

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte CHRISTOPHER L. McCRANK and JAVIER V. MAGANA

Appeal No. 2003-0495
Application No. 09/256,543

ON BRIEF

Before KRASS, BARRY, and SAADAT, *Administrative Patent Judges*.
BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

A patent examiner rejected claims 1-20. The appellants appeal therefrom under 35 U.S.C. § 134(a). We affirm-in-part.

BACKGROUND

The invention at issue on appeal identifies a synchronization signal for a cordless telephone. A cordless telephone typically includes a base and a handset. Coupled to a telephone line and a power line, the base includes an antenna, a transmitter, and a receiver for communicating via radio frequencies with the handset. Powered by at least one battery, the handset includes its own antenna, transmitter and receiver for

communicating with the base. When the handset is placed in a cradle of the base, the battery is charged. (Spec. at 2.) When the handset is removed from the base, a user can roam about while making or receiving calls if he stays within range of the base.

During a standby mode, the handset periodically powers-up and scans channels for incoming calls. According to the appellants, heretofore, scanning for incoming calls has been accomplished by stepping through a sequence of channels, determining the presence or absence of a known synchronization signal at each channel. The appellants opine that sequentially scanning individual channels for the synchronization signal "may sometimes prove to be inefficient, resulting in more power consumption from the battery while the handset . . . is in the standby mode." (*Id.* at 3.)

In contrast, the appellants' handset sequentially steps through subsets of a plurality of channels, wherein each subset includes more than one channel. Figure 4A of their specification, for example, shows a subset comprising three channels. The handset "substantially simultaneously" searches each subset for a synchronization signal. The Figure, for example, shows a synchronization signal in the middle channel. (Appeal Br., § V.¹)

¹The appellants should number the pages of their briefs to facilitate citing thereto.

A further understanding of the invention can be achieved by reading the following claim.

1. A method for detecting a synchronization signal within a plurality of channels, comprising:

selecting a subset of the plurality of channels, wherein the subset includes more than one channel;

determining substantially simultaneously if the synchronization signal exists on at least one of the subset of channels; and

initiating communications in response to determining that the synchronization signal exists on at least one of the subset of channels.

Claims 1-20 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,052,407 ("Ciccone").

OPINION

Our opinion addresses the claims in the following order:

- claims 1-7
- claims 8-20.

A. CLAIMS 1-7

"[T]o assure separate review by the Board of individual claims within each group of claims subject to a common ground of rejection, an appellant's brief to the Board must contain a clear statement for each rejection: (a) asserting that the patentability of claims within the group of claims subject to this rejection do not stand or fall together,

and (b) identifying which individual claim or claims within the group are separately patentable and the reasons why the examiner's rejection should not be sustained." *In re McDaniel*, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002) (citing 37 C.F.R. §1.192(c)(7) (2001)). "If the brief fails to meet either requirement, the Board is free to select a single claim from each group of claims subject to a common ground of rejection as representative of all claims in that group and to decide the appeal of that rejection based solely on the selected representative claim." *Id.*, 63 USPQ2d at 1465.

Here, the appellants group claims 1-7 together. (Appeal Br., § VII.) We select claim 1 from the group as representative of the claims therein. With this representation in mind, rather than reiterate the positions of the examiner or the appellants *in toto*, we address the point of contention therebetween. Observing that "[i]n column 28, lines 14-19, a subset of five channels are evaluated in a 1.5 millisecond scan period," (Examiner's Answer at 8), the examiner asserts, "[t]o the user, the determination is done substantially simultaneously as the user experiences no delay in operation." (*Id.*) The appellants argue, "*Ciccone* teaches determining if a signal is present by examining individual channels sequentially." (Appeal Br., § VIII.)

In addressing the point of contention, the Board conducts a two-step analysis. First, we construe the representative claim to determine their scope. Second, we determine whether the construed claim is anticipated.

1. Claim Construction

"Analysis begins with a key legal question -- *what is the invention claimed?*" *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987). In answering the question, "the Board must give claims their broadest reasonable construction. . . ." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1668 (Fed. Cir. 2000).

Here, claim 1 recites in pertinent part the following limitations: "selecting a subset of the plurality of channels, wherein the subset includes more than one channel; [and] determining **substantially** simultaneously if the synchronization signal exists on at least one of the subset of channels. . . ." (Emphasis added.) "We are not aided by the specification herein in determining what degrees are included within the broad term 'substantially.'" *In re Nehrenberg*, 280 F.2d 161, 165, 126 USPQ 383, 386 (CCPA 1960). The use of the term appears to permit a determination that appears simultaneous. Giving the claim its broadest, reasonable construction, the limitations

require that a determination whether a synchronization signal exists on at least one of a plurality of channels be performed to appear simultaneous.

2. Anticipation Determination

"Having construed the claim limitations at issue, we now compare the claims to the prior art to determine if the prior art anticipates those claims." *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349, 64 USPQ2d 1202, 1206 (Fed. Cir. 2002).

"[A]nticipation is a question of fact." *Hyatt*, 211 F.3d at 1371, 54 USPQ2d at 1667 (citing *Bischoff v. Wethered*, 76 U.S. (9 Wall.) 812, 814-15 (1869); *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997)). "A claim is anticipated . . . if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (citing *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715, 223 USPQ 1264, 1270 (Fed. Cir. 1984); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983); *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983)).

Here, Ciccone discloses "a cordless telephone having a plurality of portable units arranged for communicating with a base unit in a frequency hopping system." Col. 1,

ll. 10-12. During frequency hopping, a "set of 50 random channels is used . . . by the base unit 10 and one or more associated handset units. . . ." Col. 4, ll. 63-65. For its part, the passage of the reference cited by the examiner teaches selecting a subset of the 50 channels wherein the subset includes more than one channel. Specifically, "in this subroutine, the RSSI values of . . . five hopping channels are obtained by having the process visit only five of the 50 hopping channels. . . ." Col. 28, ll. 14-16. Because the process visits the subset of channels in a mere 1.5 milliseconds, *id.* at l. 17, moreover, we agree with the examiner that "[t]o the user, the determination is done substantially simultaneously as the user experiences no delay in operation."

(Examiner's Answer at 8.) Therefore, we affirm the rejection of claim 1 and of claims 2-7, which fall therewith.

B. CLAIMS 8-20

The examiner asserts, "Ciccone inherently teaches a filter capable of allowing a subset of the plurality of channels to pass through the filter, wherein the subset includes more than one channel [fig. 2: ref. 20]." (Examiner's Answer at 9.) The appellants argue, "as *Ciccone* discloses examining each one of the subset of 50 channels, *Ciccone* inherently discloses a filter capable of allowing only one of the 50 channels to pass through the filter at one time. . . ." (Appeal Br., § VIII.)

1. Claim Construction

Claims 8 and 16 recite in pertinent part the following limitations: "a filter capable of allowing a subset of the plurality of channels to pass through the filter, wherein the subset includes more than one channel. . . ." Giving these claims their broadest, reasonable construction, the limitations require a filter that can pass more than one channel.

"[T]he 'broadest reasonable interpretation' that an examiner may give means-plus-function language is that statutorily mandated in paragraph six [of 35 U.S.C. § 112]." *In re Donaldson Co.*, 16 F.3d 1189, 1194-95, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994.) "The plain and unambiguous meaning of paragraph six is that one construing means-plus-function language in a claim must look to the specification and interpret that language in light of the corresponding structure, material, or acts described therein, and equivalents thereof, to the extent that the specification provides such disclosure." *Id.* at 1193, 29 USPQ2d at 1848-49.

Here, claim 20 recites in pertinent part the following limitations: "means for selecting a subset of the plurality of channels, wherein the subset includes more than one channel. . . ." The appellants' specification discloses that "[i]n accordance with one embodiment of the present invention, the second, third, and fourth bandpass filters 255,

265, 275 are ceramic filters that have a center frequency of approximately 10.7 MHz and an adjustable bandwidth that is capable of allowing either a single channel or a subset of channels through. . . ." (Spec. at 8.) Interpreting the limitations in light of the specification, claim 20 requires three bandpass filters having a center frequency of approximately 10.7 MHz and an adjustable bandwidth that can pass more than one channel, or equivalents thereof.

2. Anticipation Determination

"[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986). Here, in obtaining the RSSI values of the five hopping channels, the aforementioned subroutine of Ciccone "dwells on each of the five channels for 300 microseconds . . . during th[e] scan period." Col. 28, ll. 17-19. We agree with the appellants that because "*Ciccone* discloses examining each one of the subset of . . . channels, *Ciccone* inherently discloses a filter capable of allowing only one of the . . . channels to pass through the filter at one time. . . ." (Appeal Br., § VIII.)

The absence of a showing of a filter that can pass more than one channel and of three bandpass filters having a center frequency of approximately 10.7 MHz and an adjustable bandwidth that can pass more than one channel, or equivalents thereof,

negates anticipation. Therefore, we reverse the rejection of claim 8; of claims 9-15, which depend therefrom; of claim 16; of claims 17-19, which depend therefrom; and of claim 20.

CONCLUSION

In summary, the rejection of claims 1-7 under § 102(e) is affirmed. The rejection of claims 8-20 under § 102(e), however, is reversed. "Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences. . . ." 37 C.F.R. § 1.192(a). Accordingly, our affirmance is based only on the arguments made in the briefs. Any arguments or authorities not included therein are neither before us nor at issue but are considered waived. *Cf. In re Watts*, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1457 (Fed. Cir. 2004) ("[I]t is important that the applicant challenging a decision not be permitted to raise arguments on appeal that were not presented to the Board.") No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

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| ERROL A. KRASS |) | |
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Appeal No. 2003-0495
Application No. 09/256,543

Page 12

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