

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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID H. HARKNESS, DAOZHENG LU,  
WILLIAM A. FEININGER, and CRAIG M. SMITHPETERS

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Appeal No. 2006-3231  
Application No. 09/955,691  
Technology Center 2600

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ON BRIEF

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Before HAIRSTON, DIXON, and BARRY, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-24, 26-33, and 48-50, which are all of the claims pending in this application.

We AFFIRM-IN-PART.

BACKGROUND

Appellants' invention relates to detection of media links in broadcast signals. An understanding of the invention can be derived from a reading of exemplary claims 1, 10, and 18, which are reproduced below.

1. A detection apparatus to identify a program comprising:  
a tuner to tune to the program;  
a meter coupled to the tuner to record a media link embedded in the program tuned by the tuner; and  
a program identifier to identify the program tuned by the tuner based on the media link recorded by the meter.

10. A data acquisition system to acquire identifying data from a program comprising:  
a tuner to tune to the program; and,  
a meter coupled to the tuner and arranged to capture first and second program identifying data identifying the program tuned by the tuner, wherein the first program identifying datum is a media link embedded in the program which, when activated, initiates a request for information from a content provider via a network, and wherein the second program identifying datum is a program identifying datum other than a media link.

18. The data acquisition system of claim 10 further comprising a program identifier, wherein the program identifier is arranged to identify the program by activating the media link to initiate the request for information from the content provider.

#### PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Lert, Jr. et al. (Lert)	4,677,466	Jun. 30, 1987
Thomas et al. (Thomas)	5,481,294	Jan. 2, 1996
Lu et al. (Lu)	5,594,934	Jan. 14, 1997
Killian	6,163,316	Dec. 19, 2000

#### REJECTIONS

Claims 1, 4-6, 24, 29, and 31-33 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thomas. Claims 7-10, 13-23, 26-28, and 48-50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas in view of Killian.

Claims 2-3 and 11-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas in view of Lu. Claim 30 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas in view of Lert, Jr.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejections, we make reference to the Examiner's Answer (mailed Jun. 2, 2006) for the reasoning in support of the rejection, and to Appellants' Brief (filed Mar. 16, 2006) and Reply Brief (filed Aug. 7, 2006) for the arguments thereagainst.

#### OPINION

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

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), it is only necessary for the claims to “‘read on’ something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or ‘fully met’ by it.” While all elements of the claimed invention must appear in a single reference, additional references may be used to interpret the anticipating reference and to shed light on its meaning, particularly to those skilled in the art at the relevant time. See Studiengesellschaft Kohle v. Dart Indus Inc., 726 F.2d 724, 726-727, 220 USPQ 841, 842-843 (Fed. Cir. 1984).

We must point out, however, that anticipation under 35 U.S.C. § 102 is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See RCA Corp.

v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. “[T]he name of the game is the claim.” In re Hiniker Co., 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the limitations as recited in independent claim 1 and find that the claim requires “a meter coupled to the tuner to record a media link embedded in the program tuned by the tuner.” [Emphasis added.] To properly interpret this limitation, we first look to Appellants’ specification and then to the ordinary meaning for a reasonable interpretation in light of Appellants’ disclosure and the express claim language.

Appellants argue that the Examiner’s interpretation of “media link” in the independent claim 1<sup>1</sup> is unreasonable in light of the express definition in the specification and that the application of the ancillary codes of Thomas is unreasonable in light of the express definition. (Br. 11-20). We do not agree with Appellants. Appellants rely on the text at page 1, line 17 – page 2, line 4 of the specification which states that “as used herein, media links include URLs . . . .” We cannot agree with Appellants that this language establishes an express definition of “‘media link’ to be any link that links a content recipient to additional content.” We find that a URL is a Universal Resource Locator and that the resource located does not always have content. The URL may forward the user to another URL, or not be used. We find no limitation in the express language of the claim that necessarily requires there to be content associated with the media link. Additionally, we do not find that the “media link” in independent claim 1 is more than a label or non-functional descriptive material since it is not used as a “link” to do any claimed function. Therefore, we find that the Examiner has not been unreasonable in interpreting the claim language and in relying upon the ancillary codes of Thomas to reject independent claim 1.

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<sup>1</sup> Here, we also question whether the “program identifier” of independent claim 1 is a separate element of the detection apparatus as structured in the claim limitations or whether this is another piece of information recorded. No prior discussion of this element has clarified this limitation.

Appellants argue that Thomas does not teach collecting a media link embedded in a tuned program to identify a tuned program. (Br. 20). We do not agree with Appellants since the ancillary codes do identify the tuned program. Therefore, Appellants' argument is not persuasive, and we will sustain the rejection of independent claim 1 and dependent claims not argued separately.

With respect to dependent claim 5, Appellants argue that Thomas does not identify the program by accessing a content provider (Br. 20-21). We agree with Appellants that the fact that an ancillary code can identify a program does not hint or anticipate accessing a content provider to identify a program based on the media link. Here, we find that the Examiner goes beyond the express teachings of Thomas with respect to the program identifier is arranged to identify the program by accessing a content provider. Here, we do not find that there is accessing a content provider by the detection apparatus. The Examiner maintains that Thomas at column 11 teaches identifying the content by accessing the content provider, but we find no such teaching at lines 40-42 of column 11. Therefore, the Examiner has not established a prima facie of anticipation, and we cannot sustain the rejection of dependent claim 5.

With respect to dependent claim 6, the Examiner maintains that the ancillary code provides information to identify the program and therefore provides a "manual identification" of the program. Appellants argue that the Examiner has not shown that Thomas teaches a non-automated act in the identification. We find no support cited by the Examiner for the Examiner's position, but we do find that Thomas does provide support for a manual identification using compressed replica and a manual identification (Thomas, Col. 19, ll. 3-11). We find that this teaching of Thomas supports the Examiner's conclusion and is in the material immediately prior to the discussion of "clustering" and the Lert reference discussed at page 23 of the Brief. Therefore, we find that Appellants have not been prejudiced by our reliance thereon, and we find that the Examiner has established a prima facie of anticipation, and we sustain the rejection of dependent claim 6.

With respect to independent claim 24, Appellants argue that the claim requires a comparator to generate a subset of reference signatures from a library of reference

signatures based on the media link embedded in the program. (Br. 22). The Examiner maintains that Thomas at columns 17-18 teaches the generation of a subset of signatures based upon the ancillary code/media link (Answer, 5). From our review of the cited portions of Thomas, we find no teaching generating a subset of signatures based upon the ancillary code/media link. While we may consider the use of the media link to identify the one reference signature of the tuned program, this would be insufficient to anticipate the claim since the limitation requires a “subset of signatures” which would be a set of at least two signatures. Therefore, the Examiner has not established a prima facie case of anticipation, and we cannot sustain the rejection of dependent claim 24 and its dependent claims 31-33 and 50 under 35 U.S.C. § 102 and claims 26-28 and 30 under 35 U.S.C. § 103(a).

With respect to independent claim 29, Appellants contend that Thomas does not teach (1) using closed captioning information to select a reference signature from a library, or (2) comparing a broadcast signature of a broadcast program associated with the closed captioning information to the selected reference signature as recited in claim 29 and that Thomas does not anticipate claim 29 (Br. 24). The Examiner maintains that in Thomas the ancillary codes are inherently closed captioning information since they are found in the vertical blanking intervals in the program. While we find that the Killian reference at column 4 (not applied here) does indicate that closed captioning information is also found in the vertical blanking interval (VBI) of the video transmission, we cannot agree with the Examiner that ancillary codes are necessarily closed captioning information. Moreover, the Examiner has not shown that this closed captioning information is used to select a reference signature.

35 U.S.C. § 103

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). A prima facie case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 458 F.2d 1013, 1016, 173 USPQ

560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is prima facie obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. See, e.g., Grain Processing Corp. v. American Maize-Prods. Co., 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, “the [E]xaminer can satisfy the burden of showing obviousness of the combination ‘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 that individual to combine the relevant teachings of the references.’” In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing In re Fritch, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). “Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence.’” In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). “Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact.” Dembiczak, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing McElmurry v. Arkansas Power & Light Co., 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. “[T]he name of the game is the claim.” In re Hiniker Co., 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the express language of independent claim 10.

With respect to Appellants' argument concerning that it is not obvious to use a media link for program identification, these arguments are not identified with respect to any specific claims or claim language (Br. 24-28). Therefore, we will address these arguments as they are relied upon with respect to specific claims and claim language.

With respect to independent claim 10, Appellants reply upon the arguments made with respect to independent claim 1 and that the media link must be construed to cover any link that connects a content recipient to additional content and is distinct from an ancillary code (Br. 30). Here, Appellants also seem to rely upon their argument with respect to that the content is different than the content of the tuned program. Appellants contend that Killian does not hint that the embedded URLs or hyperlinks in broadcast programs would in anyway be useful for identifying the programs in which they are embedded. (Br. 30). We disagree with Appellants, and find that the URL's taught by Killian would have at least narrowed the programs to a specific channel and would have been useful in this way to identify the program.

We note that the language of independent claim 10 does not specifically identify what level of identification is required or that the media link is automatically launched. We find that independent claim 10 merely requires that "when activated" the media link would initiate a request. We find this equivalent to a recitation of a URL name without the hyperlink. If a user were to use the datum in a manner to retrieve content, then content could be retrieved. We find no requirement in independent claim 10 of a hyperlink as specifically recited in dependent claim 20. Since we find that the URL narrows the area of the program, it identifies the programs in which it is embedded. Therefore, we find that the combination would have suggested the claimed invention, and we will sustain the rejection of independent claim 10 and dependent claims 13-23 and 49 grouped therewith.

Additionally, we find that the language of independent claim 10 does not expressly support Appellants' prior arguments at pages 26-27 concerning the "media links to content other than the broadcast program," "additional content from the Internet," "useful for audience measurement," and the media link "identifies media different from the television program." We find all of these arguments are not commensurate in scope with

the express language of independent claim 10. Therefore, the Examiner has not established a prima facie of obviousness, and we cannot sustain the rejection of independent claim 10 and claims dependent therefrom not argued separately.

With respect to dependent claims 7, 20, 26, and 48-50, Appellants have elected to group all the above claims together. Therefore, we select dependent claim 7 as the representative claim. As discussed above with respect to independent claims 1 and 10, we find that the URL is only an address which is taught and suggested by Killian. Since we did not find the argument persuasive with respect to independent claim 10, we do not find it persuasive here. Therefore, Appellants' argument is not persuasive, and we will sustain the rejection of claim 7 and those claims grouped therewith by Appellants.

With respect to dependent claims 8, 21, and 27, the Examiner maintains that Killian teaches "other Internet information corresponding to a channel" at column 5, lines 39-40. We agree that "other information" would have been a code referenced to a URL. We find no limitation as to the specific structure or format of the code. Therefore, we find a reasonable basis in the teachings and suggestions of Killian to support the Examiner's rejection. Therefore, Appellants' argument is not persuasive, and we will sustain the rejection of claim 8 and the claims grouped therewith by Appellants.

With respect to dependent claim 18, Appellants argue that the program identifier is arranged to identify the program by activating the media link to initiate the request for information from the content provider is not taught or suggested by Killian.

[W]hile Killian clearly describes embedding URLs and/or hyperlinks in broadcast programs, it does not hint that such media links would in any way be useful for identifying the programs in which they are embedded. As also discussed above, media links are, by definition, intended to *uniquely identify the linked content* (e.g., a referenced web page), *not the program within which they are embedded*. [Br. 30-31].

Here, it appears that Appellants may be claiming the automatic use of the media link. The portion of page 17 of the specification cited to support this limitation in the summary of the invention of the Brief merely states that "[i]n this case, the media link may be used

to access the Web site or content associated with the media link in order to discover the identity of the program, or the program may be viewed by personnel of the central facility 28 in order to discover the identity of the program.” [Specification, p. 17, ll. 5-10].  
[Emphasis added.]

Here we do not find that Appellants are claiming the automatic initiation of the link to identify the program by the system, but that the media link may be used. Here, we find that URLs of Killian may be used to identify the program to some degree as discussed above. Therefore, the Examiner has established a prima facie case of obviousness, and we will sustain the rejection of dependent claim 18.

#### CONCLUSION

To summarize, we have affirmed the rejection of claims 1, 4, and 6 under 35 U.S.C. § 102, and reversed the rejection of claims 5, 24, and 31-33 under 35 U.S.C. § 102, affirmed the rejection of claims 2, 3, 7-23, 48, and 49 under 35 U.S.C. § 103, and reversed the rejection of claims 26-28, 30, and 50 under 35 U.S.C. § 103.

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Application No. 09/955,691

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

AFFIRMED-IN-PART

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
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	)	
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