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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NAOYASU MIYAGAWA and YASUHIRO GOTOH

Appeal No. 2005-2750
Application 09/460,221 for reissue of Patent 5,235,581

HEARD: December 12, 2005

Before PATE, MARTIN, and LORIN Administrative Patent Judges.

MARTIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 26 and 29-48, which are all of the pending claims, under 35 U.S.C. § 251 on the ground of reissue recapture. We reverse.

A. Background

The application on appeal identifies itself as a continuation of Application 08/396,981 ("the 981 application"), which was filed on March 1, 1995, for reissuance of Patent 5,235,581 ("the original patent"), issued August 10, 1993. The '981 application,

which as filed included reissue claims broader in at least one respect than the claims of the original patent, issued on December 14, 1999, as Reissue Patent RE36,445 ("the reissue patent"). The reissue patent contains all of the original patent claims (i.e., claims 1-24) plus new claims 25-82.[1] The reissue patent and the application on appeal are assigned to Matsushita Electric Industrial Co., Ltd., of Osaka, Japan. Opening Brief at 1.

B. The rejection

Claims 26 and 29-48 stand rejected under 35 U.S.C. § 251 on the ground of reissue recapture.

C. The disclosure of the original patent

[1] The following other appeals also involve applications which identify themselves as continuations of the '981 application (now RE36,445): Appeal No. 2006-0018 (Application 09/460,223); Appeal No. 2006-0386 (Application 09/460,222); and Appeal No. 2006-0388 (Application 09/420,603).

The figures of the original patent depict eight different embodiments of apparatus for recording data on or reproducing data from two different types of optical discs each having a recording layer and a substrate layer. In the "first" type of disc, depicted in Figure 4A, the substrate has a thickness d_1 of 1.2 mm. Original Patent, col. 5, ll. 66-67.[2] Nishiuchi et al. Patent 5,097,464 ("Nishiuchi"), which was applied during prosecution of the original patent, explains that this is the commonly used substrate thickness for optical discs. Nishiuchi, col. 1, ll. 25-28. In the "second" type of disc, depicted in Figure 4B, the substrate has a smaller thickness d_2 of, for example, 0.3 mm. Original Patent, col. 6, l. 6. As explained at column 1, lines 21-65, the smaller thickness of this substrate is due to the fact that it is designed to record a higher density of information than is possible using the conventional, thicker substrate. Specifically, higher-density recording requires a reduced spot diameter (D), which is related as follows to the laser wavelength (λ) and the numerical aperture (NA) of the focusing lens:

$$D \propto \lambda/NA$$

Thus, the recording density can be increased by increasing the numerical aperture and thereby decreasing the spot diameter. While increasing the numerical aperture will inherently cause an increase in coma aberration, that effect is avoided or reduced by reducing the thickness of the substrate. Another problem is that an objective lens which is designed for use with the thinner, high-density optical disc will suffer from an

[2] All citations herein to the specification of the reissue application, which does not include line numbers, are to the specification of the original patent, which does.

unacceptable level of spherical aberration if used with a thicker conventional optical disc, as explained with the aid of Figures 18A and 18B. Col. 2, ll. 3-48. As a result, the disclosed embodiments employ N (N ≥2) different converging means for writing and reading from discs having any of N different substrate thicknesses. In other words, each depicted embodiment, briefly described below, includes N (N ≥2) converging means "whose aberrations have been corrected for N (N ≥2) disc substrates having different thicknesses, respectively." Col. 2, ll. 56-63. In all of the eight embodiments depicted in the figures, N equals 2.

First Embodiment – Figures 1-4

The first embodiment employs two independently movable optical heads: (a) a first optical head 3 for use with the thicker, conventional ("first") type of disc; and (b) a second optical head 5 for use with the thinner, high-density ("second") type of disc. Each optical head is supported for radial movement by its own linear motor (4, 6), col. 4, ll. 32-39, and includes an objective lens, a semiconductor laser, a photodetector, and a beam splitter (not shown in Figs. 1-4B). Col. 4, ll. 12-16.

Figure 4A shows the relative positions of the conventional disc and the low NA objective lens carried by the first optical head, while Figure 4B shows the relative

positions of the high-density disc and the high NA lens carried by the second optical head.[3]

The optical discs are contained in respective cartridges 2. Each cartridge has a disc thickness discrimination hole 7 whose open or closed states identifies the type (i.e., thickness) of disc contained therein. The open or closed state is detected using a light emitting diode (LED) 8 and a photodiode 9. A system controller 22 is responsive to the output of photodiode 9 to (a) use LD driving circuit 20 and selector switch 21 to activate the laser light source in the appropriate optical head and (b) use selector switch 10 to select the output signal from the appropriate photodetector.

Second embodiment – Figs. 5-6

The second embodiment differs from the first by including both optical systems in a single optical head 30, as shown in detail in Figure 6.

Third embodiment – Figs. 7-8

[3] Figures 4A and 4B have been amended by a certificate of correction in the Reissue Patent to designate the focal distance FD and the working distance WD.

The third embodiment employs a single laser light source (32), a single photodetector (38), a beam splitter (34), two objective lenses (36, 46), and two controllable shutters (51, 52) for selecting the appropriate objective lens.

Fourth embodiment – Figs. 9A-9B

The fourth embodiment employs a single objective lens 46 and a wave front correcting lens 54, which is movable into and out of the light path between the beam splitter (34) and the objective lens (46).

Fifth embodiment – Figs. 10-11

The fifth through eighth embodiments employ optical waveguide technology. The fifth embodiment employs two optical systems, each including, inter alia, a laser light source (63, 69), a beam splitter (66, 72), and converging grating coupler (65, 71), and a photodetector (68, 74).

Sixth embodiment – Fig. 12

The sixth embodiment differs from the fifth by employing a single laser light source (63) plus an additional beam splitter (81).

Seventh embodiment – Figs. 13-14

The seventh embodiment employs a single laser light source (63), a single photodetector (95), a single beam splitter (93), and a SAW (surface acoustic wave) transducer (91) for selecting the desired propagation angle between the beam splitter,

on the one hand, and the two converging grating couplers (65, 71), on the other. In this embodiment, the output of the tracking control circuit 11 is applied to the actuator of the optical head.

Eighth embodiment – Figs. 15-17

The eighth embodiment differs from the seventh by applying the output of tracking control circuit 100 as an input to the SAW generating circuits 86 and 87, thereby permitting the selected converging grating coupler to provide tracking control.

D. The claims of Application 07/740,629

As filed, Application 07/740,629, which matured into the original patent, contained claims 1-30. As filed, claim 1, the sole independent claim, read as follows:

> 1. An optical disc apparatus for recording, reproducing, or erasing an information signal by converging a light flux onto/from a recording layer through a transparent disc substrate, comprising:
> N converging means whose aberrations have respectively been corrected for said N ($N \geq 2$) disc substrates having different thicknesses;
> disc discriminating means for discriminating the thickness of the disc substrate of a loaded optical disc and for generating a discrimination signal corresponding to the result of the discrimination; and
> control means for selecting the converging means in which the occurrence of the aberration due to the disc substrate is smallest in accordance with the discrimination signal.

Claims 2, 4, 5, and 7-9, which depended directly on claim 1, appear to correspond to the first through third and fifth through eighth embodiments as follows:

Claims	Embodiments
2	First (Figs. 1-4B)

4	Second (Figs. 5-6)
5	Third (Figs. 7-8)
7	Fifth (Figs. 10-11)
8	Sixth (Fig. 12)
9	Seventh (Fig. 13-14) and Eighth (Figs. 15-17)

Whether or not appellants are correct to assert that "[o]riginal claim 6 is so indefinite that it could not be read on any embodiment of the application," Brief at 9, it appears that that claim, which also depends directly on claim 1, was intended to correspond to the fourth embodiment (Figs. 9A, 9B), because that is the only embodiment which employs an aberration correcting means (namely, wave front correcting lens 54) that is movable "onto an optical path between the light emitting means and the optical disc," as required by that claim. Claim 6 as filed read as follows (emphasis added):

> 6. An apparatus according to claim 1, <u>wherein said converging means comprises objective lens and aberration correcting means</u>, and wherein said apparatus comprises:
> an optical head having
> light emitting means,
> said objective lens each for converging the light flux emitted from the light emitting means onto the optical disc,
> photo detecting means for detecting the reflected light from the optical disc,
> said N aberration correcting means, and
> <u>holding means for holding said N aberration correcting means</u>, for selecting one of the N aberration correcting means in accordance with a control signal and <u>for moving onto an optical path between the light emitting means and the optical disc</u>;

> optical head moving means which is arranged below the optical disc and moves the optical head in the radial direction of the optical disc;
>
> disc discriminating means for discriminating the thickness of the disc substrate of the loaded optical disc and for generating the discrimination signal according to the result of the discrimination; and
>
> control means for generating the control signal to said holding means in accordance with the discrimination signal and for moving the aberration correcting means onto said optical path in which the occurrence of the aberration due to the disc substrate is smallest onto said optical path,
>
> and wherein the optical head records, reproduces, or erases the information signal onto/from the optical disc by the light flux which has transmitted the selected aberration correcting means.

For reasons which will become apparent, it is not necessary to decide whether appellants are correct to argue that claim 6 is too indefinite to be read on any embodiment. However, we note that appellants have not explained whether this argument is based solely on the examiner's § 112, ¶ 2 criticism of claim 6 (discussed infra) or whether it is based on other reasons which have not been identified.

E. The rejections in the '629 application

Claims 1-30 were rejected for indefiniteness under 35 U.S.C. § 112, ¶ 2 for the following reasons:

> Claim 1 recites "N converging means whose . . . thickness[es];". However, it is not clearly recited according to what structural element or means the aberrations had been corrected.
>
> Claim[s] 2 & 4-9 [recite] "disc discriminating means". Is the above means the same as the one in claim 1 and if not what is the difference?
>
> Claim 4 recites "control means for selecting the light emitting means". It is not clear whether the selection means selects one of the objective lenses or one of the light beams?
>
> Claim 6 & 7 also recites "-- in accordance with a control signal". However, the claim fails to recite the source of a control signal.

> Regarding claim 26 there is no antecedent basis for "N synthetic optical systems".
>
> Regarding claim 30 the phrase "the N converging grating couplers" lacks proper antecedent basis.

August 17, 1992, Office action at 2-3.

Claim 21 was rejected under 35 U.S.C. § 112, ¶ 4 for failing to further limit claim 11, on which it depended. Id. at 3.

Finally, the examiner rejected claims 1 and 6 under 35 U.S.C. § 102(e) for anticipation by the above-mentioned Nishiuchi et al. patent, which discloses apparatus for writing to and reading from optical discs having substrates with any of a number of different thicknesses. Referring to Figure 1, the apparatus employs, inter alia, a single objective lens (8), a single laser diode (3), a single beam splitter (6), and a pair of photodetectors (14, 15). The tracking and focusing positions of the lens are controlled by a voice coil 17 responsive to a controller 16. In order to accommodate optical discs having either of two different thicknesses, a plate actuator 11 responsive to controller 16 moves a transparent plate (9 in Fig. 1; 22 in Fig. 5(b)) into the light path when the thinner of the two discs is present. Various plate configurations are shown in Figures 2(a)-(d). A disc shape detector (10 in Fig. 1) is used to detect the thickness of the optical disc.

The examiner read claims 1 and 6 on Nishiuchi as follows:

> The reference shows an optical recording and reproducing apparatus comprising N converging means (elements 8 and 9 of Fig. 1

> and Figs 2(a)-2(d)), disc discriminating means 10, and control means 11 & 16.
>
> With respect to the limitation of claim 6 see Fig. 1, elements 3 regarding the light source, objective lens 8, photodetectors 14 & 15, selecting one of the aberration correcting means Figs 2(a)-2(d), disc discriminating means 10, and control means 11 & 16.

Id. at 3-4. The remaining claims were indicated to be patentable over the prior art:

> Claims 2-5, and 7-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
>
> None of the cited prior art shows or teaches an optical head apparatus comprising a plurality of heads (objective lenses) or converging grating couplers, a light beam, photodetectors, moving means, selective means, a disc discriminating means and a control means for generating a control signal to the selecting means to select a grating coupler or an optical head (objective lens) in which the occurrence of aberration of the disc is smallest in accordance with the disc discriminating signal.

Id. at 4.

Appellants responded to the rejections with an amendment which: canceled (a) claims 1 and 6 (b) claims 11 and 21 (dependent on claim 1), and (c) claims 16 and 26 (depended on claim 6); and rewrote claims 2, 4, 5, and 7-9 (directed to the first through third and fifth through eighth embodiments) in independent form while also amending claims 4 and 7 in response to the § 112, ¶ 2 criticisms of those claims. The "Remarks" portion of the amendment read in pertinent part as follows:

> The applicants acknowledge with appreciation the indication in the outstanding Office Action that claims 2-5 and 7-30 are directed to allowable subject matter. Only claims 1 and 6 stand rejected on art; claims 1 and 6 are hereby canceled. In addition, claims 11 and 21, dependent from claim 1, are also canceled, while claims 16 and 26, dependent from claim 6, are canceled.

> Claims 2, 4, 5 and 7-9 have been rewritten in independent form and also amended to overcome the §112, second paragraph, rejections. Regarding claim 4, the applicants note that the control means selects one of a plurality of light emitting means which are associated with the converging optical systems. By selecting one of the light emitting means, an aberration caused by the difference of the disk substrate thickness is minimized. Regarding claims 6 and 7 [sic; claim 7], the control means is defined as generating a control signal which is provided to the selecting means in accordance with the discrimination signal. Regarding the issues raised in the Office Action concerning claim 30, it is noted that this claim depends indirectly on claim 9, and the "N converging grating couplers" are defined in claim 9. It is respectfully submitted that all pending claims are now in full compliance with §112 and are in condition for allowance.

(Emphasis added.) November 17, 1992, Amendment at 9.

Following entry of this amendment, the '629 application issued as Patent 5,235,581 on August 10, 1993. Amended application claims 2, 4, 5, and 7-9 became claims 1, 7, 10, 13, 16, and 19, respectively, of the patent.

F. The Reissue Application

Of the five independent claims (26, 33, 38, 43, and 48) before us, claim 26 is the broadest:

> 26. An optical recording/reproducing apparatus for recording, reproducing or erasing an information signal onto/from any one of N types (where $N \geq 2$) of optical discs having first layers of different thicknesses, each type of said optical discs having at least said first layer being transparent and a second layer for storing information, said apparatus comprising:
>
> a light emitting means for emitting a light flux; and
>
> a converging means for converging said light flux on said second layer of one of the N optical discs through the first layer as a light spot and for performing aberration correction at said light spot; and
>
> wherein when the first layer of a first disc of said N optical discs has a thickness (d1) smaller than a thickness (d2) of the first layer of a second disc of said N optical discs, said converging means converges the light

> spot on the second layer of said first disc with a diameter (D1) smaller than a diameter (D2) of the light spot converged by said converging means on the second layer of said second disc, and
>
> wherein a thickness of each of said first layers of said N types of optical discs is about 1.2mm or less.

In a non-final Office action dated August 16, 2002, the examiner rejected all of the reissue claims on the ground of reissue recapture, citing Pannu v. Storz Instruments, Inc., 258 F.3d 1366, 59 USPQ2d 1597 (Fed. Cir. 2001); Hester Industries Inc. v. Stein Inc., 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); In re Clement, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); and Ball Corp. v. United States, 729 F.2d 1429, 221 USPQ 289 (Fed. Cir. 1984). On November 15, 2002, appellants filed a notice of appeal, noting the twice-rejected status of the claims. The opening brief was filed on January 15, 2003, the Answer was mailed on May 19, 2003, and the reply brief was filed on July 30, 2003. On January 6, 2004, the application was remanded to the examiner for the purpose of having him address Ex parte Eggert, 67 USPQ2d 1716 (Bd. Pat. App. & Int. 2003)(expanded panel)(precedential), which was decided on May 29, 2003. A Supplemental Examiner's Answer was mailed on January 24, 2005. A Supplemental Reply Brief was filed on March 24, 2005, and approved for entry by the examiner.

G. The merits of the reissue recapture rejection

The recapture rule "prevents a patentee from regaining through reissue the subject matter that he surrendered in an effort to obtain allowance of the original claims." Pannu, 258 F.3d at 1370-71, 59 USPQ2d at 1600 (quoting Clement, 131 F.3d

at 1468, 45 USPQ2d at 1164). Reissued claims that are broader than the original patent's claims in a manner directly pertinent to the subject matter surrendered during prosecution are impermissible. Pannu, 258 F.3d at 1371, 59 USPQ2d at 1600 (citing Clement, 131 F.3d at 1468, 45 USPQ2d at 1164, and Mentor Corp. v. Coloplast, Inc., 998 F.2d 992, 996, 27 USPQ2d 1521, 1525 (Fed. Cir. 1993)). Pannu explains:

> Application of the recapture rule is a three-step process. The first step is to "determine whether and in what `aspect' the reissue claims are broader than the patent claims." [Clement, 131 F.3d at 1468, 45 USPQ2d at 1164.] "The second step is to determine whether the broader aspects of the reissued claim related to surrendered subject matter." Id. Finally, the court must determine whether the reissued claims were materially narrowed in other respects to avoid the recapture rule. Hester, 142 F.3d at 1482-83, 46 USPQ2d at 1649-50; Clement, 131 F.3d at 1470, 45 USPQ2d at 1165.

238 F.3d at 1370-71; 59 USPQ2d at 1600. Accord, Eggert, 67 USPQ2d at 1727; North American Container Inc. v. Plastipak Packaging Inc., 415 F.3d 1335, 1350, 75 USPQ2d 1545, 1556 (Fed. Cir. 2005); MPEP § 1402.02 (8th ed., rev. 3, Aug. 2005), at 1400-17.

Because claims 1 and 6 of the '629 application were rejected under § 112, ¶ 2 as well as over prior art, we will begin our analysis by addressing the second step of the Pannu analysis, more particularly by considering whether appellants are correct to argue that treating canceled claims 1 and 6 as representing surrendered subject matter under the second step of Pannu is precluded by the fact that those claims stood rejected for indefiniteness under § 112, ¶ 2, in support of which argument they cite In re Wesseler, 367 F.2d 838, 151 USPQ 339 (CCPA 1966). If appellants' argument is

correct, the rejection for reissue recapture must be reversed on that ground, making it unnecessary to consider the first and third steps of the Pannu analysis.

In Wesseler, all of the claims of the application which ultimately issued as the original patent had been finally rejected as "being vague and indefinite." 367 F.2d at 845, 151 USPQ at 344. In addition, some of the claims had been rejected as unpatentable over a patent to Simmonds. Id. Following a personal interview between Wesseler's counsel and the primary examiner,[4] the application was amended by cancelling all of the pending claims in favor of newly added claims 25-27, which became claims 1-3 of the issued patent (2,939,664). The new claims each recited at least one feature (e.g., an offset ear in claim 25) which did not appear in the canceled claims. The remarks which accompanied the amendment read in pertinent part as follows:

> In an effort to expedite prosecution of this case and bring it to a close, this amendment after final rejection is presented for the examiner's further consideration. *Applicant has herein attempted to follow completely the procedures and suggestions presented by the Primary Examiner insofar as they were understood*. Accordingly, three new claims have been herein presented. Claim 25 is believed to be generic, and Claims 26 and 27 are believed to be species contemplated by said generic claim. [Emphasis added.]

[4] The court noted that the patent file did not contain a paper recording the suggestions made by the primary examiner during the interview. 367 F.2d at 846, 151 USPQ at 345.

367 F.2d at 845, 151 USPQ at 345. The court noted that in affirming the examiner's rejection of the reissue claims on the ground of reissue recapture, the board held that the italicized language in the foregoing passage

> * * * points out specifically that the examiner would consider allowance only with such specific limitations [the channel with the laterally offset ear] pertaining to the mounting.

(Brackets in Wesseler.) 367 F.2d at 845-46, 151 USPQ2d at 345. The court disagreed:

> On the above facts we do not agree with the conclusion of the board that the remarks accompanying the three claims show "specifically that the examiner would consider allowance only with such specific limitations pertaining to mounting." Insofar as the inclusion of a specific limitation is concerned, the remarks establish that the attorney considered he was obtaining protection for the two "highly useful results" in presenting a generic and two species claims. Insofar as the act of cancelling claims is concerned the record does not show whether this was an admission that those claims were unpatentable over the prior art or whether they were cancelled and the amended claims were submitted to cure the "vague and indefinite" rejection.

(Footnotes omitted.) 367 F.2d at 846, 151 USPQ at 345-46.

Appellants' Wesseler argument clearly has merit with respect to claim 1. The stated basis for the § 112, ¶ 2 rejection of that claim, which recited, inter alia, "N converging means whose aberrations have been respectively corrected for said N ($N \geq 2$) disc substrates having different thicknesses," was that "it is not clearly recited according to what structural element or means the aberrations had been corrected." August 17, 1992, Office action, at 2. This criticism was not additionally directed at any of dependent claims 2 and 4-9, which described the converging means of the various embodiments in greater detail. As a result, it is apparent that appellants could have

responded to the § 112, ¶ 2 rejection insofar as it was directed to claim 1 by canceling it in favor of dependent claims 2 and 4-9, rewritten in independent form. For this reason, even though the "Remarks" portion of appellants' amendment mentions the cancellation of claim 1 only in the same sentence which mentions the art rejection ("Only claims 1 and 6 stand rejected on art; claims 1 and 6 are hereby canceled."), the cancellation of claim 1 in favor of the independent claims may have been motivated by a desire to avoid the § 112, ¶ 2 rejection of claim 1.

The examiner's contention that appellants' "Remarks" argue that the limitations of the dependent claims distinguish them from the prior art is not persuasive. Specifically, the examiner contends that in the "Remarks"

> applicant argued what appears to be the patentable subject matter that is defined over the prior art in claim 4; stating "control means selects one of the plurality of the light emitting means which are associated with the converging optical systems. By selecting one of the light emitting means, an aberration caused by the difference of the disk substrate thickness is minimized." Regarding claim[s] 6 and 7, applicant raise[d] the issue that "control means is defined as generating a control signal which is provided to the selecting means in accordance with the discrimination signal."

Supplemental Answer at 6. We believe it is clearly evident from these "Remarks"about claims 4, 6, and 7 (including their mention of claim 6, which was being canceled) that are directed solely at the examiner's 112, ¶ 2 criticisms of those claims, which were as follows:

> Claim 4 recites "control means for selecting the light emitting means". It is not clear whether the selection means selects one of the objective lenses or one of the light beams?

> Claim 6 & 7 also recites "-- in accordance with a control signal". However, the claim fails to recite the source of a control signal.

'629 application, August 17, 1992, Office action, at 2. Thus, the examiner is incorrect to contend that "applicant's current argument that the amendment was intended to overcome the rejection under 35 USC 112, 2[d] paragraph is not credible." Supplemental Answer at 17.

For the foregoing reasons, we agree with appellants that the cancellation of claim 1 in favor of dependent claims 2, 4, 5, and 7-9 did not constitute a surrender of subject matter, as required by the second step of the Pannu reissue recapture analysis. Thus, insofar as the question of reissue recapture is concerned, appellants are in the same posture as if (1) the '629 application as filed had not included claim 1 but instead had included, as the only independent claims, claims 2, 4, and 5-9, written in independent form; (2) the examiner had rejected claim 6 under § 112, ¶ 2 for failing to recite the source of the control signal and also under § 102 for anticipation by Nishiuchi; and (3) appellants had responded by canceling claim 6 along with its dependent claims 16 and 26.

Our determination that the cancellation of claim 1 in favor of dependent claims 2, 4, 5, and 7-9 did not constitute a surrender of subject matter is a sufficient reason for reversing the reissue recapture rejection, which is based entirely on the cancellation of claim 1 in favor of those dependent claims, whose limitations the examiner has characterized as being effectively added to claim 1 for the purpose of overcoming the

prior art rejection. Supplemental Answer at 14-15. Although the examiner's explanation of the rejection refers to the cancellation of claims 1 and 6, id. at 14, the examiner has not explained whether and, if so, to what extent the cancellation of claim 6 constitutes a surrender of subject matter even if the cancellation of claim 1 does not.[5] Nor has the examiner explained why such a surrender would support a rejection of the reissue claims on the ground of reissue recapture.

The reissue recapture rejection is therefore reversed with respect to all of the rejected claims.

REVERSED

WILLIAM F. PATE, III)
Administrative Patent Judge)
)

[5] In contrast to the cancellation of claim 1, the cancellation of claim 6 apparently was not done in response to the examiner's § 112, ¶ 2 criticism thereof, which was identical to his § 112, ¶ 2 criticism of claim 7 and thus presumably could have been overcome by amending claim 6 in the same way as claim 7.

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