examiner's findings appear to be nothing more than mere speculation and conjecture.

Since we cannot find support in the applied prior art for the examiner's rejection, we do not sustain the rejection based on this record. Therefore, the decision of the examiner rejecting claims 1-18 is reversed.

REVERSED

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