

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

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NICOLAS RINGOT

Appeal No. 2005-0232
Application No. 10/169,818

ON BRIEF

Before TIMM, PAWLIKOWSKI, and MACDONALD **Administrative Patent Judges.**

PAWLIKOWSKI, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-7.

Claims 1 and 7 are representative of the subject matter on and are set forth below:

1. A telephony device, comprising:
a display screen; and
at least one adjustment parameter is visible on said display screen, a value of each adjustment parameter is represented on said display screen via a movable index.

position along a path and "moving means for moving the audio adjustment parameter along the path to a second position indicative of a second value of the audio adjustment parameter".

Appellant argues that claims 1 and 7 are distinguishable from Yatsu because Yatsu teaches an extension of an adjustment parameter to indicate an increase in value. Appellant illustrates this in Table I on page 6 of the brief. Appellant asserts that, therefore, the adjustment parameter in Yatsu is never moved along a path, but it is best characterized as teaching an expandable/contractable index for adjusting a parameter. Brief, page 6. By comparison, appellant sets forth an illustration in Table II, on page 7 of the brief. Appellant states that the present application is accurately characterized as teaching a movable index for adjusting a parameter as illustrated in Table II.

In response, on pages 5-7 of the answer, the examiner disagrees with appellant's characterization of the claimed invention and teachings of Yatsu, and we refer to the examiner's position therein.

Appellant emphasizes the claimed recitations regarding a "movable index" of claim 1, or a "moving means . . . along a path to a second position" of claim 7. However, each of claims 1 and 7, does not contain limitations that provide for the more narrow interpretation that appellants wish imparted to these claims. Appellants wish us to interpret these claims as limited to requiring a movement similar, for example, to the movement of a peg in a pegboard game. However, the specification does not limit the movement as such, and nor do claims 1 and 7.

Furthermore, we note that during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 320, 322 (Fed. Cir. 1999). Also, in determining the patentability of claims, the PTO gives claim language its "broadest reasonable interpretation" consistent with the specification and claims. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997)(citations omitted).

In the instant case, appellant's claims are directed to a device, and it is the claimed structure of the device at issue here. The difference argued by appellants, however, is a difference in how the display screen is operated. While Yatsu describes a different sequence for turning the pixels of the described LCD screen on and off, it is reasonable to conclude that the screen of Yatsu is capable of operating in the manner claimed by appellants. That is all that is required for a prima facie case of anticipation under the instant facts because when the prior art structure possesses all the claimed characteristics, including the capability of performing the claimed function, then there is a prima facie case of unpatentability. See In re Ludtke, 441 F.2d 660, 663-64, 169 USPQ 563, 566-67 (CCPA 1971). Appellants may overcome the prima facie case by showing that, in fact, there is a patentable difference between the claimed device structure and the prior art structure. Id. Appellants have not, on this record, connected any specific structure, to the operation that is claimed, much less provided evidence of a difference between the underlying structure of the display screen of the claims and that of Yatsu.

We therefore agree with the examiner's position as set forth on pages 3-7 of the answer, and incorporate it as our own. We emphasize that the phrase "movable index" or "moving means for moving the audio adjustment parameter along the path to a second position indicative of a second value of the audio adjustment parameter", is not so limited as appellants assert in the brief.

In view of the above, therefore, we affirm the anticipation rejection.

II. The obviousness rejection of claim 5

On page 8 of the brief, appellant argues that claim 5 depends upon claim 1, and therefore claim 5 includes all the elements and limitations of independent claim 1, and is therefore allowable over Yatsu also.

For the same reasons, therefore, that we have affirmed the anticipation rejection, we also affirm the obviousness rejection of claim 5 as being unpatentable over Yatsu.

III. Conclusion

Each of the rejections is affirmed.

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