The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ETIENNE FERT and DANIEL KAISER

Appeal No. 2002-2041
Application No. 09/764,658

ON BRIEF

Before HAIRSTON, KRASS and GROSS, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-5, 8 and 9.

The invention is directed to a variable bitrate video coding method, best illustrated by reference to representative independent claim 1, reproduced as follows:

1. A variable bitrate video coding method comprising the steps of a first analysis step, for coding a bitstream corresponding to a picture sequence with a constant quantization

stepsize, a second prediction step, for predicting the quantization stepsize which is used to code said bitstream according to a predetermined target bit rate, and a final control step, for adjusting the stepsize with respect to said target bit rate, said method including between the analysis and prediction steps of one iteration, a picture re-arrangement step for rearranging an order of the picture sequence.

The examiner relies on the following reference:

Legall	5,878,166	Mar. 2, 1999

Claims 1-5, 8 and 9 stand rejected under 35 U.S.C. § 102(e) as anticipated by Legall.

Reference is made to the brief and answer for the respective positions of appellants and the examiner.

OPINION

An anticipatory reference is one which describes all of the elements of the claimed invention so as to have placed a person of ordinary skill in the art in possession thereof. In re Spada, 911 F.2d 205, 15 USPQ2d 1655 (Fed. Cir. 1990).

We will not sustain the rejection of claims 1-5, 8 and 9 because, in our view, the examiner has failed to identify, in Legall, each and every claimed element.

Both independent claims 1 and 9 recite a picture re-arrangement step or operation for rearranging an order of the

picture sequence. The examiner points to Legall's teaching of the starting of a new group of pictures (GOP), e.g., at column 11, lines 15 et seq., as an indication that a picture rearrangement has taken place.

However, even if the start of a new GOP may be considered as a rearrangement of the order of a picture sequence, the instant claims do not require this rearrangement in a vacuum. Rather, the picture rearrangement step or operation must take place "between the analysis and prediction steps of one iteration" (claim 1) or "between the coding operation and the prediction operation" (claim 9).

The examiner points us to Figure 8 of Legall, wherein step 200 is said to correspond to the claimed "analysis" step, steps 202-212 are said to correspond to the claimed "prediction step" and step 214 is said to correspond to the claimed "final control step." The examiner's analysis is erroneous in only one aspect. That is, there is no picture rearrangement step shown or disclosed by Legall between the analysis and prediction steps. As depicted in instant Figure 4, while the analysis, prediction and final pass steps may be conventional, appellants' contribution is to include the picture rearrangement step 42, comprised of various substeps, between the analysis and

prediction steps. This picture rearrangement step goes to the heart of the instant invention, it is not disclosed in Legall and the examiner's attempt to correlate Legall's start of a new GOP with such a step is unpersuasive.

Accordingly, the examiner's decision is reversed.

REVERSED

KENNETH W. HAIRSTON Administrative Patent Judge	)	
ERROL A. KRASS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
ANITA PELLMAN GROSS Administrative Patent Judge	)	

EK/RWK

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