

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 DID-MIN SHIH, CHUN-CHIEH CHEN, JYHFONG LIN
and PEIR-WEIR CHEN

Appeal 2006-2624
Application 10/223,246
Technology Center 2600

Decided: February 27, 2007

Before JAMES D. THOMAS, HOWARD B. BLANKENSHIP, and
MAHSHID D. SAADAT, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134, Appellants have appealed to the Board from the Examiner's final rejection of claims 1 through 23 and 25.

Representative independent claim 1 is reproduced below:

1. A radio communication device, comprising:

a transmitter for emitting a radio signal to a corresponding receiver;
a transmitter power detector coupled to the transmitter detecting TSS (transmitted Signal Strength) of the radio signal emitted from the transmitter; and
an indicator, coupled to the transmitted power detector, for indicating a TSSI (transmitted Signal Strength indication) according to the TSS, thereby warning a user adjacent to the transmitter.

The following references are relied on by the Examiner:

| | | |
|-----------|-----------------|---------------|
| Durkota | US 5,396,255 | Mar. 7, 1995 |
| Park | US 5,818,402 | Oct. 6, 1998 |
| Nakanishi | US 5,832,373 | Nov. 3, 1998 |
| Jensen | US 6,216,012 B1 | Apr. 10, 2001 |

Maia, Fred. “*General Radiotelephone Operator License*”, Copyright 1994, page 162.

All claims on appeal, claims 1 through 23 and 25 stand rejected under 35 U.S.C. § 103. As evidence of obviousness as to claims 1, 4, 6 through 10, 13, 15 through 23 and 25, the Examiner relies upon Nakanishi in view of Durkota, and further in view of Maia.¹ To this initial combination of references the Examiner adds Jensen as to claims 2, 3, 11 and 12 and separately adds Park as to claims 5 and 14.

¹ The Examiner’s statement of the rejection at the bottom of page 3 of the Answer is incorrect to the extent that it includes cancelled claim 24 among the rejected claims. Moreover, this listing of claims at this location in the Answer does not include claim 22, which is clearly a rejected claim on the basis of the reasoning at page 5 of the Answer.

Rather than repeat the positions of the Appellants and the Examiner, reference is made to the Brief (no Reply Brief has been filed) for Appellants' positions, and to the Answer for the Examiner's positions.

OPINION

We affirm-in-part.

Noting again that Appellants have not filed a Reply Brief in this appeal, we also observe that Appellants have not presented any arguments in the brief as to the second and third stated rejections noted earlier respectively relying upon Jensen and Park. Note page 11 of the Brief.

There appears to be no dispute between the Examiner and Appellants that Nakanishi does in fact teach the subject matter of independent claims 1 and 10 on appeal, except for the feature of an indicator for indicating a TSSI. Nakanishi's teachings encompass the use of a telephone as recited in dependent claim 21 according to the teachings of mobile radio environments at Specification page 1, lines 1 through 9 and the discussion beginning at column 14, line 51 to the end of Nakanishi's Patent.

The Examiner relies upon Durkota for the use of a watt meter 112 in figure 2 to monitor the power levels of the antenna 102. Contrary to some arguments of Appellants in the Brief, the Examiner does not rely upon the video display 189 within the portable test unit 103 for display of a power level feature even though the telemetry data from the onboard test system 105 does communicate watt meter-type information through the telemetry transmitter 151 to the telemetry antenna 156 within the portable test system 103 for display on the video display 189.

Even though we consider the Examiner's reasons of combinability at pages 4 and 5 of the Answer as being weakly-based, we sustain the rejection as to independent claims 1 and 10 because of the compelling assessment of the prior art at Appellants' Specification pages 1 through 3 of the application as filed. This portion on more than one occasion indicates that long term exposure to radio frequency signal radiation may damage human tissue. In the context of cell phones and the like of Nakanishi as noted earlier, it clearly would have been obvious to the artisan to have utilized some kind of indication device to inform the user of the power levels or transmitted signal strength levels of such a portable device. The most straightforward teaching of the watt meter 112 in Durkota is the statement at column 4, lines 42 through 44: “[a] watt meter element 110 and watt meter 112 are used to provide local measurements of the transmitted power of the test antenna 102.” This is local to the on board test system 105 within the vehicle or helicopter in figure 1. Thus, there's ample evidence in Durkota that it was known in the art to utilize an indicator element of some kind to convey to a user the power levels associated with a transmitted signal on an antenna. Maia is considered cumulative to what has already been taught in Durkota as to watt meters since the showing at figure 162 of Maia merely shows that a meter indicating arrangement is inherit in the name “watt meter” used as element 112 in Durkota.

We do not agree with Appellants' urging at pages 6 and 7 of the Brief that Nakanishi and Durkota are non-analogous art. The Examiner addresses this at pages 8 and 9 of the Answer and urges that both references are in the same field of endeavor. Rather than being in diverse or unrelated art areas as characterized by Appellants, it appears to us with understanding of both references that the focus of both of them is on transmitted power of a radio antenna and monitoring of it. Appellants' remarks at the bottom of page 6 even admit that the art as characterized by Appellants is related anyway.

Similarly, we disagree with Appellants' arguments at page 7 of the brief which makes reference to the language "thereby warning a user adjacent to the transmitter" at the end claim 1 on appeal. Besides arguing a structural combinability rather than the combinability of the teaching value of the applied prior art, the additional rationale from Appellants' admitted prior art actually meets this limitation. Notwithstanding these considerations, however, the mere intended use of an device does not make a claim to that product patentable as indicated in *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). There is no such warning indication recited in independent claim 10 on appeal. We also agree with the Examiner's responsive remarks addressing Appellants' arguments in the brief beginning at page 9 through the end of the Answer.

On the other hand, we do not sustain the rejection of independent claim 19. The Examiner's statement of the rejection at page 6 of the Answer recognizes that the combination of Nakanishi, Durkota and Maia does not teach the features of claim 19 of presetting a warning level for the transmitted signal strength and, if it is recognized that the strength is greater

than a warning level that has been preset, to output to an indication warning of high RF radiation. From our review of the applied prior art, there is no teaching or showing among them of presetting a warning level associated with the power level of an antenna and then performing such a comparison operation such as to yield an indication of some kind to the user if the level is exceeded. The Examiner's rationale of the obviousness of doing so such as to not change the scope of the invention is without merit. Clearly, there is no *prima facie* case of obviousness of the subject matter of claim 19 on appeal.

We reach a similar conclusion with respect to features recited in dependent claims 7 through 9 which are also equally recited in dependent claims 16 through 18. These respectively recite an indicator comprising a speaker or a vibrator or a smell generator. The Examiner's reasoning of obviousness at the top of page 5 of the Answer essentially dismisses the features themselves and sets forth a presumptuous line of reasoning. Our review of the applied prior art indicates that there is absolutely no evidence presented to us to prove by means of applied prior art the obviousness of a broadly defined indicator as comprising a sound, vibration or smell. Even though the features seem trivial and perhaps well known in the art especially since they are only passively mentioned in the disclosed invention, nevertheless we are constrained to reverse the rejection of these claims. Should the Examiner produce prior art evidence of the recited features in a properly stated rejection, we would reconsider our reversal of these claims. The same applies to independent claim 19.

It is noted that the argued features associated with dependent claim 22 at page 10 of the brief relate to features of this claim corresponding to the features of independent claim 19. As such, we must reverse the rejection of claim 22 for the same reasons. We have already made reference to our consideration of the features of dependent claim 21. As to the argued feature of dependent claim 23 relating to the indicator being physically connected to a transmitted power detector, the assertion at the bottom of page 10 of the Brief is misplaced to the extent that it is noted that Durkota's display 189 is connected to a micro processor. As noted earlier, this is not the rationale of the Examiner since the watt meter 112 is directly connected to a sensor 110 which in turn is directly connected to the antenna 102 itself.

In view of the foregoing, we have affirmed the rejection of claims 1 through 6, 10 through 15, 20, 21, 23 and 25 but have reversed the rejection of dependent claims 7 through 9, 16 through 18 and 22 as well as the rejection of independent claim 19. Therefore, the decision of the Examiner is affirmed-in-part.

Appeal 2006-2624
Application 10/223,246

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR §1.136(a). See 37 CFR § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

PGC

Rabin & Berdo, PC
1101 14th Street, N.W.
Suite 500
Washington, DC 20005