

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

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

Ex parte DAVID S. WEHRLE, CARL R. SCHUMAKER,
GREGG M. SICHNER and JOHN P. CASPERS

Appeal No. 2006-1948
Application No. 09/546,089

ON BRIEF

Before KRASS, MACDONALD, and HOMERE, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 4, 6, 7, and 9-12. Claims 5 and 8 have been indicated by the examiner as being directed to allowable subject matter and are not before us.

The invention is directed to a control system best illustrated by reference to independent claim 4, reproduced as follows:

4. An adaptable control system for providing network communications, comprising; a physical media for providing communications to at least one I/O module, wherein the physical media includes a first protocol and a second protocol, the first protocol to enable the at least one I/O module to receive the network communications and the second protocol to provide the network communications to the at least one enabled I/O module.

The examiner relies on the following references:

Zegelin	6,484,216	Nov. 19, 2002 (eff. filing date Sept. 12, 1997)
Burke et al. (Burke)	6,052,382	Apr. 18, 2000 (filed Jan. 31, 1997)

Claims 4, 7, 9, 10, and 12 stand rejected under 35 U.S.C. § 102(e) as anticipated by Zegelin.

Claims 6 and 11 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the examiner offers Zegelin with regard to claim 6, adding Burke with regard to claim 11.

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

OPINION

A rejection for anticipation under section 102 requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

With regard to independent claim 4, the examiner asserts that Zegelin describes the instant claimed subject matter at column 4, line 18 – column 5, lines 32, and column 7, lines 18-32.

Appellants contend that Zegelin is lacking a teaching of a “first protocol to enable the at least one I/O module to receive the network communications.” Appellants reason that Zegelin uses a control signal to select a communications protocol (column 2, lines 30-40) and when an illegal signal is sent (column 5, lines 8-15), this causes a switching of the communications protocol. However, appellants contend, this illegal control signal is not a protocol (principal brief-page 4). Appellants define “protocol” as “a set of conventions governing the treatment and especially the formatting of data in an electronic communications system” (principal brief-page 4).

We have carefully reviewed the evidence before us, including, inter alia, the disclosure of the reference and the arguments of appellants and the examiner, and we conclude therefrom that the examiner is correct.

As generally asserted by the examiner, at page 6 of the answer, the control signal in Zegelin does enable the I/O module to receive the network communications (this much does not appear to be disputed by appellants, appellants arguing only that the control signal is not a “protocol,” as claimed). But the control signal itself is part of the standard communications protocol that is active at the time the control signal is applied, so in applying the control signal to switch communication protocols, there is a first

communications protocol operating, and this first protocol, via the control signal, does, indeed, enable the at least one I/O module to receive the network communications.

Accordingly, we find appellants' argument to be unpersuasive of no anticipation, and we will sustain the rejection of claim 4 under 35 U.S.C. § 102(e). Since claims 7, 9, 10, and 12 are not separately argued, we will also sustain the rejection of these claims under 35 U.S.C. § 102(e).

Appellants apply the same argument re claim 4 to the rejection of claim 6 (see page 5 of the principal brief) and so, we will also sustain the rejection of claim 6 under 35 U.S.C. § 103(a).

Similarly, appellants choose to rely on the same argument anent claim 11 (see page 5 of the principal brief). Accordingly, we will also sustain the rejection of claim 11 under 35 U.S.C. § 103(a).

The examiner's decision is affirmed.

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

AFFIRMED

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Errol A. Krass)	
Administrative Patent Judge)	
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Allen R. MacDonald)	
Administrative Patent Judge)	APPEALS AND
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Jean R. Homere)	
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