

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 LORNA GOULDEN,
PAUL MCGROARY,
BERTRAND RIGOT, KO BE DEU RO,
NATHALIE SCHAAP, and
ALEXANDRA INDRIANI TULUSAN

Appeal No. 2005-2759
Application No. 10/221,916

ON BRIEF

Before KRASS, RUGGIERO and DIXON, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 6-14.

The invention pertains to interactive display systems. In particular, a portable transmitter carried by a user in a waiting

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area causes an alteration to a display when the portable transmitter is detected in the waiting area.

Representative independent claim 6 is reproduced as follows:

6. An interactive display system for use in a waiting area, the system comprising:

a display positioned in the waiting area;

a portable transmitter carrier by a user in the waiting area;

a receiver positioned in the waiting area for receiving a first signal from the portable transmitter; and

a processor operatively connected to the display and for receiving a second signal from the receiver and supplying a third signal to the display, the processor configured to alter the display based on a detection of the portable transmitter in the waiting area.

The examiner relies on the following reference:

Lutterbach et al. (Lutterbach) 5,510,828 Apr. 23, 1996

Claims 6-14 stand rejected under 35 U.S.C. § 103 as unpatentable over Lutterbach.

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

OPINION

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). To reach a conclusion of obviousness under § 103, the examiner must produce a factual basis supported by a teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a prima facie case. In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). The examiner may satisfy his/her burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead the individual to combine the relevant teachings of the references. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

In applying Lutterbach against the instant claims, it is the examiner's opinion that Figure 6 of Lutterbach discloses the claimed display at 32, the claimed portable transmitter at 54, and the claimed receiver at 52. The examiner finds that since one environment of Lutterbach is a stadium, as during a Super Bowl game, it would have been clear that a user holding a transmitter would be in a "waiting area" of the stadium when the transmitter is within range of the receiver. The examiner further contends that altering of the display in Lutterbach is achieved by processor 42 interacting with marketing system 56 to provide feedback information to screen 32 for viewing, citing column 4, lines 43-63, of Lutterbach.

For their part, appellants argue that Lutterbach's transmitter is an active transmitter whose purpose in particular is to be used as an interactive marketing polling device, in contrast to the transmitter of the instant invention which is "an inherently passive transmitter that requires no active user interaction with the transmitter" (see page 8 of the principal brief).

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Appellants further argue that the active transmitter in Lutterbach is not disclosed or suggested to be a "ticket" that is issued to a customer upon entering a stadium, and that Lutterbach's transmitter 54 was not meant to be used as a ticket but rather a device to assist in gathering marketing information.

Appellants further argue that there is no motivation to "combine the cited references" (principal brief-page 11).

Moreover, appellants argue in the reply brief that Lutterbach does not disclose or suggest altering the display based on detection of the portable transmitter, as required by independent claims 6, 11, and 14.

We have carefully reviewed the evidence before us, including the arguments of appellants and the examiner, as well as the Lutterbach reference and we conclude therefrom that the examiner has failed to establish a prima facie case of obviousness, within the meaning of 35 U.S.C. § 103.

Initially, we note that appellants' argument anent no motivation to "combine the cited references" is nonsensical since there is only one reference applied against the claims.

Further, we are unpersuaded by appellants' argument anent the instant invention's *passive* transmitter compared with Lutterbach's *active* transmitter because the instant claims do not require a passive transmitter nor do they preclude an active transmitter. Arguments directed to limitations not appearing in the claims are not persuasive of patentability.

We also do not find persuasive appellants' argument anent Lutterbach's alleged failure to teach or suggest that the portable transmitter is a "ticket." Since the reference clearly suggests that the transmitter may be issued to customers at sporting events, such as the Super Bowl, as they enter the stadium (see column 5, lines 61-64), it would have been obvious to artisans that such transmitters may be considered "tickets." The artisan would have understood that the transmitters could be given to customers with the normal admission tickets, or the transmitters, themselves, could obviously serve as the tickets of admission.

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However, we do find persuasive of patentability the argument that Lutterbach does not disclose or suggest altering the display based on detection of the portable transmitter, as required by independent claims 6, 11, and 14.

The examiner contends that the teaching of altering the display may be found at column 4, lines 43-63, of Lutterbach. However, our review of that portion of the reference, as well as the entire rest of the reference finds, only that the portable transmitter 54 of Lutterbach is used only to provide feedback information as a marketing tool. Thus, the transmitter is used by the customer for responding to instructions to press a particular button on the transmitter according to preferences or the like relating to the advertising material on the screen. However, the user's action regarding the transmitter does not alter the display, except, perhaps, in the very broad sense that the marketing agency will eventually use the response, along with other responses, to, one day, alter the advertisement shown on the screen, in response to these responses as to users' likes and dislikes. In our view, this does not constitute an altering of the display "based on a detection of the portable transmitter in the waiting area," as claimed.

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Accordingly, since all limitations of the instant claims are not disclosed or suggested by the applied reference, within the meaning of 35 U.S.C. § 103, the examiner's decision rejecting claims 6-14 under 35 U.S.C. § 103 is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH F. RUGGIERO)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JOSEPH L. DIXON)	
Administrative Patent Judge)	

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PHILIPS INTELLECTUAL PROPERTY
and STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510