

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BILL YANG

Appeal No. 2002-1980
Application 09/264,769

ON BRIEF

Before THOMAS, RUGGIERO and DIXON, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellant has appealed to the Board from the examiner's final rejection of claims 1-40.

Representative claim 1 is reproduced below:

1. A communication system for a mobile or a cellular telephone to be installed inside a car, comprising:

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a microphone connected by a wire to the mobile or cellular telephone for receiving a first voice signal from a user and then transmitting the first voice signal to the mobile or cellular telephone;

a transmitter connected to the mobile or cellular telephone for receiving a second voice signal from the telephone and then converting the second voice signal into a wireless signal so that the wireless signal is broadcast by the transmitter, wherein the transmitter can be an (sic, a) separated unit or a built-in unit in the mobile or cellular telephone; and

a receiver earphone for picking up the wireless signal from the transmitter and then converting the wireless signal into a third voice signal for hearing by the user, wherein the transmitter and the receiver earphone are coupled in a wireless manner, and the receiver earphone forms a stand-alone unit that is not connected to the microphone.

The following references are relied on by the examiner:

Ham	5,552,708	Sep. 3, 1996
Rydbeck	5,590,417	Dec. 31, 1996
Barkat et al. (Barkat)	5,805,672	Sep. 8, 1998
Core et al. (Core)	5,826,187	Oct. 20, 1998

All claims on appeal, claims 1-40, stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Rydbeck in view of Ham as to claims 1, 4, 5, 8-11, 13, 22-33 and 35-40 in the first stated rejection, with the addition of Barkat as to claims 2, 3, 6 and 7. The remaining claims on appeal, claims 12, 14-21 and 34 are considered obvious by the examiner in light of Rydbeck in view of Ham, further in view of Core.

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Rather than repeat the positions of the appellant and the examiner, reference is made to the brief and answer for the respective details thereof.

OPINION

Of the claims on appeal, we sustain only the rejection of independent claim 40 and reverse the rejection of claims 1-39.

The first stated rejection includes each of the independent claims on appeal, claims 1, 13, 22, 30, 37 and 40. We reverse the rejection of all of these claims except claim 40 for essentially two reasons.

Our study of Ham leads us to conclude that this reference is nonanalogous art as argued by appellant at pages 7, 10, 12, 14, 15 and 16 in the brief.

The test to determine whether the prior art is analogous is: "(1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved." In re Clay, 966 F.2d 656,

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658-59, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992) (citing In re Deminiski, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). Note also the common sense analysis in In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992) as to what fields of endeavor an artisan would reasonably be expected to look for a solution to the problems facing the appellant.

Ham is clearly not in the same field of endeavor as the telephone environment set forth in the claims on appeal. Additionally, we do not consider Ham to be reasonably pertinent to the particular problems addressed by the claimed invention since Ham's magnetic resonance imaging apparatus and its gradient noise suppression approach is not in a field of endeavor that the artisan would reasonably be expected to look at for solutions to the problems facing appellant. That Ham teaches a wireless headset in and of itself is not sufficient in our view for the artisan to have considered such as analogous art in the telephone field of invention.

Since we consider Ham to be nonanalogous art, the rejection of the independent claims in the first stated rejection is sustainable only as to independent claim 40. Each of independent

claims 1, 13, 22, 30 and 37 in some manner recite that the receiver earphone forms a stand-alone unit that is "not connected to the microphone [or transmitter]." This negative limitation feature is in each of the claims 1-39. Rydbeck's Figure 1, for example, shows a prior art approach where the earphone and microphone are connected together and both are connected by a wire connection to the radio telephone shown. According to the more system-oriented diagrams in Rydbeck's Figures 2, 3, and 6, there is no embodiment where the receiver earphone/speaker 140 is not connected to the microphone 150. Additionally, in all embodiments in Rydbeck, the receiver earphone/speaker 140 and the microphone are connected together in a common stand-alone unit. The same may be said of the various transceivers in Figures 4a and 4b. Therefore, even considering the teaching value of Rydbeck alone within 35 U.S.C. § 103, the subject matter of claims 1-39 would not have been obvious to the artisan within 35 U.S.C. § 103.

In contrast, we do sustain the rejection of independent method claim 40. This claim does not recite the above-noted negative limitation at the end of this claim as does each of the other independent claims on appeal. When the headset 110

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is connected in Figures 2a and 2b to the telephone 100 in Rydbeck, the microphone is clearly connected by a wire to the telephone in the manner claimed. The methodology of this connection is through the contacts 134 in Figure 2c, which is further detailed in the various portions of Figure 3. Figures 4a and 4b provide teachings of a wireless connected headset 110 functioning as a receiver earphone as claimed and which performs its receiver function by the use of the transceiver 207 in Figure 4b or the FM receiver 210 in Figure 4a. The "comprising" language at the end of the preamble of claim 40 does not exclude an embodiment of use where the headset 110 is detached from the telephone 110 and the embodiment of the headset 110 is attached to the body of the telephone 100 as in Figure 2a.

In summary, we have reversed the rejections of claims 1-39, but have sustained the rejection of claim 40 under 35 U.S.C. § 103. Therefore, the decision of the examiner is affirmed-in-part.

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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

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