

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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** SCOTT B. REYNOLDS

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Appeal No. 2003-0661  
Application 09/032,622

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ON BRIEF

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Before JERRY SMITH, FLEMING, and MACDONALD, **Administrative Patent Judges**.

MACDONALD, **Administrative Patent Judge**.

**DECISION ON APPEAL**

This is a decision on appeal from the final rejection of claims 21-40.

**Invention**

Appellant's invention relates to digital communications and more particularly, to a system and method for estimating cell bandwidth in digital communications networks (Appellant's

specification, page 1, lines 7-8). The system and method measures the transmission of a desired cell in a cell stream, such as a stream of asynchronous transfer mode (ATM) available bit rate (ABR) user cells, during a selected time interval based on the occurrence of predetermined events. The measurement is then used to determine the cell bandwidth (specification at page 5, lines 13-19). The measurement comprises sensing first and second events, measuring the time period there-between, counting the number cells received during the time period, and calculating the transmission rate based on the time period and number of cells received (specification at page 6, lines 6-21).

Claim 34 is representative of the claimed invention and is reproduced as follows:

34. A method for determining a transmission rate of a first type of cell transmitted in a cell stream over an asynchronous transfer mode (ATM) network connection during an event-based adaptive time period, the method comprising the steps of:

- a) sensing the occurrence of a first predetermined event;
- b) sensing the occurrence of a second predetermined event;
- c) measuring a time period between the occurrences of the first and second events;
- d) counting a number of cell received from the network connection during the time period; and
- e) calculating an actual transmission rate of the cells

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during the time period.

### References

The references relied on by the Examiner are as follows:

Soumiya et al.	6,094,418	Jul. 25, 2000 (filed Mar. 7, 1997)
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### Rejection At Issue

Claims 21-40 stand rejected under 35 U.S.C. § 103 as being obvious over Soumiya et al. Throughout our opinion, we make references to the Appellant's briefs, and to the Examiner's Answer for the respective detail thereof<sup>1</sup>.

### OPINION

With full consideration being given to the subject matter on appeal, Examiner's rejections and the arguments of Appellant and Examiner, for the reasons stated **infra**, we reverse the Examiner's rejection of claims 21-40 under 35 U.S.C. § 103.

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<sup>1</sup> Appellant's filed an appeal brief on June 11, 2002. The Appellant filed a reply brief on November 13, 2002. The Examiner mailed out an office communication on September 3, 2002.

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**I. Whether the Rejection of Claims 21-40 Under 35 U.S.C. § 103 is proper?**

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 21-40. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a **prima facie** case of obviousness. **In re Oetiker**, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). **See also In re Piasecki**, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. **In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. **See also Piasecki**, 745 F.2d at 1472, 223 USPQ at 788.

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An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." **In re Lee**, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

With respect to claim 34, the essence of the Examiner's rejection is that Soumiya et al would suggest to one of ordinary skill in the art the obviousness of modifying Soumiya's transmission rate calculating unit 22 (Figure 7, with details at figure 8) from a fixed observation time interval calculation to an event driven calculation given Soumiya's teaching of event driven time interval calculation being used by delay time measuring unit 5 (Figure 3). Appellant argues, in Soumiya's unit 22 "the arriving cells define the observation period rather than the other way around." (brief, page 11, fourth paragraph) We agree. Soumiya's unit 22 already uses event driven interval calculation based on the first and last of a set number of cells

arriving (column 19, lines 37-43). Therefore, no motivation exists to modify unit 22 to add this feature. Further, Appellant argues with respect to claim 21 and we deem it equally applicable to claim 34, Soumiya teach calculation of "the allowed transmission rate based on  $B_a(n)=B(n)/N_{vc}(n)$ ." (brief page 7, third full paragraph) We note that,  $N_{vc}(n)$  = the number of active virtual connection (VCs) in a period during which a predetermined number of cells arrive and  $B(n)$  = the Band of the output channel (Soumiya at column 19, lines 40-47). Soumiya does not show unit 22 calculating "an actual transmission rate of the cells". The Examiner's response [answer, page 5] states "it is well known [in] the art that the transmission rate can be calculated by dividing [the] total number of cells [...] by the time interval", "Soumiya discloses counting the number of arrived cells [...] and designating the observation period (time interval)", and "[t]hus, the transmission rate can be calculated by dividing". Even if we accept the Examiner's three points as fact, the Examiner does not then explain why based on these facts one of ordinary skill in the art would then be motivated to modify the device of Soumiya to arrive at Appellant's invention. Therefore, Appellant's arguments are persuasive. We will not sustain the Examiner's rejection under 35 U.S.C. § 103.

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With respect to claims 30 and 40, both explicitly require calculation of an actual transmission rate of the cells and their rejection under 35 U.S.C. § 103 is reversed for the reasons discussed above with respect to claim 34. Claim 21, requires calculation of a transmission rate of the cells, but does not explicitly require "actual". However we find, "actual transmission rate" is implicit in claim 21, and the rejection under 35 U.S.C. § 103 is reversed for the reasons discussed above with respect to claim 34.

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**Conclusion**

In view of the foregoing discussion, we have reversed the rejection under 35 U.S.C. § 103 of claims 21-40.

**REVERSED**

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

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