

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 41

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LESTER F. LUDWIG and J. CHRIS LAUWERS

Appeal No. 2003-0663
Application No. 09/072,549

ON BRIEF

Before KRASS, FLEMING and BARRY, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-5, 7-15, 17-25 and 27-31.

The invention is directed to a video communication system. More particularly, the system permits teleconferencing, involving the transmission of high-quality color video images, meeting NTSC standards, over unshielded twisted pair (UTP) lines which are part of a computer network.

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Representative independent claim 1 is reproduced as follows:

1. A video communication system comprising:

(a) at least one analog video-signal source;

(b) a plurality of video display devices;

(c) at least one communication control component configured

(i) to produce digital control-signals; and

(d) a computer network; including.

(i) an unshielded twisted pair of wires,

(1) defining a UTP communication path

(2) arranged for video-signal transportation,

wherein the system is configured to multiplex

(1) analog video-signals,

a. originating at one of the video-signal

sources,

(2) with digital control-signals;

a. from one of the communication control

components

(ii) transmit

(1) the multiplexed signals

(2) along the UTP communication path,

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(3) to at least one of the video display devices,
and

(iii) use

(1) the control-signals

(2) to control reproduction of color video images

a. at TV quality,

b. based on the video-signals,

c. on at least one of the video display

devices.

The examiner relies on the following references:

Verhoechx et al. (Verhoeckx)	4,005,265	Jan. 25, 1977
Tompkins et al. (Tompkins)	4,847,829	July 11, 1989

Ramanathan et al. "Optimal Communication Architecture for Multimedia Conferencing in Distributed System" IEEE Computer Society Technical Committee on Distributed Processing, 1992, pp. 46-53.

Rangan et al. "Software Architecture for Integration of Video Services in the Etherphone System", IEEE Journal on Selected areas in Communications Vol. 9. No. 9 December, 1991, pp. 1395-1404.

Stefik et al. "Beyond the Chalkboard: Computer Support for Collaboration and Problem Solving in Meetings", Communications of the ACM, Jan. 1987, Vol. 30, pp. 32-47.

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Claims 1-5, 7-15, 17-25 and 27-31 stand rejected under 35 U.S.C. § 112, first paragraph, as relying on a non-enabling disclosure.

Claims 1-5, 7, 12-15, 17, 21-25 and 27 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner offers Verhoeckx with regard to claims 1, 12-14 and 21; Tompkins in view of Verhoeckx with regard to claims 1-5, 12-15 and 21-25; and adds Ramanathan to this latter combination with regard to claims 7, 17 and 27. Further, the examiner offers Tompkins, Verhoeckx, Ramanathan and Rangan with regard to claims 8, 18 and 28. Tompkins, Verhoeckx, Ramanathan and Stefik are offered with regard to claims 9-11, 19, 20 and 29-31.

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

OPINION

Turning first to the rejection under 35 U.S.C. § 112, first paragraph, it is the examiner's position that the claims rely on a non-enabling disclosure because the claims call for the transmission of "TV quality" video signals over UTP communication paths and, in the examiner's view, the instant disclosure would not have enabled the skilled artisan to transmit such signals without undue experimentation.

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As a matter of Patent and Trademark Office practice, a specification disclosure which contains a teaching of the manner and process of making and using the invention in terms which correspond in scope to those used in describing and defining the subject matter sought to be patented *must* be taken as in compliance with the enabling requirement of the first paragraph of 35 U.S.C. 112 *unless* there is reason to doubt the objective truth of the statements contained therein which must be relied on for enabling support. Assuming that sufficient reason for such doubt does exist, a rejection for failure to teach how to make and/or use will be proper on that basis; such a rejection can be overcome by suitable proofs indicating that the teaching contained in the specification is truly enabling, In re Marzucchi, 439 F.2d 220, 169 USPQ 367 (CCPA 1971); In re Sichert, 566 F.2d 1154, 196 USPQ 209 (CCPA 1977).

Appellants cite page 23 of the specification, as well as Figures 18 and 19 of the application, and the Ludwig declaration, filed January 16, 2001 (Paper No. 23), for the proposition that video signals are passed through loopback/AV mute circuitry 830 via video ports 833 (input) and 834 (output) and into A/V Transceivers 840 (via Video In port 842) where they are transformed from standard video cable signals to UTP signals and

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sent out via port 845 and Audio/Video I/O port 805 onto AV Network 901. Appellants contend that these teachings show that the transmission of TV-quality video over UTP is accomplished by this video communications system having an Audio/Video (A/V) transceiver as shown in Figure 19.

It appears to us that appellants have given a reasonable explanation as to how the TV-quality transmission is accomplished while the examiner merely asserts that the specification merely recites a desire to have "TV-quality" video without an adequate disclosure as to how to accomplish this. On balance, it does not appear to us that the examiner has made a reasonable finding to doubt the objective truth of appellants' statements as to how TV-quality transmission is effected. Since we find no sufficient reason to doubt appellants' disclosure and statements, as well as the statements in the Ludwig declaration, we will not sustain the rejection of claims 1-5, 7-11, 21-25 and 27-31 under 35 U.S.C. § 112, first paragraph.

When a rejection is made on the basis that the disclosure lacks enablement, it is incumbent upon the examiner to explain why he/she doubts the truth or accuracy of any statement in a supporting disclosure and to back up assertions with acceptable evidence or reasoning which is inconsistent with the contested

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statement. The examiner has not advanced any such evidence or an acceptable line of reasoning inconsistent with enablement and, therefore, has not sustained his/her burden.

An affidavit declaration by an expert, rather than the person of ordinary skill, is one alternative available to demonstrate enablement. In re Longe, 644 F.2d 856, 209 USPQ 288 (CCPA 1981). While the Ludwig declaration is offered by appellants to demonstrate enablement, an acceptable form of evidence, the examiner never addresses the credentials of Mr. Ludwig nor does the examiner address the statements made in the declaration proffered to demonstrate enablement. Thus, again, we will not sustain the rejection under enablement because, on balance, it is our view that appellants make a colorable case for enablement while the examiner falls far short of stating a reasonable case for non-enablement.

We now turn to the rejection of claims 1-5, 7, 12-15, 17, 21-25 and 27 under 35 U.S.C. § 103.

The examiner rejects all of the independent claims based on the single reference to Verhoeckx, contending that the reference teaches the claimed system, with an analog video-signal source (abstract-line 6), a video display device (apparent), a control communication component configured to produce digital control

signals (abstract, line 5-signaling signals), an unshielded twisted pair of wires (telephone wire) defining a UTP communication path (column 20, lines 20+)¹ arranged for video-signal transportation, wherein the system is configured to multiplex analog video signals with digital controls (lines 19-27)² and to transmit the multiplexed signals along the UTP communication path, etc.

The examiner indicates that Verhoeckx does not teach the UTP wire being included as part of a computer network, but that Verhoeckx does teach using the existing UTP wire of a telephone network. The examiner then contends that the claimed "computer network" is a "merely nominal recitation" and that there is no "functional relationship tying the elements of the claims to the 'computer network'" (answer-page 5). The examiner concludes that the recited elements would function exactly the same way over a UTP path separate from that of a "computer network" and that integrating the video UTP with an existing UTP computer network path would have been "a matter of economic" (answer-page 5) and

¹We note that while the examiner refers to column "20," the reference has only 12 columns.

² We note that the examiner refers to lines "19-27" but does not identify any particular column of the reference.

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it would have been obvious to apply Verhoeckx in a computer network "because it would have enabled the video transmission over existing paths and reduced the need to run new wires" (answer-page 6).

We will not sustain the rejection of claims 1, 12-14 and 21 under 35 U.S.C. § 103 over Verhoeckx.

With regard to the "TV quality" feature of the instant claims, the examiner merely points to a disclosure in Verhoeckx, at column 7, line 32, which indicates a picture frequency of "25 Hz" but the examiner never explains why this is considered to be "TV quality." It is not clear from any teaching in Verhoeckx that the reference provides for TV quality color video images.

Moreover, the instant claims are very specific to a "computer network," yet the examiner dismisses this as a "merely nominal recitation." Also, the instant claims require a multiplexing of analog-video signals with digital control-signals from one of the communication control components. Appellants have argued, very strongly, that the Verhoeckx digital operations simply reorganize the synchronization signals themselves, but no more (principal brief-page 7), so that these digital operations "in no way involve the introduction of digital control signals from any sort of communications control component," as claimed.

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Appellants point out that Verhoeckx lacks any communications control component at all and there is "no computer networking aspect to Verhoeckx whatsoever" (principal brief-page 7). The examiner offers no reasonable rebuttal to this argument.

Additionally, appellants point out that Verhoeckx's modified synchronization signals within the video signal are in no way equivalent to the digital control signals from communication control components of the claimed invention recited in claims 1 and 21 and their dependencies. But, the examiner has no reasonable answer to these differentiations by appellants.

Since there are so many missing claimed elements from Verhoeckx, together with unconvincing rationales by the examiner, we find that the examiner has not established a prima facie case of obviousness with regard to the instant claimed subject matter. But, to whatever extent there may have been a prima facie case, we find that appellants have overcome the case with arguments that are not convincingly rebutted by the examiner.

We also will not sustain the rejection of claims 1-5, 8-15, 17-25 and 27-31 under 35 U.S.C. § 103 over Verhoeckx in combination with either Tompkins and/or Ramanathan and/or Rangan and/or Stefik since none of the latter references provides for the deficiencies of Verhoeckx.

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The examiner's decision is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
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MICHAEL R. FLEMING)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
LANCE LEONARD BARRY)	
Administrative Patent Judge)	

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SUGHRUE MION, PLLC
1010 EL CAMINO REAL, SUITE 300
MENLO PARK, CA 94025