

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. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** HONG SHI

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Appeal No. 2002-1511  
Application No. 09/026,936

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ON BRIEF

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Before KRASS, DIXON, and BLANKENSHIP, **Administrative Patent Judges**.  
DIXON, **Administrative Patent Judge**.

**DECISION ON APPEAL**

This is a decision on appeal from the examiner's final rejection of claims 1-16 and 24-30, which are all of the claims pending in this application. Claims 17-23 have been canceled.

We REVERSE.

Appeal No. 2002-1511  
Application No. 09/026,936

Appellant's invention relates to a multi-channel communication system for wireless local loop communication. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A method of conducting radio communication in a wireless local loop communication system including a plurality of fixed access units in radio communication with an array of radio fixed parts, comprising the steps of:

utilizing a plurality of radio channels divided into a predetermined number of synchronized time slots;

conducting radio communication between an activated fixed access unit and an activated radio fixed part during a chosen time slot on an assigned radio channel; and

denying radio communication on said assigned radio channel during said chosen time slot in a controlled number of radio fixed parts surrounding said activated radio fixed parts.

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

Barratt et al. (Barratt)	5,592,490	Jan. 7, 1997
Przelomiec et al. (Przelomiec)	5,915,212	Jun. 22, 1999

Claims 1-5, 8-13<sup>1</sup>, 16, and 24-30 stand rejected under 35 U.S.C. § 102 as being anticipated by Barratt. Claims 6, 7, 14, and 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Barratt in view of Przelomiec.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 16, mailed Apr. 10, 2001) for the examiner's reasoning in support of the rejections, and to appellant's brief<sup>2</sup> (Paper No. 12, filed Aug. 14, 2000), appellant's supplemental brief (Paper No. 15, filed Feb. 7, 2001) and reply brief (Paper No. 17, filed Jun. 6, 2001 ) for appellant's arguments thereagainst.

### **OPINION**

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

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<sup>1</sup> We note that the examiner made a rejection under 35 USC § 112, second paragraph in the most recent non final rejection (Paper No. 13, mailed Nov. 3, 2000), but only inferentially mentions the rejection at page 5 of the answer. While we do note that there appears to be a formal problem with the structural limitation and a lack of antecedent basis, the examiner has not set forth a rejection in the answer for our review. Therefore, we leave it to the examiner to consider this issue when the application is returned to the examiner.

<sup>2</sup> We note that the examiner reopened prosecution and modified the rejection to be over Barratt rather than the Dent reference. Appellant reinstated the appeal after the new rejection. We note that the supplemental brief does not meet all of the requirements of 37 CFR § 1.192, but we will consider the combination of briefs as meeting the requirements. Therefore, we refer to the supplemental brief for the arguments and only refer to the brief for the formal requirements.

**35 U.S.C. § 102**

Appellant argues that Barratt has been misinterpreted by the examiner and that Barratt does not teach or suggest the limitation “denying radio communication on said assigned radio channel during said chosen time slot in a controlled number of radio fixed parts surrounding said activated radio fixed parts.” Appellants argue that Barratt teaches which terminals can communicate using a particular channel without interference. (See supplemental brief at page 2.) The examiner maintains that Barratt teaches the above denying limitation at page 3 of the answer and cites to 8 portions of Barratt. We have reviewed those specific teachings of Barratt and do not find that Barratt teaches “denying radio communication on said assigned radio channel during said chosen time slot in a controlled number of radio fixed parts surrounding said activated radio fixed parts” as recited in independent claim 1. We agree with appellant that Barratt does not deny radio communication on an assigned radio channel, but determines channel assignment. The examiner maintains that

[s]uch a channel assignment [each subscriber is communication with their respective antenna element on the same channel and time slot as the other subscribers] can be done if the system so desires to allocate the channels in that manner. Therefore the Barratt system can assign different subscribers (A-M) the same channel and time slot, but communication with different antenna elements (A-M) . . . the system must deny subscriber (A) access to that channel and time slot in the other antenna elements (B-M).

To the extent that the rejection may be based on the principles of inherency, we note that our reviewing court has set out clear standards for a showing of inherency, which

have not been attained in the instant case. To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." **In re Robertson**, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted). We are not persuaded by the examiner that Barratt necessarily must deny access. We are persuaded by appellant that the Section 102 rejection of each independent claim on appeal is in error. We thus do not sustain the rejection of independent claims 1, 8, and 24 under 35 U.S.C. § 102 as anticipated by Barratt.

### **35 U.S.C. § 103**

"Deficiencies of the cited references cannot be remedied by the Board's general conclusions about what is 'basic knowledge' or 'common sense.'" **In re Zurko**, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Furthermore, "the Board's findings must extend to all material facts and must be documented on the record, lest the 'haze of so-called expertise' acquire insulation from accountability." **In re Lee**, 277 F.3d 1338, 1345, 61 USPQ2d 1430, 1435 (Fed. Cir. 2002). Here, we find the Examiner's arguments to be supported merely by the Examiner's own expertise instead of the evidence of record and the teachings of prior art which are required in order to establish a **prima facie** case of obviousness. Appellant relies on the lack of a teaching



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