

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ex parte ANDREW C. GORIS, JASON E. YOST, and GREGORY V. HOFER

Appeal No. 2005-1666
Application No. 10/356,079

ON BRIEF

Before HAIRSTON, CRAWFORD, and DIXON, Administrative Patent Judges.
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 6 and 8 to 13.¹

We reverse.

¹ The only rejection of claim 7 has been withdrawn (answer at page 5).

BACKGROUND

The appellants' invention relates to a camera which computes and indicates a measure of focus as a function of focal distance (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The Prior Art Reference

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Miyamoto	5,687,409	Nov. 11, 1997
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The Rejection

Claims 1 to 6 and 8 to 13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Miyamoto.²

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed February 10, 2005) for the examiner's complete reasoning in support of the rejections, and to the brief (filed October 7, 2004) and reply brief (filed April 11, 2005) for the appellants' arguments thereagainst.

² The examiner has withdrawn the rejections based on the Seki reference (answer at page 5).

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The examiner has rejected claims 1, 8 and 11 under 35 U.S.C. § 102(b) as being anticipated by Miyamoto. We note initially that to support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The examiner is of the opinion that Miyamoto describes each element of claim 1 as detailed on page 3 of the answer.

The appellants argue that Miyamoto does not describe a camera that comprises a processor which computes a "measure of focus" using the image data at each of a plurality of focal distances or an indicator that indicates the measure of focus as a "function of focal distance," as required by claim 1. In appellants' view, Miyamoto does not describe an indication of a "measure of focus" but rather of whether the subject is in focus or out of focus.

The appellants' specification discloses, as depicted in Fig. 2A, a camera which indicates a measure of focus (curve 202) as a function of focal distance (200 axis) (specification at page 4). As such, appellants' specification discloses that at each of a plurality of focal distances, there is a measure of focus associated therewith.

Miyamoto describes a camera which measures the focal distance of a subject to be imaged and moves a lens group based on the focal distance from an "out of focus" position to an "in focus" position (col. 7, lines 13 to 19 and lines 53 to 56).

The examiner's position is that whether a subject is in or out of focus is a measure of focus and that since the determination of whether the subject is "in focus" or "out of focus" is determined based on focal point distance Miyamoto describes indicating a measure of focus as a function of focal distance as claimed (answer at page 6).

We agree with the examiner that an indication of whether a subject is in focus or out of focus is an indication of a measure of focus. However, as Miyamoto indicates this measure of focus based on only one focal distance, Miyamoto does not describe "computing a measure of focus, using the image data, at each of the plurality of focal distances" as required by claim 1. In addition, since the indicator relates to only one focal distance, it can not be considered indicating a measure of focus as a "function of focal distance." As such, we agree with the appellants that an indication of a function of

focal distance would involve an indication of the measure of focus (in or out of focus in the Miyamoto device) for each of several focal distances.

In view of the foregoing, we will not sustain the examiner's rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Miyamoto. We will also not sustain this rejection as it is directed to claims 2 through 6 as these claims are dependent on claim 1. We will likewise not sustain this rejection as it is directed to claim 8, and claims 9 through 13 dependent thereon, as claim 8 also recites that the measure of focus is detected at a plurality of focal distances and that the measure of focus is a function of focal distance.

The decision of the examiner is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 6 and 8 to 13 under 35 U.S.C. § 102(b) is reversed.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

REVERSED

KENNETH W. HAIRSTON
Administrative Patent Judge

MURRIEL E. CRAWFORD
Administrative Patent Judge

JOSEPH L. DIXON
Administrative Patent Judge

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