

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOLFGANG GRIECH

Appeal No. 2004-0129
Application No. 09/230,720

HEARD: April 13, 2004

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 26 through 52, which are all of the claims pending in this application.

Appellant's invention relates to a control system of a machine for making a fibrous web. The system includes a plurality of actuators which are intelligent participants in a decentralized communications hardware structure in which the actuators are coupled to one another via a closed pipeline ring

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or a local area network. Claim 26 is illustrative of the claimed invention, and it reads as follows:

26. A control system of a machine for making a fibrous web, comprising:

a plurality of actuators, each assigned to one final control element to vary certain properties of said fibrous web; and

said actuators forming intelligent participants in a decentralized communications hardware structure, in which said actuators are coupled to one another through at least one of a closed pipeline ring and a local area network.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Spinner et al. (Spinner)	5,771,174	Jun. 23, 1998
Flamm et al. (Flamm)	5,988,846	Nov. 23, 1999
		(filed Jun. 05, 1997)

Claim 51 stands rejected under 35 U.S.C. § 103 as being unpatentable over Spinner.

Claims 26 through 50 and 52 stand rejected under 35 U.S.C. § 103 as being unpatentable over Spinner in view of Flamm.

Reference is made to the Examiner's Answer (Paper No. 17, mailed April 8, 2003) for the examiner's complete reasoning in support of the rejections, and to appellant's Brief (Paper No. 16, filed January 27, 2003) and Reply Brief (Paper No. 19, filed June 9, 2003) for appellant's arguments thereagainst.

OPINION

As a preliminary matter, we note that appellant indicates on page 6 of the Brief that each of claims 26 through 52 is separately patentable. 37 C.F.R. § 1.192(c)(7) states:

For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. ***Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.*** (Emphasis ours)

Although appellant provides separate arguments for claims 26, 51, and 52, for claims 27 through 50 appellant merely points out the differences in what the claims cover by repeating the limitations therein. Arguments that could have been made but that were not included in the brief are waived. Accordingly, we will treat the claims as falling into three groups, claims 26 through 50, claim 51, and claim 52, with claims 26, 51, and 52 as representative.

We have carefully considered the claims, the applied prior art references, and the respective positions articulated by

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appellant and the examiner. As a consequence of our review, we will reverse the obviousness rejections of claims 26 through 52.

Regarding claims 26 through 50, appellant argues (Brief, pages 8-9) that although Spinner discloses that actuator controllers are coupled together in a local area network (LAN) and have peer-to-peer communication, a host controller system 20 is required to transmit setpoints to the actuator controllers and thereby operates as a master for the controllers. As such, Spinner's actuator controllers are not part of a decentralized communications hardware structure. We agree.

The examiner asserts (Answer, pages 6) that "SPINNER et al. specifically teach peer-to-peer communication between the actuator controllers, exclusive of the host controller system" in addition to the centralized control in which the host transmits information to the controllers. The examiner contends (Answer, page 6) that "[t]his decentralized communication accomplishes controlling the operation of the actuators, by calculating new setpoints dependent upon the statuses of adjacent actuators, using algorithms which are resident within the actuator controllers, NOT in the host controller system."

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Spinner discloses (column 4, lines 23-30 and 43-51, column 7, lines 33-44, and column 8, lines 15-34 and 54-59) that based on information sent to the host 20 from the actuator controllers, the host calculates and transmits to the actuator controllers desired setpoints. Then, based on status information from adjacent controllers, the controllers calculate those target setpoints and determine whether the new setpoints can be processed. Thus, as indicated by the examiner, there is peer-to-peer communication. However, the actuators are still slaves with the host as the master, since the actuators do not act until and unless the host sends a target setpoint. As long as the host plays that role in the determination of actuator setpoints, the actuators are not part of a decentralized communications hardware structure.

We note that although the examiner included Flamm in the rejection of claims 26 through 50, the examiner admits (Answer, page 3) that Flamm was only relied upon for a pipeline ring, which is claimed in the alternative in claim 26. Flamm adds nothing with regard to the decentralized communications hardware structure. Therefore, we cannot sustain the obviousness rejection of claims 26 through 50 over Spinner in view of Flamm.

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Claim 51 is similar to claim 26 except that only a local area network (LAN) rather than a LAN or a pipeline ring is recited and each actuator includes a processor. Since no pipeline ring is recited, the examiner relies solely on Spinner. However, as explained *supra*, Spinner fails to disclose that the actuators are participants in a decentralized communications hardware structure. Accordingly, we cannot sustain the obviousness rejection of claim 51.

Claim 52 is identical to claim 51 except that it recites a pipeline ring instead of the LAN. Thus, the examiner turns to Flamm for a substitution of a pipeline ring for the LAN of Spinner. The examiner asserts (Answer, pages 4-5) that the substitution would be "a matter of obvious design choice." "Design choice" is inappropriate in this situation. "Design choice" has limited applications. *See In re Chu*, 66 F.3d 292, 36 USPQ2d 1089 (Fed. Cir. 1995) and *In re Gal*, 980 F.2d 717, 25 USPQ2d 1076 (Fed. Cir. 1992).

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In addition, as discussed *supra*, Spinner fails to disclose that the actuators are participants in a decentralized communications hardware structure. Further, although Flamm states (column 5, line 66-column 6, line 1) that a "disadvantage of a central drive control means is that all the desired value data has to be led to the individual drives via the central drive control means," Figure 1 shows that drive controllers 6 are connected to drive control means 3 in a master-slave type of configuration, and drive control means 3 are connected to control unit 9 in a master-slave type of configuration. Therefore, Flamm fails to cure the deficiencies of Spinner, and we cannot sustain the rejection of claim 52.

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CONCLUSION

The decision of the examiner rejecting claims 26 through 52 under 35 U.S.C. § 103 is reversed.

REVERSED

ANITA PELLMAN GROSS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LANCE LEONARD BARRY)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
MAHSHID D. SAADAT)	
Administrative Patent Judge)	

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